

(3) Effect on Commission authority

Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) or any other provision of this chapter or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this chapter, a remedy or procedure required to be imposed under this subsection.

(4) "Limited partnership rollup transaction" defined

Except as provided in paragraph (5), as used in this subsection, the term "limited partnership rollup transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which—

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before December 17, 1993, by the Commission under section 78k-1 of this title;

(B) any of the investors' limited partnership securities are not, as of the date of filing, reported under a transaction reporting plan declared effective before December 17, 1993, by the Commission under section 78k-1 of this title;

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(5) Exclusions from definition

Notwithstanding paragraph (4), the term "limited partnership rollup transaction" does not include—

(A) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

(B) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged in accordance with the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(C) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(D) a transaction that involves only issuers that are not required to register or report under section 78l of this title, both before and after the transaction;

(E) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, involving the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if—

(i) such action is approved by not less than 66 $\frac{2}{3}$ percent of the outstanding units of each of the participating limited partnerships; and

(ii) as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting limited partnership agreements; or

(F) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before December 17, 1993, by the Commission under section 78k-1 of this title, if—

(i) such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(ii) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(i) Disclosure of pay versus performance

The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including, for any issuer other than an emerging growth company, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

(j) Disclosure of hedging by employees and directors

The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

- (1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or
- (2) held, directly or indirectly, by the employee or member of the board of directors.

(k) Data standards for proxy and consent solicitation materials

(1) Requirement

The Commission shall, by rule, adopt data standards for all information contained in any proxy or consent solicitation material prepared by an issuer for an annual meeting of the shareholders of the issuer, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(June 6, 1934, ch. 404, title I, §14, 48 Stat. 895; Pub. L. 88–467, §5, Aug. 20, 1964, 78 Stat. 569; Pub. L. 90–439, §3, July 29, 1968, 82 Stat. 455; Pub. L. 91–567, §§3–5, Dec. 22, 1970, 84 Stat. 1497; Pub. L. 98–38, §2(b), June 6, 1983, 97 Stat. 205; Pub. L. 99–222, §2, Dec. 28, 1985, 99 Stat. 1737; Pub. L. 101–550, title III, §302, Nov. 15, 1990, 104 Stat. 2721; Pub. L. 103–202, title III, §302(a), Dec. 17, 1993, 107 Stat. 2359; Pub. L. 105–353, title III, §301(b)(7), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107–123, §6, Jan. 16, 2002, 115 Stat. 2396; Pub. L. 111–203, title IX, §§953(a), 955, 971(a), 991(b)(3), July 21, 2010, 124 Stat. 1903, 1904, 1915, 1953; Pub. L. 112–106, title I, §102(a)(2), Apr. 5, 2012, 126 Stat. 309; Pub. L. 117–263, div. E, title LVIII, §5821(g), Dec. 23, 2022, 136 Stat. 3426.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (h)(1)(A), (2), (3), was in the original "this title". See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsecs. (b)(1), (c), (d)(1), and (g)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of

chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Securities Act of 1933, referred to in subsec. (h)(5)(C), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2022—Subsec. (k). Pub. L. 117–263 added subsec. (k).

2012—Subsec. (i). Pub. L. 112–106 inserted ", for any issuer other than an emerging growth company," after "including".

2010—Subsec. (a). Pub. L. 111–203, §971(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(1)(A). Pub. L. 111–203, §991(b)(3)(A), substituted "paragraph (4)" for "paragraphs (5) and (6)" in cls. (i) and (ii).

Subsec. (g)(3). Pub. L. 111–203, §991(b)(3)(B), substituted "paragraph (4)" for "paragraphs (5) and (6)".

Subsec. (g)(4) to (6). Pub. L. 111–203, §991(b)(3)(C), (D), added pars. (4) to (6) and struck out former pars. (4) to (6) which related to deposit and crediting of fees as offsetting collections, annual adjustment of rates, and final rate adjustment, respectively.

Subsec. (g)(8) to (11). Pub. L. 111–203, §991(b)(3)(E), (F), redesignated par. (11) as (8) and struck out former pars. (8) to (10) which related to review and effective date of adjusted rate, collection of fees upon lapse of appropriation, and publication of rate, respectively.

Subsec. (i). Pub. L. 111–203, §953(a), added subsec. (i).

Subsec. (j). Pub. L. 111–203, §955, added subsec. (j).

2002—Subsec. (g)(1)(A)(i), (ii), (3). Pub. L. 107–123, §6(1), substituted "a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$92 per \$1,000,000 of" for "a fee of 1/50 of 1 per centum of".

Subsec. (g)(4) to (11). Pub. L. 107–123, §6(2), (3), added pars. (4) to (10) and redesignated former par. (4) as (11).

1998—Subsec. (g)(4). Pub. L. 105–353 substituted "consolidation, sale," for "consolidation sale,".

1993—Subsec. (h). Pub. L. 103–202 added subsec. (h).

1990—Subsec. (b)(1). Pub. L. 101–550, §302(a), substituted "section 78l of this title, or any security issued by an investment company registered under the Investment Company Act of 1940," for "section 78l of this title" and "authorization, or information statement" for "or authorization".

Subsec. (c). Pub. L. 101–550, §302(b), substituted "title, or a security issued by an investment company registered under the Investment Company Act of 1940," for "title".

1985—Subsec. (b). Pub. L. 99–222 designated existing provision as par. (1), inserted "or any bank, association, or other entity that exercises fiduciary powers," after "under this chapter," and added par. (2).

1983—Subsec. (g). Pub. L. 98–38 added subsec. (g).

1970—Subsec. (d)(1). Pub. L. 91–567, §3, included equity securities of an insurance company which would have been required to be registered except for the exemption contained in section 78l(g)(2)(G) of this title, and substituted "5 per centum" for "10 per centum".

Subsec. (d)(8). Pub. L. 91–567, §4, struck out cl. (A) which excluded offers for, or invitations for tenders of, securities proposed to be made by means of a registration statement under the Securities Act of 1933, and redesignated cls. (B) to (D) as (A) to (C), respectively.

Subsec. (e). Pub. L. 91–567, §5, inserted provisions requiring the Commission, for the purposes of the subsection, by rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

1968—Subsecs. (d) to (f). Pub. L. 90–439 added subsecs. (d) to (f).

1964—Subsec. (a). Pub. L. 88–467, §5(a), substituted provisions which make it unlawful for any person, in contravention of the Commission's rules and regulations, to solicit, or to permit the use of his name to solicit, proxies in respect of any security registered pursuant to section 78l of this title for former provisions which limited the Commission's rulemaking authority to proxies relating to securities listed and registered on a national securities exchange.

Subsec. (b). Pub. L. 88–467, §5(b), substituted provisions which make it unlawful for members of a national securities exchange and brokers and dealers registered under this chapter, in contravention of such rules as may be prescribed by the Commission, to give, or to refrain from giving proxies, consents, and other authorizations in respect of any security registered under section 78l of this title carried for the account of customers for former provisions which limited the Commission's rulemaking authority only to the giving of proxies in respect to listed securities carried for the account of customers by members of the national securities exchanges and by brokers or dealers who conduct business through the medium of an exchange

member, and deleted the reference to brokers and dealers who transacted business through the medium of an exchange member as being now covered by brokers and dealers registered under this chapter.

Subsec. (c). Pub. L. 88-467, §5(c), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 953(a), 955, and 971(a) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 991(b)(3) of Pub. L. 111-203 effective Oct. 1, 2011, see section 991(b)(4) of Pub. L. 111-203, set out as a note under section 77f of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-123 effective Oct. 1, 2001, except that authorities provided by subsec. (g)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107-123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-550, title III, §303, Nov. 15, 1990, 104 Stat. 2721, provided that: "The amendments made by section 302 of this title [amending this section] shall take effect upon the expiration of 180 days after the date of enactment of this Act [Nov. 15, 1990]."

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-222, §3, Dec. 28, 1985, 99 Stat. 1737, provided that: "The amendments made by this Act [amending this section] shall become effective one year after the date of enactment of this Act [Dec. 28, 1985]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

REGULATIONS

Pub. L. 111-203, title IX, §971(b), (c), July 21, 2010, 124 Stat. 1915, provided that:

"(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

"(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section [amending this section] or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers."

[For definitions of terms used in section 971(b), (c) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

Pub. L. 103-202, title III, §302(b), Dec. 17, 1993, 107 Stat. 2363, provided that: "The Securities and Exchange Commission shall conduct rulemaking proceedings and prescribe final regulations under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] to implement the requirements of section 14(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78n(h)], as amended by subsection (a), and such regulations shall become effective not later than 12 months after the date of enactment of this Act [Dec. 17, 1993]."

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117-263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117-263, set out as a note under section 77g of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103-202 not to limit authority of Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of this chapter or preclude the

Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103–202, set out in an Effective Date of 1993 Amendment note under section 78f of this title.

STUDY AND REPORT ON SHAREHOLDER ACCESS TO PROXY STATEMENTS

Pub. L. 104–290, title V, §510(b), Oct. 11, 1996, 110 Stat. 3450, provided that the Securities and Exchange Commission should conduct a study to determine if shareholder access to proxy statements pursuant to this section had been impaired by recent statutory, judicial, or regulatory changes and the ability of shareholders to have proposals relating to corporate practices and social issues included as part of proxy statements, and provided that the Commission report the study and any recommendations to Congress by 1 year after Oct. 11, 1996.

EVALUATION OF FAIRNESS OPINION PREPARATION, DISCLOSURE, AND USE

Pub. L. 103–202, title III, §302(c), Dec. 17, 1993, 107 Stat. 2363, provided that the Comptroller General of the United States should, within 18 months after Dec. 17, 1993, conduct a study of the use of fairness opinions in limited partnership rollup transactions, the standards which preparers use in making determinations of fairness, the scope of review, quality of analysis, qualifications and methods of selection of preparers, costs of preparation, and any limitations imposed by issuers on such preparers, the nature and quality of disclosures provided with respect to such opinions, any conflicts of interest concerning such opinions, and the usefulness of the opinions to limited partners, with a report required to be sent to Congress by the end of the 18-month period.

ADJUSTMENT OF REGISTRATION FEE RATE

By order dated Aug. 25, 2023, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$147.60 per \$1,000,000, effective Oct. 1, 2023, see 88 F.R. 59953.

By order dated Aug. 25, 2022, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$110.20 per \$1,000,000, effective Oct. 1, 2022, see 87 F.R. 53030.

By order dated Aug. 23, 2021, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$92.70 per \$1,000,000, effective Oct. 1, 2021, see 86 F.R. 47696.

By order dated Aug. 26, 2020, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$109.10 per \$1,000,000, effective Oct. 1, 2020, see 85 F.R. 53890.

By order dated Aug. 23, 2019, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$129.80 per \$1,000,000, effective Oct. 1, 2019, see 84 F.R. 45601.

By order dated Aug. 24, 2018, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$121.20 per \$1,000,000, effective Oct. 1, 2018, see 83 F.R. 44101.

By order dated Aug. 24, 2017, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$124.50 per \$1,000,000, effective Oct. 1, 2017, see 82 F.R. 41080.

By order dated Aug. 30, 2016, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$115.90 per \$1,000,000, effective Oct. 1, 2016, see 81 F.R. 61283.

By order dated Aug. 26, 2015, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$100.70 per \$1,000,000, effective Oct. 1, 2015, see 80 F.R. 52824.

By order dated Aug. 29, 2014, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$116.20 per \$1,000,000, effective Oct. 1, 2014, see 79 F.R. 52771.

By order dated Aug. 30, 2013, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$128.80 per \$1,000,000, effective Oct. 1, 2013, see 78 F.R. 54934.

By order dated Aug. 31, 2012, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$136.40 per \$1,000,000, effective Oct. 1, 2012, see 77 F.R. 55240.

By order dated Aug. 31, 2011, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (g) of this section to \$114.60 per \$1,000,000, effective Oct. 1, 2011, see 76 F.R. 55139.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [See Adjustment of Registration Fee Rate notes below.](#)

§78n–1. Shareholder approval of executive compensation

(a) Separate resolution required

(1) In general

Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

(2) Frequency of vote

Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

(3) Effective date

The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on July 21, 2010, shall include—

(A) the resolution described in paragraph (1); and

(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

(b) Shareholder approval of golden parachute compensation

(1) Disclosure

In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on July 21, 2010, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

(2) Shareholder approval

Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

(c) Rule of construction

The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

(1) as overruling a decision by such issuer or board of directors;

(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(d) Disclosure of votes

Every institutional investment manager subject to section 78m(f) of this title shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

(e) Exemption

(1) In general

The Commission may, by rule or order, exempt any other issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens ¹ small issuers.

(2) Treatment of emerging growth companies

(A) In general

An emerging growth company shall be exempt from the requirements of subsections (a) and (b).

(B) Compliance after termination of emerging growth company treatment

An issuer that was an emerging growth company but is no longer an emerging growth company shall include the first separate resolution described under subsection (a)(1) not later than the end of—

(i) in the case of an issuer that was an emerging growth company for less than 2 years after the date of first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the 3-year period beginning on such date; and

(ii) in the case of any other issuer, the 1-year period beginning on the date the issuer is no longer an emerging growth company.

(June 6, 1934, ch. 404, title I, §14A, as added Pub. L. 111–203, title IX, §951, July 21, 2010, 124 Stat. 1899; amended Pub. L. 112–106, title I, §102(a)(1), Apr. 5, 2012, 126 Stat. 308.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (e)(2)(B)(i), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–106 designated existing provisions as par. (1), inserted heading, substituted "any other issuer" for "an issuer", and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

¹ So in original. Probably should be "burden".

§78n–2. Corporate governance

Not later than 180 days after July 21, 2010, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).

(June 6, 1934, ch. 404, title I, §14B, as added Pub. L. 111–203, title IX, §972, July 21, 2010, 124 Stat. 1915.)

EDITORIAL NOTES

CODIFICATION

July 21, 2010, referred to in text, was in the original "the date of enactment of this subsection", and was translated as meaning the date of enactment of Pub. L. 111–203, which enacted this section, to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§78o. Registration and regulation of brokers and dealers

(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b) Manner of registration of brokers and dealers

(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny

such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on June 4, 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this chapter.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this chapter and the rules and regulations thereunder: *Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this chapter (other than section 78e of this title and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made

false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer municipal advisor,,¹ government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18 or a violation of a substantially equivalent foreign statute.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor,,¹ government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, 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.

(D) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker, dealer, security-based swap dealer, or a major security-based swap participant;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

- (i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of this subsection;
- (ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or
- (iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

- (i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;
- (ii) for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or
- (iii) for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

(C) For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from such term.

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 78o-5(a)(1)(A) of this title shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

- (A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;
- (B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and
- (C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national

securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or ² commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 78o-3 of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 78f(c)(2), 78o-3(g)(2), or 78q-1(b)(4)(A) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(11) BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—

(A) NOTICE REGISTRATION.—

(i) **CONTENTS OF NOTICE.**—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 78f(g) of this title may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 78o-3(k) of this title.

(ii) **IMMEDIATE EFFECTIVENESS.**—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) **SUSPENSION.**—Such registration shall be suspended immediately if a national securities association registered pursuant to section 78o-3(k) of this title suspends the membership of that broker or dealer.

(iv) **TERMINATION.**—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this chapter and the rules thereunder with respect to transactions in security futures products:

- (i) Section 78h of this title.
- (ii) Section 78k of this title.
- (iii) Subsections (c)(3) and (c)(5) of this section.
- (iv) Section 78o-4 of this title.
- (v) Section 78o-5 of this title.
- (vi) Subsections (d), (e), (f), (g), (h), and (i) ³ of section 78q of this title.

(12) EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.—

(A) REGISTRATION EXEMPTION.—A natural person shall be exempt from the registration requirements of this section if such person—

- (i) is a member of a designated contract market registered with the Commission as an

exchange pursuant to section 78f(g) of this title;

(ii) effects transactions only in securities on the exchange of which such person is a member; and

(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

(B) OTHER EXEMPTIONS.—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this chapter and the rules thereunder:

(i) Section 78h of this title.

(ii) Section 78k of this title.

(iii) Subsections (c)(3), (c)(5), and (e) of this section.

(iv) Section 78o-4 of this title.

(v) Section 78o-5 of this title.

(vi) Subsections (d), (e), (f), (g), (h), and (i) ³ of section 78q of this title.

(13) REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an M&A broker shall be exempt from registration under this section.

(B) EXCLUDED ACTIVITIES.—An M&A broker is not exempt from registration under this paragraph if such broker does any of the following:

(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(ii) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the Commission under section 78l of this title or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection (d).

(iii) Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company.

(iv) Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company.

(v) Assists any party to obtain financing from an unaffiliated third party without—

(I) complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. 220 et seq.); and

(II) disclosing any compensation in writing to the party.

(vi) Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.

(vii) Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker to acquire the eligible privately held company.

(viii) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers.

(ix) Binds a party to a transfer of ownership of an eligible privately held company.

(C) DISQUALIFICATION.—An M&A broker is not exempt from registration under this paragraph if such broker (and if and as applicable, including any officer, director, member, manager, partner, or employee of such broker)—

(i) has been barred from association with a broker or dealer by the Commission, any State, or any self-regulatory organization; or

(ii) is suspended from association with a broker or dealer.

(D) **RULE OF CONSTRUCTION.**—Nothing in this paragraph shall be construed to limit any other authority of the Commission to exempt any person, or any class of persons, from any provision of this chapter, or from any provision of any rule or regulation thereunder.

(E) **DEFINITIONS.**—In this paragraph:

(i) **BUSINESS COMBINATION RELATED SHELL COMPANY.**—The term "business combination related shell company" means a shell company that is formed by an entity that is not a shell company—

(I) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(II) solely for the purpose of completing a business combination transaction (as defined under section 230.165(f) of title 17, Code of Federal Regulations) among one or more entities other than the company itself, none of which is a shell company.

(ii) **CONTROL.**—The term "control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control if, upon completion of a transaction, the buyer or group of buyers—

(I) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(II) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

(iii) **ELIGIBLE PRIVATELY HELD COMPANY.**—The term "eligible privately held company" means a privately held company that meets both of the following conditions:

(I) The company does not have any class of securities registered, or required to be registered, with the Commission under section 781 of this title or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d).

(II) In the fiscal year ending immediately before the fiscal year in which the services of the M&A broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(aa) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.

(bb) The gross revenues of the company are less than \$250,000,000.

For purposes of this subclause, the Commission may by rule modify the dollar figures if the Commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.

(iv) **M&A BROKER.**—The term "M&A broker" means a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that—

(I) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert—

(aa) will control the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(bb) directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company, including without limitation, for example, by—

(AA) electing executive officers;

- (BB) approving the annual budget;
- (CC) serving as an executive or other executive manager; or
- (DD) carrying out such other activities as the Commission may, by rule, determine to be in the public interest; and

(II) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than 120 days before the date of the offer, and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(v) SHELL COMPANY.—The term "shell company" means a company that at the time of a transaction with an eligible privately held company—

(I) has no or nominal operations; and

(II) has—

(aa) no or nominal assets;

(bb) assets consisting solely of cash and cash equivalents; or

(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—On the date that is 5 years after December 29, 2022, and every 5 years thereafter, each dollar amount in subparagraph (E)(iii)(II) shall be adjusted by—

(I) dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

(II) multiplying such dollar amount by the quotient obtained under subclause (I).

(ii) ROUNDING.—Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of \$100,000.

(c) Use of manipulative or deceptive devices; contravention of rules and regulations

(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), or any security-based swap agreement by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security or any security-based swap agreement involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(2)(A) No broker or dealer shall make use of the mails or any means or instrumentality of

interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such broker, dealer, or municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(3)(A) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(B) Consistent with this chapter, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to subsection (b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 78h of this title, subsection (c)(3), and section 78q of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.] and rules and regulations thereunder involving security futures products.

(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(C)(i), 6d(a)(2)] and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 78mm of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act [7 U.S.C. 6f(a)(1)], in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act [7 U.S.C. 6d] and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 78l, 78m, 78n of this title or subsection (d) or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 78g of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this chapter or under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(d) Supplementary and periodic information

(1) In general

Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 78m of this title in respect of a security registered pursuant to section 78l of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 78l of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 1467a of title 12), or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons persons.¹ For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(2) Asset-backed securities

(A) Suspension of duty to file

The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) Classification of issuers

The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

(e) Notices to customers regarding securities lending

Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.

(f) Compliance with this chapter by members not required to be registered

The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under this section and any person associated with any such member to comply with any provision of this chapter (other than subsection (a)) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

(g) Prevention of misuse of material, nonpublic information

Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this chapter, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this chapter (or the rules or regulations thereunder) of material, nonpublic information.

(h) Requirements for transactions in penny stocks

(1) In general

No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

(2) Risk disclosure with respect to penny stocks

Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer a risk disclosure document that—

(A) contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;

(B) contains a description of the broker's or dealer's duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;

(C) contains a brief, clear, narrative description of a dealer market, including "bid" and "ask" prices for penny stocks and the significance of the spread between the bid and ask prices;

(D) contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 78o-3(i) of this title;

(E) defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and

(F) contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

(3) Commission rules relating to disclosure

The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules—

(A) shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors—

(i) the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

(ii) the number of shares to which such bid and ask prices apply, or other comparable information relating to the depth and liquidity of the market for such stock; and

(iii) the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;

(B) shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and

(C) may, as the Commission finds necessary or appropriate in the public interest or for the

protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

(4) Exemptions

The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

(5) Regulations

It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets—

(A) as necessary or appropriate to carry out this subsection; or

(B) as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

(i) Limitations on State law

(1) Capital, margin, books and records, bonding, and reports

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this chapter. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this chapter.

(2) Funding portals

(A) Limitation on State laws

Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

(B) Examination and enforcement authority

Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

(C) Definition

For purposes of this paragraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) De minimis transactions by associated persons

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) ³ for a customer in such State if—

(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

(B) such associated person is registered with a registered securities association and at least one State; and

(C) the broker or dealer with which such person is associated is registered with such State.

(4) Described transactions

(A) In general

A transaction is described in this paragraph if—

(i) such transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) by an associated person of the broker or dealer—

(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or

(ii) the transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of—

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

(B) Rules of construction

For purposes of subparagraph (A)(i)(II)—

(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and

(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

(j) ⁴ Rulemaking to extend requirements to new hybrid products

(1) Consultation

Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

(2) Limitation

The Commission shall not—

(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A),

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

(3) Criteria for rulemaking

The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—

(A) the new hybrid product is a security; and

(B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

(4) Considerations

In making a determination under paragraph (3), the Commission shall consider—

(A) the nature of the new hybrid product; and

(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

(5) Objection to Commission regulation

(A) Filing of petition for review

The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

(B) Transmittal of petition and record

A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(C) Exclusive jurisdiction

On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

(D) Standard of review

The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—

(i) the subject product is a new hybrid product, as defined in this subsection;

(ii) the subject product is a security; and

(iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

(E) Judicial stay

The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

(F) Other authority to challenge

Any aggrieved party may seek judicial review of the Commission's rulemaking under this subsection pursuant to section 78y of this title.

(6) Definitions

For purposes of this subsection:

(A) New hybrid product

The term "new hybrid product" means a product that—

- (i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act [Nov. 12, 1999];
- (ii) is not an identified banking product as such term is defined in section 206 of such Act; and
- (iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

(B) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(j) ⁴ Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c–1(b) of this title.

(k) ⁵ Registration or succession to a United States broker or dealer

In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(l) ⁶ Termination of a United States broker or dealer

For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(k) ⁷ Standard of conduct

(1) In general

Notwithstanding any other provision of this chapter or the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–11]. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

(2) Disclosure of range of products offered

Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

(l) ⁸ Other matters

The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(m) Harmonization of enforcement

The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this chapter; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this chapter to ⁹ same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.].

(n) Disclosures to retail investors

(1) In general

Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

(2) Considerations

In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

(3) Form and contents of documents and information

Any documents or information designated under a rule promulgated under paragraph (1) shall—

(A) be in a summary format; and

(B) contain clear and concise information about—

(i) investment objectives, strategies, costs, and risks; and

(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.

(o) Authority to restrict mandatory pre-dispute arbitration

The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

(June 6, 1934, ch. 404, title I, §15, 48 Stat. 895; May 27, 1936, ch. 462, §3, 49 Stat. 1377; June 25, 1938, ch. 677, §2, 52 Stat. 1075; Pub. L. 88–467, §6, Aug. 20, 1964, 78 Stat. 570; Pub. L. 91–598, §11(d), formerly §7(d), Dec. 30, 1970, 84 Stat. 1653, renumbered §11(d), Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 260; Pub. L. 94–29, §11, June 4, 1975, 89 Stat. 121; Pub. L. 95–213, title II, §204, Dec. 19, 1977, 91 Stat. 1500; Pub. L. 98–38, §3(a), June 6, 1983, 97 Stat. 206; Pub. L. 98–376, §§4, 6(b), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 99–571, title I, §102(e), (f), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 100–181, title III, §317, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 100–704, §3(b)(1), Nov.

19, 1988, 102 Stat. 4679; Pub. L. 101–429, title V, §§504(a), 505, Oct. 15, 1990, 104 Stat. 952, 953; Pub. L. 101–550, title II, §203(a), (c)(1), Nov. 15, 1990, 104 Stat. 2715, 2718; Pub. L. 103–202, title I, §§105, 106(b)(2)(B), 109(b)(2), 110, Dec. 17, 1993, 107 Stat. 2348, 2350, 2353; Pub. L. 104–67, title I, §103(a), Dec. 22, 1995, 109 Stat. 756; Pub. L. 104–290, title I, §103(a), Oct. 11, 1996, 110 Stat. 3420; Pub. L. 105–353, title III, §301(b)(8), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §205, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106–554, §1(a)(5) [title II, §§203(a)(1), (b), 206(h), title III, §303(e), (f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–421, 2763A–422, 2763A–432, 2763A–454, 2763A–455; Pub. L. 107–204, title VI, §604(a), (c)(1)(B), July 30, 2002, 116 Stat. 795, 796; Pub. L. 109–291, §4(b)(1)(A), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title I, §173(c), title VII, §§713(a), 762(d)(4), 766(d), title IX, §§913(g)(1), (h)(1), 919, 921(a), 925(a)(1), 929L(3), 929X(c), 942(a), 975(g), 985(b)(5)(A), July 21, 2010, 124 Stat. 1440, 1646, 1761, 1799, 1828, 1829, 1837, 1841, 1850, 1861, 1870, 1896, 1923, 1933; Pub. L. 112–106, title III, §305(d)(1), title VI, §601(b), Apr. 5, 2012, 126 Stat. 323, 326; Pub. L. 114–94, div. G, title LXXXV, §85001(2), Dec. 4, 2015, 129 Stat. 1797; Pub. L. 117–328, div. AA, title V, §501(a), Dec. 29, 2022, 136 Stat. 5538.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2)(B), (C), (3), (4)(A), (D), (E), (11)(B), (12)(B), (13)(D), (c)(3)(B), (8), (f), (g), and (i)(1), was in the original "this title", and this chapter, referred to in subsecs. (k)(1) and (m), was in the original "this Act". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsecs. (b)(4)(B)(ii), (C) to (E) and (c)(3)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(4)(D), (E), (c)(8), and (d)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter 1 (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsecs. (b)(4)(D), (E), (k)(1), and (m), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (b)(4)(D), (E), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter 1 (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Subsection (i) of section 78q of this title, referred to in subsec. (b)(11)(B)(vi), (12)(B)(vi), was struck out and subsec. (j) was redesignated (i) by Pub. L. 111–203, title VI, §617(a), July 21, 2010, 124 Stat. 1616.

Paragraph (3), referred to in subsec. (i)(3), was redesignated as paragraph (4) of subsec. (i) of this section by Pub. L. 112–106, title III, §305(d)(1)(A), Apr. 5, 2012, 126 Stat. 323.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (j)(6)(A)(ii), (iii), is section 206 of Pub. L. 106–102, which is set out as a note under section 78c of this title.

AMENDMENTS

2022—Subsec. (b)(13). Pub. L. 117–328 added par. (13).

2015—Subsec. (d). Pub. L. 114–94 substituted "case of a bank, a savings and loan holding company (as defined in section 1467a of title 12)," for "case of bank".

2012—Subsec. (d)(1). Pub. L. 112–106, §601(b), substituted "300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons" for "three hundred".

Subsec. (i)(2) to (4). Pub. L. 112–106, §305(d)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2010—Subsec. (b)(1). Pub. L. 111–203, §985(b)(5)(A)(ii), in concluding provisions, inserted "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership." after "are satisfied."

Subsec. (b)(1)(B). Pub. L. 111–203, §985(b)(5)(A)(i), struck out "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects

transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership." after "grant or deny such registration."

Subsec. (b)(4). Pub. L. 111-203, §975(g)(1), inserted "municipal advisor," after "municipal securities dealer" in subpars. (B)(ii) and (C).

Subsec. (b)(4)(C). Pub. L. 111-203, §766(d)(1), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (b)(4)(F). Pub. L. 111-203, §766(d)(2), substituted "broker, dealer, security-based swap dealer, or a major security-based swap participant" for "broker or dealer".

Subsec. (b)(6)(A). Pub. L. 111-203, §925(a)(1), substituted ", or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," for ", or bar such person from being associated with a broker or dealer," in introductory provisions.

Subsec. (c). Pub. L. 111-203, §975(g)(2), inserted "broker, dealer, or" before "municipal securities dealer" in par. (1)(B) and in two places in par. (2)(B).

Subsec. (c)(1)(A). Pub. L. 111-203, §929L(3), struck out "otherwise than on a national securities exchange of which it is a member" after "commercial bills".

Pub. L. 111-203, §762(d)(4)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)," after "security-based swap agreement".

Subsec. (c)(1)(B), (C). Pub. L. 111-203, §762(d)(4)(B), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement".

Subsec. (c)(3)(C). Pub. L. 111-203, §713(a), added subpar. (C).

Subsec. (d). Pub. L. 111-203, §942(a), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, inserted ", other than any class of asset-backed securities," after "securities of each class", and added par. (2).

Subsecs. (e) to (h). Pub. L. 111-203, §929X(c), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i) relating to limitations on State law.

Subsec. (i). Pub. L. 111-203, §929X(c)(1), redesignated subsec. (h) as (i). Former subsec. (i), relating to rulemaking to extend requirements to new hybrid products, redesignated (j).

Subsec. (j). Pub. L. 111-203, §929X(c)(1), redesignated subsec. (i), relating to rulemaking to extend requirements to new hybrid products, as (j).

Pub. L. 111-203, §762(d)(4)(C), (D), redesignated subsec. (i), relating to limitation on Commission authority, as (j) and struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements".

Subsecs. (k), (l). Pub. L. 111-203, §913(g)(1), added subsec. (k) relating to standard of conduct and subsec. (l) relating to other matters.

Pub. L. 111-203, §173(c), added subsec. (k) relating to registration or succession to a United States broker or dealer and subsec. (l) relating to termination of a United States broker or dealer.

Subsec. (m). Pub. L. 111-203, §913(h)(1), added subsec. (m).

Subsec. (n). Pub. L. 111-203, §919, added subsec. (n).

Subsec. (o). Pub. L. 111-203, §921(a), added subsec. (o).

2006—Subsec. (b)(4)(B)(ii), (C). Pub. L. 109-291 inserted "nationally recognized statistical rating organization," after "transfer agent,".

2002—Subsec. (b)(4)(F). Pub. L. 107-204, §604(a)(1), added subpar. (F) and struck out former subpar. (F) which read as follows: "is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer."

Subsec. (b)(4)(H). Pub. L. 107-204, §604(a)(2), added subpar. (H).

Subsec. (b)(6)(A)(i). Pub. L. 107-204, §604(c)(1)(B)(ii), substituted ", or is subject to an order or finding," for "or omission".

Pub. L. 107-204, §604(c)(1)(B)(i), substituted "(H), or (G)" for "or (G)". See 1990 Amendment note for subsec. (b)(6) below.

2000—Subsec. (b)(11). Pub. L. 106-554, §1(a)(5) [title II, §203(a)(1)], added par. (11).

Subsec. (b)(12). Pub. L. 106-554, §1(a)(5) [title II, §203(b)], added par. (12).

Subsec. (c)(1). Pub. L. 106-554, §1(a)(5) [title III, §303(e)], amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) to (E) prohibiting use of mails or instrumentality of interstate commerce for transactions in securities by manipulative, deceptive, or other fraudulent device, requiring the Commission, by regulation, to define such devices as manipulative, deceptive or fraudulent, and providing for consultation with the Secretary of the Treasury and other agencies prior to adoption of regulations.

Subsec. (c)(3). Pub. L. 106-554, §1(a)(5) [title II, §206(h)], designated existing provisions as subpar. (A)

and added subpar. (B).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title III, §303(f)], added subsec. (i) relating to limitation on Commission authority.

1999—Subsec. (i). Pub. L. 106-102 added subsec. (i) relating to rulemaking to extend requirements to new hybrid products.

1998—Subsec. (c)(8). Pub. L. 105-353, §301(b)(8)(A), realigned margins.

Subsec. (h)(2). Pub. L. 105-353, §301(b)(8)(B), substituted "effecting" for "affecting" in introductory provisions.

Subsec. (h)(3)(A)(i)(II)(bb). Pub. L. 105-353, §301(b)(8)(C), inserted "or" after semicolon at end.

Subsec. (h)(3)(A)(ii)(I). Pub. L. 105-353, §301(b)(8)(D), substituted "maintained" for "maintains".

Subsec. (h)(3)(B)(ii). Pub. L. 105-353, §301(b)(8)(E), substituted "associated" for "association".

1996—Subsec. (h). Pub. L. 104-290 added subsec. (h).

1995—Subsec. (c)(8). Pub. L. 104-67 added par. (8).

1993—Subsec. (b)(1)(B). Pub. L. 103-202, §109(b)(2), inserted "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership." before "The Commission may extend".

Subsec. (b)(7). Pub. L. 103-202, §106(b)(2)(B), inserted "or government securities broker or government securities dealer registered (or required to register) under section 78o-5(a)(1)(A) of this title" after "No registered broker or dealer" in introductory provisions.

Subsec. (c)(1). Pub. L. 103-202, §105(b), inserted subpar. designation "(A)" after "(1)", substituted "contrivance." along with subpar. designation "(B)" and "No municipal securities dealer" for "contrivance, and no municipal securities dealer", substituted "contrivance." along with subpar. (C), subpar. designation "(D)" and "The Commission shall" for "contrivance. The Commission shall", and added subpar. (E).

Subsec. (c)(2). Pub. L. 103-202, §105(a), inserted subpar. designation "(A)" after "(2)", substituted "fictitious quotation." along with subpar. designation "(B)" and "No municipal securities dealer" for "fictitious quotation, and no municipal securities dealer", substituted "fictitious quotation." along with subpar. (C), subpar. designation "(D)" and "The Commission shall" for "fictitious quotation. The Commission shall", and added subpar. (E).

Subsec. (c)(7). Pub. L. 103-202, §110, added par. (7).

1990—Subsec. (b)(4)(B). Pub. L. 101-550, §203(a)(1), inserted "or of a substantially equivalent crime by a foreign court of competent jurisdiction" after "misdemeanor".

Subsec. (b)(4)(B)(i). Pub. L. 101-550, §203(a)(2), inserted "any substantially equivalent activity however denominated by the laws of the relevant foreign government," after "burglary,".

Subsec. (b)(4)(B)(ii). Pub. L. 101-550, §203(a)(3), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," and "or any substantially equivalent foreign statute or regulation" before semicolon at end.

Subsec. (b)(4)(B)(iii). Pub. L. 101-550, §203(a)(4), inserted ", or substantially equivalent activity however denominated by the laws of the relevant foreign government" after "securities".

Subsec. (b)(4)(B)(iv). Pub. L. 101-550, §203(a)(5), inserted "or a violation of a substantially equivalent foreign statute" after "title 18".

Subsec. (b)(4)(C). Pub. L. 101-550, §203(a)(6), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," , "or any substantially equivalent foreign statute or regulation" after "Commodity Exchange Act" wherever appearing, and "foreign entity substantially equivalent to any of the above," after "insurance company,".

Subsec. (b)(4)(G). Pub. L. 101-550, §203(a)(7), added subpar. (G).

Subsec. (b)(6). Pub. L. 101-429, §504(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), (E), or (G) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being

associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order."

Pub. L. 101-550, §203(c)(1), which directed amendment of subsec. (b)(6) by substituting "(A), (D), (E), or (G)" for "(A), (D), or (E)", was executed by making the substitution both before and after the general amendment of subsec. (b)(6) by Pub. L. 101-429, §504(a), which was effective 12 months after Oct. 15, 1990, to reflect the probable intent of Congress and the subsequent amendment by Pub. L. 107-204, §604(c)(1)(B)(i), which presumed that the substitution had taken place.

Subsec. (g). Pub. L. 101-429, §505, added subsec. (g).

1988—Subsec. (f). Pub. L. 100-704 added subsec. (f).

1987—Subsec. (b)(4)(B)(ii). Pub. L. 100-181, §317(1), substituted "fiduciary, transfer agent, or" for "fiduciary, or any".

Subsec. (b)(4)(C). Pub. L. 100-181, §317(2), added subpar. (C) and struck out former subpar. (C) which read as follows: "is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, entity or person required to be registered under the Commodity Exchange Act, municipal securities dealer, government securities broker, or government securities dealer, or as an affiliated person or employee of any investment company, bank, entity or person required to be registered under such Act, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

Subsec. (b)(6). Pub. L. 100-181, §317(3), substituted "seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" for "or seeking to become associated," in first sentence.

Subsec. (b)(10). Pub. L. 100-181, §317(4), substituted "78q-1(b)(4)(A)" for "78q-1(b)(4)(B)".

1986—Subsec. (b)(4)(A). Pub. L. 99-571, §102(e)(1), inserted "or with any other appropriate regulatory agency".

Subsec. (b)(4)(B)(ii). Pub. L. 99-571, §102(e)(2), inserted "government securities broker, government securities dealer,".

Subsec. (b)(4)(C). Pub. L. 99-571, §102(e)(3), substituted "municipal securities dealer, government securities broker, or government securities dealer," for "or municipal securities dealer,".

Subsec. (b)(8). Pub. L. 99-571, §102(e)(4), substituted "any registered broker or dealer" for "any broker or dealer required to register pursuant to this chapter" and struck out "an exempted security" after "other than".

Subsec. (c)(3). Pub. L. 99-571, §102(f), inserted "(other than a government securities broker or government securities dealer, except a registered broker or dealer)" and "(except a government security)".

1984—Subsec. (b)(4)(B)(ii). Pub. L. 98-376, §6(b)(1), substituted "fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)" for "or fiduciary".

Subsec. (b)(4)(C). Pub. L. 98-376, §6(b)(2), inserted "entity or person required to be registered under the Commodity Exchange Act," and "entity or person required to be registered under such Act".

Subsec. (b)(4)(D), (E). Pub. L. 98-376, §6(b)(3), inserted "the Commodity Exchange Act,".

Subsec. (c)(4). Pub. L. 98-376, §4, inserted reference to section 78n of this title and "and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply,".

1983—Subsec. (b)(8). Pub. L. 98-38, §3(a)(1), added par. (8) and struck out former par. (8), which had directed that, in addition to the fees and charges authorized by par. (7) of this subsection, each registered broker or dealer not a member of a registered securities association pay to the Commission such reasonable fees and charges as necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effected transactions in securities otherwise than on a national securities exchange of which it was a member and was not a member of a registered securities association, and that the Commission, by rule, establish such fees and charges.

Subsec. (b)(9). Pub. L. 98-38, §3(a)(2), added par. (9) and struck out former par. (9), which had provided that no broker or dealer subject to par. (8) of this subsection could effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it was a member) in contravention of such rules and regulations as the Commission might prescribe designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

1977—Subsec. (d). Pub. L. 95-213 authorized the Commission to define, for purposes of this subsection, term "held of record".

1975—Pub. L. 94-29, §11(1), amended section catchline.

Subsec. (a). Pub. L. 94-29, §11(2), required registration with the Commission of all persons utilizing an exchange's facilities to effect transactions.

Subsec. (b). Pub. L. 94-29, §11(2), expanded coverage to include municipal securities dealers, permitted nonbank municipal securities dealers and brokers to register company departments or divisions conducting municipal securities activities rather than the company of which the department or division is a part, subjected municipal securities and associated persons thereof to the Commission's enforcement and disciplinary powers, updated the list of statutory offenses which bar a person from becoming a broker-dealer or an associated person of a broker-dealer, expanded Commission regulatory control to include all brokers and dealers executing transactions on exchanges of which such brokers and dealers are not members, required any registered broker-dealer who is not a member of a registered securities association to pay the Commission fees imposed by it to defray the costs of the additional regulatory duties to be performed by the Commission, and clarified the power of national securities exchanges, registered securities associations, and registered clearing agencies to make determinations as to whether a person is subject to statutory disqualification.

Subsec. (c)(1). Pub. L. 94-29, §11(3), expanded the Commission's authority to define devices, contrivances, acts, and practices deemed manipulative, deceptive, and otherwise fraudulent for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(2). Pub. L. 94-29, §11(3), expanded the Commission's authority to define quotations deemed to be fictitious for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(3). Pub. L. 94-29, §11(3), inserted requirement that rules and regulations be promulgated no later than Sept. 1, 1975, establishing minimum financial responsibility requirements for all brokers and dealers.

Subsec. (c)(5). Pub. L. 94-29, §11(4), substituted provisions authorizing the Commission to regulate trading activities of market makers other than specialists registered on a national securities exchange for provisions authorizing the Commission summarily to suspend trading, otherwise than on a national securities exchange, in any security other than an exempted security for a period not exceeding 10 days if the public interest and the protection of investors so requires.

Subsec. (c)(6). Pub. L. 94-29, §11(5), added par. (6).

Subsec. (e). Pub. L. 94-29, §11(6), added subsec. (e).

1970—Subsec. (c)(3). Pub. L. 91-598 extended Commission's rulemaking power to both the exchange and the over-the-counter markets, striking out "otherwise than on a national securities exchange" before "in contravention of such rules and regulations" and substituting "shall prescribe" for "may prescribe" and provided for safeguards with respect to the related practices of brokers and dealers, including customers' securities and customers' deposits or credit balances, and maintenance of reserves with respect to such deposits or credit balances.

1964—Subsec. (a). Pub. L. 88-467, §6(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 88-467, §6(b), designated first par. as (1) and substituted "persons associated with such broker or dealer" for "person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such broker or dealer,".

Subsec. (b)(2). Pub. L. 88-467, §6(b), designated second par. as (2) and substituted "associated with the applicant" for "directly or indirectly controlling or controlled by, or under direct or indirect common control with, the applicant".

Subsec. (b)(3). Pub. L. 88-467, §6(b), designated third par. as (3) and substituted "effective date of the registration" for "effective date thereof".

Subsec. (b)(4). Pub. L. 88-467, §6(b), added par. (4).

Subsec. (b)(5). Pub. L. 88-467, §6(b), designated first sentence of fourth par. as (5), provided for censure and for suspension for period not exceeding twelve months, substituted the language "that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated" for "that (1) such broker or dealer whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", substituted in clause (A) the provision respecting false or misleading statements in any report required to, be filed with the Commission for such statements in any document supplemental to application for registration and inserted in such clause (A) the material fact omission provision, designated existing provisions of clause (B) as items (i) and (ii), included in item (ii) the business of investment broker, and added items (iii) and (iv), provided in clause (C) for enjoyment from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in

or continuing any conduct or practice in connection with any such activity, made clause (D) applicable to violations of the Investment Advisers Act of 1940 and the Investment Company Act of 1940, and added clauses (E) and (F).

Subsec. (b)(6). Pub. L. 88-467, §6(b), designated second through fifth sentences of fourth par. as (6) and, in provision constituting first sentence of par. (6) substituted "any registration under this subsection" for "any such registration" and inserted "(which may consist solely of affidavits and oral argument)" after "opportunity for hearing".

Subsec. (b)(7) to (10). Pub. L. 88-467, §6(b), added pars. (7) to (10).

Subsec. (c)(4), (5). Pub. L. 88-467, §6(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 88-467, §6(d), substituted provisions which require every issuer filing a registration statement under the Securities Act of 1933 to file for the fiscal year in which the registration statement becomes effective such reports as may be required by the Commission under section 78m of this title and provide for suspension of duty to file reports for any later fiscal years if at the beginning of such fiscal year the securities to which the registration statement relates are held of record by less than three hundred persons for former provisions which required the registration statement filed under the Securities Act to contain an undertaking if the value of the securities offered plus the value of other outstanding securities of the same class amounted to \$2,000,000 or more and suspended the duty to file if the value of securities outstanding was reduced to less than \$1,000,000 or the issuer had become subject to an equivalent reporting requirement and deleted "or to any other security which the Commission may by rules and regulations exempt as not comprehended within the purposes of this subsection" after "political subdivision thereof".

1938—Subsec. (c)(2), (3). Act June 25, 1938, added pars. (2) and (3).

1936—Act May 27, 1936, amended section generally.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-328, div. AA, title V, §501(b), Dec. 29, 2022, 136 Stat. 5542, provided that: "This section [amending this section] and any amendment made by this section shall take effect on the date that is 90 days after the date of enactment of this Act [Dec. 29, 2022]."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 173(c), 913(g)(1), (h)(1), 919, 921(a), 925(a)(1), 929L(3), 929X(c), 942(a), and 985(b)(5)(A) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 713(a) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of Title 7, Agriculture.

Amendment by sections 762(d)(4) and 766(d) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

Pub. L. 111-203, title IX, §975(i), July 21, 2010, 124 Stat. 1923, provided that: "This section [amending this section and sections 78o-3, 78o-4, and 78q of this title], and the amendments made by this section, shall take effect on October 1, 2010."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106-102, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as a note under section 771 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 504(a) of Pub. L. 101-429 effective 12 months after Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(A) of Pub. L. 101-429, set

out in a note under section 77g of this title.

Amendment by section 505 of Pub. L. 101-429 effective 18 months after Oct. 15, 1990, with provision to commence rulemaking proceedings to implement such amendment not later than 180 days after Oct. 15, 1990, and with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(B), (C) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-704, §9, Nov. 19, 1988, 102 Stat. 4684, provided that: "The amendments made by this Act [enacting sections 78t-1, 78u-1, and 80b-4a of this title and amending this section and sections 78c, 78u, 78ff, and 78kk of this title], except for section 6 [amending sections 78c and 78u of this title], shall not apply to any actions occurring before the date of enactment of this Act [Nov. 19, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78o-5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-38, §3(b), June 6, 1983, 97 Stat. 207, provided that: "The amendments made by subsection (a) [amending this section] shall become effective six months after the date of enactment of this Act [June 6, 1983]."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsec. (a) by Pub. L. 94-29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 of subsec. (a) of this section effective July 1, 1964, and of subsecs. (b), (c)(4), (5), and (d) of this section effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by sections 105, 106(b)(2)(B), and 109(b)(2) of Pub. L. 103-202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103-202, set out as a note under section 78o-5 of this title.

STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS

Pub. L. 111-203, title IX, §913(a)-(f), July 21, 2010, 124 Stat. 1824-1827, provided that:

"(a) **DEFINITION.**—For purposes of this section, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

"(1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and

"(2) uses such advice primarily for personal, family, or household purposes.

"(b) **STUDY.**—The Commission shall conduct a study to evaluate—

"(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers

imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards; and

"(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

"(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider—

"(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards;

"(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute;

"(3) whether retail customers understand that there are different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers in the provision of personalized investment advice about securities to retail customers;

"(4) whether the existence of different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers is a source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive;

"(5) the regulatory, examination, and enforcement resources devoted to, and activities of, the Commission, the States, and a national securities association to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

"(A) the effectiveness of the examinations of brokers, dealers, and investment advisers in determining compliance with regulations;

"(B) the frequency of the examinations; and

"(C) the length of time of the examinations;

"(6) the substantive differences in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers;

"(7) the specific instances related to the provision of personalized investment advice about securities in which—

"(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

"(B) the regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

"(8) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

"(9) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

"(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers, as interpreted by the Commission and the courts; and

"(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

"(10) the potential impact of eliminating the broker and dealer exclusion from the definition of 'investment adviser' under section 202(a)(11)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(C)), in terms of—

"(A) the impact and potential benefits and harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and

recommendations about securities to retail customers or the availability of such advice and recommendations;

"(B) the number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), and the additional requirements to which brokers, dealers, and persons associated with brokers and dealers would become subject, including—

"(i) any potential additional associated person licensing, registration, and examination requirements; and

"(ii) the additional costs, if any, to the additional entities and individuals; and

"(C) the impact on Commission and State resources to—

"(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

"(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

"(11) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the varying scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

"(12) the potential impact upon retail customers that could result from potential changes in the regulatory requirements or legal standards of care affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers regarding the provision of investment advice, including any potential impact on—

"(A) protection from fraud;

"(B) access to personalized investment advice, and recommendations about securities to retail customers; or

"(C) the availability of such advice and recommendations;

"(13) the potential additional costs and expenses to—

"(A) retail customers regarding and the potential impact on the profitability of their investment decisions; and

"(B) brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

"(14) any other consideration that the Commission considers necessary and appropriate in determining whether to conduct a rulemaking under subsection (f).

"(d) REPORT.—

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [July 21, 2010], the Commission shall submit a report on the study required under subsection (b) to—

"(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

"(B) the Committee on Financial Services of the House of Representatives.

"(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

"(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (b), to make such findings, conclusions, and policy recommendations; and

"(B) an analysis of whether [sic] any identified legal or regulatory gaps, shortcomings, or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers.

"(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

"(f) RULEMAKING.—The Commission may commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers, investment advisers,

persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to such retail customers. The Commission shall consider the findings[,] conclusions, and recommendations of the study required under subsection (b)."

[For definitions of terms used in section 913(a)–(f) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

STUDY AND REPORT ON BROKER-DEALER UNIFORMITY

Pub. L. 104–290, title V, §510(d), Oct. 11, 1996, 110 Stat. 3451, provided that:

"(1) **STUDY.**—The Commission, after consultation with registered securities associations, national securities exchanges, and States, shall conduct a study of the impact of disparate State licensing requirements on associated persons of registered brokers or dealers and methods for States to attain uniform licensing requirements for such persons.

"(2) **REPORT.**—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit to the Congress a report on the study conducted under paragraph (1). Such report shall include recommendations concerning appropriate methods described in paragraph (1)(B), including any necessary legislative changes to implement such recommendations."

PENNY STOCK REFORM; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 101–429, title V, §502, Oct. 15, 1990, 104 Stat. 951, provided that: "The Congress finds the following:

"(1) The maintenance of an honest and healthy primary and secondary market for securities offerings is essential to enhancing long-term capital formation and economic growth and providing legitimate investment opportunities for individuals and institutions.

"(2) Protecting investors in new securities is a critical component in the maintenance of an honest and healthy market for such securities.

"(3) Protecting issuers of new securities and promoting the capital formation process on behalf of small companies are fundamental concerns in maintaining a strong economy and viable trading markets.

"(4) Unscrupulous market practices and market participants have pervaded the 'penny stock' market with an overwhelming amount of fraud and abuse.

"(5) Although the Securities and Exchange Commission, State securities regulators, and securities self-regulators have made efforts to curb these abusive and harmful practices, the penny stock market still lacks an adequate and sufficient regulatory structure, particularly in comparison to the structure for overseeing trading in National Market System securities.

"(6) Investors in the penny stock market suffer from a serious lack of adequate information concerning price and volume of penny stock transactions, the nature of this market, and the specific securities in which they are investing.

"(7) Current practices do not adequately regulate the role of 'promoters' and 'consultants' in the penny stock market, and many professionals who have been banned from the securities markets have ended up in promoter and consultant roles, contributing substantially to fraudulent and abusive schemes.

"(8) The present regulatory environment has permitted the ascendancy of the use of particular market practices, such as 'reverse mergers' with shell corporations and 'blank check' offerings, which are used to facilitate manipulation schemes and harm investors.

"(9) In light of the substantial and continuing problems in the penny stock markets, additional legislative measures are necessary and appropriate."

REVISION OF SANCTION AUTHORITY WITH RESPECT TO PENNY STOCKS; RECOMMENDATIONS TO CONGRESS

Pub. L. 101–429, title V, §504(b), Oct. 15, 1990, 104 Stat. 953, provided that within 6 months after Oct. 15, 1990, the Securities and Exchange Commission was to submit to each House of Congress any recommendations the Commission considered appropriate with respect to further revision of subsection (b)(6) of this section.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ So in original.

² So in original. The word "or" probably should not appear.

³ See References in Text note below.

⁴ So in original. There are two subsecs. designated (j).

⁵ Another subsec. (k) is set out after the first subsec. (l).

⁶ Another subsec. (l) is set out after the second subsec. (k).

⁷ Another subsec. (k) is set out after the second subsec. (j).

⁸ Another subsec. (l) is set out after the first subsec. (k).

⁹ So in original. Probably should be followed by "the".

§78o–1. Brokers deemed to be registered

All brokers and dealers for whom registration was in effect on May 27, 1936, in accordance with rules and regulations of the Commission prescribed pursuant to section 78o of this title shall be deemed to be registered pursuant to said section.

(May 27, 1936, ch. 462, §10, 49 Stat. 1380.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78o–2. Liabilities arising prior to amendment unaffected

Nothing in this Act shall be deemed to extinguish any liability which may have arisen prior to the effective date of this Act by reason of any violation of section 78o of this title or of any rule or regulation thereunder.

(May 27, 1936, ch. 462, §11, 49 Stat. 1380.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375, popularly known as the Unlisted Securities Trading Act, which enacted sections 78l–1, 78o–1, 78o–2, and 78hh–1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

Effective date of this Act, referred to in text, is July 1, 1934. See section 78hh-1 of this title.

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§78o-3. Registered securities associations

(a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b), or as an affiliated securities association pursuant to subsection (d), under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determinations by Commission requisite to registration of applicant as national securities association

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine,

censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

(9) The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(10) The requirements of subsection (c), insofar as these may be applicable, are satisfied.

(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(A) the right of dissenting limited partners to one of the following:

(i) an appraisal and compensation;

(ii) retention of a security under substantially the same terms and conditions as the original issue;

(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;

(B) the right not to have their voting power unfairly reduced or abridged;

(C) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period in which the offer is outstanding.

(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the

Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(A) the right of dissenting limited partners to one of the following:

(i) an appraisal and compensation;

(ii) retention of a security under substantially the same terms and conditions as the original issue;

(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;

(B) the right not to have their voting power unfairly reduced or abridged;

(C) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period during which the offer is outstanding.

(14) The rules of the association include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof, which rules require—

(A) the broker or dealer performing brokerage services to clearly and conspicuously disclose to potential investors—

(i) that the securities offered are not being offered or provided by the broker or dealer on behalf of the Federal Government, and that its offer is not sanctioned, recommended, or encouraged by the Federal Government; and

(ii) the identity of the registered broker-dealer offering the securities;

(B) such broker or dealer to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation of a security to a member of the Armed Forces or a dependent thereof; and

(C) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless such person is an associated person of a registered broker or dealer and is qualified pursuant to the rules of a self-regulatory organization.

(15) The rules of the association provide that the association shall—

(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 78o-4(b)(2)(E) of this title, so that the Municipal Securities Rulemaking Board may—

- (i) assist in such enforcement actions and examinations; and
- (ii) evaluate the ongoing effectiveness of the rules of the Board.

(c) National association rules; provision for registration of affiliated securities association

The Commission may permit or require the rules of an association applying for registration pursuant to subsection (b), to provide for the admission of an association registered as an affiliated securities association pursuant to subsection (d), to participation in said applicant association as an affiliate thereof, under terms permitting such powers and responsibilities to such affiliate, and under such other appropriate terms and conditions, as may be provided by the rules of said applicant association, if such rules appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this section. The duties and powers of the Commission with respect to any national securities association or any affiliated securities association shall in no way be limited by reason of any such affiliation.

(d) Registration as affiliated association; prerequisites; association rules

An applicant association shall not be registered as an affiliated securities association unless it appears to the Commission that—

(1) such association, notwithstanding that it does not satisfy the requirements set forth in paragraph (1) of subsection (b), will, forthwith upon the registration thereof, be admitted to affiliation with an association registered as a national securities association pursuant to subsection (b), in the manner and under the terms and conditions provided by the rules of said national securities association in accordance with subsection (c); and

(2) such association and its rules satisfy the requirements set forth in paragraphs (2) to (10), inclusive, and paragraph (12),¹ of subsection (b); except that in the case of any such association any restrictions upon membership therein of the type authorized by paragraph (3) of subsection (b) shall not be less stringent than in the case of the national securities association with which such association is to be affiliated.

(e) Dealings with nonmember professionals

(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(2) For the purposes of this subsection, the term "nonmember professional" shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from granting to any member of any registered securities association or any such municipal securities dealer any dealer's discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: *Provided, however,* That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of the Municipal Securities Rulemaking Board adopted pursuant to section 78o-4(b)(2)(K) of this title.

(f) Transactions in municipal securities

Nothing in subsection (b)(6) or (b)(11) of this section shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.

(g) Denial of membership

(1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(2) A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the association.

(B) A registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

(C) A registered securities association may bar any person from becoming associated with a member if such person does not agree (i) to supply the association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and (ii) to permit examination of its books and records to verify the accuracy of any information so supplied.

(D) Nothing in subparagraph (A), (B), or (C) of this paragraph shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in municipal securities.

(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

(h) Discipline of registered securities association members and persons associated with members; summary proceedings

(1) In any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection) the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the association to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reason therefor.

(2) In any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A registered securities association may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (C) limit or prohibit any person with respect to access to services offered by the association if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(i) Obligation to maintain registration, disciplinary, and other data

(1) Maintenance of system to respond to inquiries

A registered securities association shall—

(A) establish and maintain a system for collecting and retaining registration information;

(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding—

(i) registration information on its members and their associated persons; and

(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

(C) adopt rules governing the process for making inquiries and the type, scope, and

presentation of information to be provided in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).

(2) Recovery of costs

A registered securities association may charge persons making inquiries described in paragraph (1)(B), other than individual investors, reasonable fees for responses to such inquiries.

(3) Process for disputed information

Each registered securities association shall adopt rules establishing an administrative process for disputing the accuracy of information provided in response to inquiries under this subsection in consultation with any registered national securities exchange providing information pursuant to paragraph (1)(B)(ii).

(4) Limitation on liability

A registered securities association, or an exchange reporting information to such an association, shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(5) Definition

For purposes of this subsection, the term "registration information" means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.

(j) Registration for sales of private securities offerings

A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 77c(b), 77d(2),¹ or 77d(6)¹ of this title and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding November 12, 1999, engaged in effecting such sales.

(k) Limited purpose national securities association

(1) Regulation of members with respect to security futures products

A futures association registered under section 21 of title 7 shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to section 78o(b)(11) of this title.

(2) Requirements for registration

Such a securities association shall—

(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security futures products and to comply, and (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security futures products, the rules and regulations thereunder, and its rules;

(B) have rules that—

(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to subsection (a) that are applicable to security futures products; and

(ii) are not designed to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association;

(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security futures products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security futures products and are tested for their knowledge of securities and security futures products.

(3) Exemption from rule change submission

Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for, advertising of, or standards of training, experience, competence, or other qualifications for security futures products for persons who effect transactions in security futures products, or rules effectuating the association's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;

(B) the association shall file pursuant to sections 78s(b)(1) and 78s(b)(2) of this title proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(C) the association shall file pursuant to section 78s(b)(1) of this title proposed rule changes that have been abrogated by the Commission pursuant to section 78s(b)(7)(C) of this title.

(4) Other exemptions

Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security futures products, be required to comply, with the following provisions of this chapter and the rules thereunder:

(A) Section 78h of this title.

(B) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

(C) Subsections (d), (f), and (k) ¹ of section 78q of this title.

(D) Subsections (a), (f), and (h) of section 78s of this title.

(l) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 78o(b) of this title (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 6f(a) of title 7 (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities association of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered pursuant to section 78f(g) of this title involving security futures products.

(m) Procedures and rules for security future products

A national securities association registered pursuant to subsection (a) shall, not later than 8 months after December 21, 2000, implement the procedures specified in section 78f(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 78f(h)(5) of this title.

(n) Data standards

(1) Requirement

A national securities association registered pursuant to subsection (a) shall adopt data standards for all information that is regularly filed with or submitted to the association.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(June 6, 1934, ch. 404, title I, §15A, as added June 25, 1938, ch. 677, §1, 52 Stat. 1070; amended Pub. L. 88–467, §7, Aug. 20, 1964, 78 Stat. 574; Pub. L. 94–29, §12, June 4, 1975, 89 Stat. 127; Pub. L. 99–571, title I, §102(g), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 101–429, title V, §509, Oct. 15, 1990, 104 Stat. 957; Pub. L. 103–202, title I, §106(b)(1), title III, §303(a), (c), Dec. 17, 1993, 107 Stat. 2350, 2364, 2366; Pub. L. 106–102, title II, §203, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106–554, §1(a)(5) [title II, §§203(c), 206(j), (k)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–422, 2763A–433; Pub. L. 109–290, §§5, 6, Sept. 29, 2006, 120 Stat. 1319, 1320; Pub. L. 111–203, title IX, §975(f), July 21, 2010, 124 Stat. 1923; Pub. L. 117–263, div. E, title LVIII, §5824(a), Dec. 23, 2022, 136 Stat. 3428.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (6), (7), (9), (h)(1)(B), (k)(2)(B)(ii), (4), and (l), was in the original "this title". See References in Text note set out under section 78a of this title.

Paragraph (12), of subsection (b) of this section, referred to in subsec. (d)(2), was omitted in the general amendment of subsec. (b) by Pub. L. 94–29, see par. (11) of subsec. (b). A new par. (12) was added by Pub. L. 103–302, §303(a).

Sections 77d(2) and 77d(6) of this title, referred to in subsec. (j), were redesignated sections 77d(a)(2) and 77d(a)(6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

Subsection (k) of section 78q of this title, referred to in subsec. (k)(4)(C), was redesignated subsec. (j) by Pub. L. 111–203, title VI, §617(a)(2), July 21, 2010, 124 Stat. 1616.

AMENDMENTS

2022—Subsec. (n). Pub. L. 117–263 added subsec. (n).

2010—Subsec. (b)(15). Pub. L. 111–203 added par. (15).

2006—Subsec. (b)(14). Pub. L. 109–290, §5, added par. (14).

Subsec. (i). Pub. L. 109–290, §6, inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: "A registered securities association shall, within one year from October 15, 1990, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. Such association may charge persons, other than individual investors, reasonable fees for written responses to such inquiries. Such an association shall not have any liability to any person for any actions taken or omitted in good faith under this paragraph."

2000—Subsec. (k). Pub. L. 106–554, §1(a)(5) [title II, §203(c)], added subsec. (k).

Subsec. (l). Pub. L. 106–554, §1(a)(5) [title II, §206(j)], added subsec. (l).

Subsec. (m). Pub. L. 106–554, §1(a)(5) [title II, §206(k)(1)], added subsec. (m).

1999—Subsec. (j). Pub. L. 106–102 added subsec. (j).

1993—Subsec. (b)(12). Pub. L. 103–202, §303(a), added par. (12).

Subsec. (b)(13). Pub. L. 103–202, §303(c), added par. (13).

Subsec. (f). Pub. L. 103–202, §106(b)(1)(A), redesignated par. (3) as entire subsec. (f) and struck out pars. (1) and (2) which read as follows:

"(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.

"(2) A registered securities association may adopt and implement rules applicable to members of such

association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this chapter and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this chapter and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of registered brokers and dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising."

Subsec. (g)(3)(D). Pub. L. 103-202, §106(b)(1)(B)(i), substituted "transactions in municipal securities" for "transactions in exempted securities".

Subsec. (g)(4), (5). Pub. L. 103-202, §106(b)(1)(B)(ii), (iii), redesignated par. (5) as (4) and struck out former par. (4) which allowed a registered securities association to deny membership to, condition the membership of, or to otherwise bar association with, the association, under circumstances where a government securities broker or dealer or other person violated financial responsibility rules adopted under section 78o-5(b)(1)(A) of this title, or where it appeared likely that such person or entity had or would engage in conduct which would subject such person or entity to sanctions under section 78o-5(c) of this title.

1990—Subsec. (i). Pub. L. 101-429 added subsec. (i).

1986—Subsec. (f). Pub. L. 99-571, §102(g)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security."

Subsec. (g)(3)(D). Pub. L. 99-571, §102(g)(2)(A), added subpar. (D).

Subsec. (g)(4), (5). Pub. L. 99-571, §102(g)(2)(B), (C), added par. (4) and redesignated former par. (4) as (5).

1975—Subsec. (a). Pub. L. 94-29, §12(2), struck out "with the Commission" after "registered", inserted reference to section 78s(a) of this title, substituted provisions covering an application for registration in the form prescribed by Commission rule containing the rules of the association and such other information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors for provisions covering a statement in the form prescribed by the Commission setting forth specified information and accompanied by specified documents, and struck out provision that registration not be construed as a waiver of constitutional rights or as a waiver of the right to contest the validity of Commission rules or regulations.

Subsec. (b). Pub. L. 94-29, §12(2), amended subsec. (b) generally, to conform its provisions concerning the registration and regulation of national and affiliated securities associations to those covering the registration and regulation of national securities exchanges contained in section 78f of this title and inserted provisions necessary to accommodate the creation of the Municipal Securities Rulemaking Board and to implement its purposes.

Subsec. (e). Pub. L. 94-29, §12(3), redesignated subsec. (i) as (e) and in subsec. (e) as so redesignated substituted "nonmember professional" for "nonmember broker or dealer" in par. (1), substituted "term 'nonmember professional' shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills" for "term 'nonmember broker or dealer' shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, or commercial bills" and added cl. (B) in par. (2), and, in par. (3), designated existing provisions as cl. (A) and added cl. (B). Former subsec. (e), covering the grant and denial of registration and the revocation of affiliated association registration, was struck out. See section 78s of this title.

Subsec. (f). Pub. L. 94-29, §12(3), redesignated subsec. (m) as (f). Former subsec. (f), covering withdrawal from registration, was struck out. See section 78s of this title.

Subsec. (g). Pub. L. 94-29, §12(3), (4), added subsec. (g). Former subsec. (g), covering review by the Commission of adverse actions against association members and stays of such actions, was struck out. See section 78s of this title.

Subsec. (h). Pub. L. 94-29, §12(3), (4), added subsec. (h). Former subsec. (h), covering the Commission's action upon findings, was struck out. See section 78s of this title.

Subsec. (i). Pub. L. 94-29, §12(3), redesignated subsec. (i) as (e) and amended subsec. (e) as so redesignated.

Subsecs. (j) to (l). Pub. L. 94-29, §12(3), struck out subsecs. (j) to (l) which covered the filing of changes or

additions to association rules and current information, the abrogation and alteration of association rules and supplements to association rules, the suspension of an association or its members, the revocation of registration, the expulsion of members, and the removal of officers or directors. See section 78s of this title.

Subsec. (m). Pub. L. 94-29, §12(3), redesignated subsec. (m) as (f).

Subsec. (n). Pub. L. 94-29, §12(3), struck out subsec. (n) which directed that provisions of this section prevail in the event of any conflict between this section and any other law of the United States in force on June 25, 1938.

1964—Subsec. (b)(1), (2). Pub. L. 88-467, §7(a)(1), substituted a period for the semicolon at end of pars. (1) and (2).

Subsec. (b)(3). Pub. L. 88-467, §7(a)(1), (2), substituted a period for the semicolon at end of par. (3), struck out "of" before "any means", substituted "paragraph (4) or (5) of this subsection, or a rule of the association permitted under this paragraph. The rules" for "paragraph (4) of this subsection: *Provided*, That the rules", and inserted provision authorizing a registered securities association to adopt rules under which it might exclude from membership persons who had been suspended or expelled from a national securities exchange or who were barred or suspended from being associated with all brokers or dealers who are members of such an exchange for violation of exchange rules.

Subsec. (b)(4). Pub. L. 88-467, §7(a)(1), (3), substituted a period for the semicolon at end of par. (4), deleted from text preceding cl. (A) the language "or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", inserted in cl. (A) "or has been and is barred or suspended from being associated with all brokers or dealers which are members of such exchange", inserted in cl. (B) provision for suspension for period not exceeding twelve months or barring or suspending the broker or dealer from being associated with a broker or dealer, inserted at the beginning of cl. (C) "whether prior or subsequent to becoming a broker or dealer," (derived from former cl. (1) of this paragraph) and added to cl. (C) provision conferring jurisdiction upon the Commission, an exchange, or a registered securities association to determine whether an individual is the cause of disciplinary action taken by them against a broker or a dealer, and added cl. (D).

Subsec. (b)(5). Pub. L. 88-467, §7(a)(4), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (8). Pub. L. 88-467, §7(a)(1), (4), substituted periods for semicolons at end of paragraphs, and redesignated former pars. (5) to (7) as (6) to (8), respectively. Former pars. (6) to (8) redesignated (7) to (9), respectively.

Subsec. (b)(9). Pub. L. 88-467, §7(a)(1), (4), (5), substituted a period for the semicolon at the end, redesignated former par. (8) as (9), and inserted "and persons associated with its members" and "or being suspended or barred from being associated with all members," respectively. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 88-467, §7(a)(4), (6), redesignated former par. (9) as (10), and inserted in paragraph preceding cl. (A) "and persons associated with members", "or the barring of any person from being associated with a member", "or other persons", and "or person", substituted a period for a comma at end of cls. (A) and (B) and a period for ", and" at end of cl. (C), inserted in cl. (A) "or other person" in two places and in concluding sentence "or whether any person shall be barred from being associated with a member", "or person", "or bar" in two places, and substituted a period for "; and", respectively. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 88-467, §7(a)(4), redesignated former par. (10) as (11).

Subsec. (b)(12). Pub. L. 88-467, §7(a)(7), added par. (12).

Pub. L. 88-467, §7(a)(7), inserted effective date provisions for application of subsec. (b) prior to its amendment and since its amendment with July 1, 1964 as the guiding date.

Subsec. (d)(2). Pub. L. 88-467, §7(b), substituted "(10)" for "(9)" and inserted "and paragraph (12)," after ", inclusive,".

Subsec. (g). Pub. L. 88-467, §7(c), provided that disciplinary action taken by a registered securities association against a person associated with a member will be reviewable by the Commission, shortened the period for review by an aggrieved person from sixty days or within such longer period as the Commission may determine to thirty days or within such longer period as the Commission may determine, authorized the Commission, after notice and opportunity for hearing on the question of stay to order no stay of action of a registered securities association pending the Commission's decision on review, and authorized the Commission to limit the hearing on the question of stay to affidavits and oral arguments.

Subsec. (h). Pub. L. 88-467, §7(d), made the procedures and the Commission's authority in reviewing disciplinary action by a registered securities association against members and in reviewing association action in denying membership also applicable to Commission review of disciplinary action against persons

associated with members and to the barring by an association of any person from being associated with a member.

Subsec. (k)(2). Pub. L. 88-467, §7(e), inserted ", or with such modifications of such alteration or supplement as it deems necessary" after "in the manner theretofore requested", redesignated cls. (1) to (4) as (A) to (D), respectively, and inserted in cl. (A) "or the barring from being associated with a member" and "or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof".

Subsec. (l). Pub. L. 88-467, §7(f), substituted a period for a semicolon at end of par. (1) and inserted in par. (2) preceding cl. (A) ", or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111-203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106-102, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 303(a), (c) of Pub. L. 103-202 effective 12 months after Dec. 17, 1993, with provisions for rulemaking authority and review of filings prior to effective date, see section 304(a) of Pub. L. 103-202, set out as a note under section 78f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78o-5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

RULEMAKING

Pub. L. 117-263, div. E, title LVIII, §5824(b), Dec. 23, 2022, 136 Stat. 3428, provided that:

"(1) **IN GENERAL.**—Not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title, each national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)) shall issue rules to adopt the standards required under subsection (n) of section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3), as added by subsection (a) of this section.

"(2) **SCALING OF REGULATORY REQUIREMENTS; MINIMIZING DISRUPTION.**—In issuing the rules required under paragraph (1), a national securities association described in that paragraph—

"(A) may scale data reporting requirements in order to reduce any unjustified burden on smaller regulated entities; and

"(B) shall seek to minimize disruptive changes to the persons affected by those standards."

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117-263 not to be construed to require certain additional information to be

collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 106(b)(1) of Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

Amendment by section 303(a), (c) of Pub. L. 103–202 not to limit authority of Securities and Exchange Commission, a registered securities association or a national securities exchange under any provision of this chapter, or preclude the Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103–202, set out in an Effective Date of 1993 Amendment note under section 78f of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [*See References in Text note below.*](#)

§78o–4. Municipal securities

(a) Registration of municipal securities dealers

(1)(A) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 78o of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.

(2) A municipal securities dealer or municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer or municipal advisor and any persons associated with such municipal securities dealer or municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer or municipal advisor

if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or municipal advisor or any person acting on behalf of such municipal securities dealer or municipal advisor, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.

(b) Municipal Securities Rulemaking Board; rules and regulations

(1) The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),¹ which shall perform the duties set forth in this section. The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as "public representatives"); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "broker-dealer representatives"), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "bank representatives"), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as "advisor representatives" and, together with the broker-dealer representatives and the bank representatives, are referred to as "regulated representatives"). Each member of the board shall be knowledgeable of matters related to the municipal securities markets. Prior to the expiration of the terms of office of the members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such members.

(2) The Board shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors. The rules of the Board, as a minimum, shall:

(A) provide that no municipal securities broker or municipal securities dealer shall effect any

transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons. In connection with the definition and application of such standards the Board may—

- (i) appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors;
- (ii) specify that all or any portion of such standards shall be applicable to any such class; and
- (iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section.

(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

- (i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;
- (ii) shall specify the length or lengths of terms members shall serve;
- (iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and
- (iv) shall establish requirements regarding the independence of public representatives.

(C) be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest; and not be designed to permit unfair discrimination among customers, municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers, municipal securities dealers, or municipal advisors, to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the Board, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(D) if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities and advice concerning municipal financial products: *Provided, however*, that no person other than a municipal securities broker, municipal securities dealer, municipal advisor, or person associated with such a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled to submit to such arbitration except at his instance and in accordance with section 78cc of this title.

(E) provide for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers, municipal securities dealers, and municipal advisors to determine compliance with applicable provisions of this chapter, the rules and regulations thereunder, and

the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker, municipal securities dealer, or municipal advisor.

(F) include provisions governing the form and content of quotations relating to municipal securities which may be distributed or published by any municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(G) prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

(H) define the term "separately identifiable department or division", as that term is used in section 78c(a)(30) of this title, in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. A separately identifiable department or division of a bank may be engaged in activities other than those relating to municipal securities.

(I) provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

(J) provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.

(K) establish the terms and conditions under which any broker, dealer, or municipal securities dealer may sell, or prohibit any broker, dealer, or municipal securities dealer from selling, any part of a new issue of municipal securities to a related account of a broker, dealer, or municipal securities dealer during the underwriting period.

(L) with respect to municipal advisors—

(i) prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients;

(ii) provide continuing education requirements for municipal advisors;

(iii) provide professional standards; and

(iv) not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

(A) establish information systems; and

(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons which systems may be developed for the purposes of serving as a repository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization, except that the Board—

(i) may not charge a fee to municipal entities or obligated persons to submit documents or other information to the Board or charge a fee to any person to obtain, directly from the Internet site of the Board, documents or information submitted by municipal entities, obligated persons, brokers, dealers, municipal securities dealers, or municipal advisors, including documents submitted under the rules of the Board or the Commission; and

(ii) shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under section 78s(b) of this title.

(4) The Board may provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under section 78o-3 of this title, or any other appropriate regulatory agency, as applicable.

(5) The Board, the Commission, and a registered securities association under section 78o-3 of this title, or the designees of the Board, the Commission, or such association, shall meet not less frequently than 2 times a year—

(A) to describe the work of the Board, the Commission, and the registered securities association involving the regulation of municipal securities; and

(B) to share information about—

(i) the interpretation of the Board, the Commission, and the registered securities association of Board rules; and

(ii) examination and enforcement of compliance with Board rules.

(7) ² Nothing in this section shall be construed to impair or limit the power of the Commission under this chapter.

(8)(A) The Commission shall adopt data standards for information submitted to the Board.

(B) Any data standards adopted under subparagraph (A) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(C) The Commission shall consult market participants in establishing data standards under subparagraph (A).

(D) Nothing in this paragraph may be construed to affect the operation of paragraph (1) or (2) of subsection (d).

(c) Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations

(1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in contravention of any rule of the Board. A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.

(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer or municipal advisor, if it finds, on the record after notice and opportunity

for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer or municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(3) Pending final determination whether any registration under this section shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors or municipal entities or obligated person.³ Any registered municipal securities dealer or municipal advisor may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors or municipal entities or obligated person,³ withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal securities dealer or municipal advisor is no longer in existence or has ceased to do business as a municipal securities dealer or municipal advisor, the Commission, by order, shall cancel the registration of such municipal securities dealer or municipal advisor.

(4) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding 12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

(5) With respect to any municipal securities dealer for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such municipal securities dealer may sanction any such municipal securities dealer in the manner and for the reasons specified in paragraph (2) of this subsection and any person associated with such municipal securities dealer in the manner and for the reasons specified in paragraph (4) of this subsection. In addition, such appropriate regulatory agency may, in accordance with section 1818 of title 12, enforce compliance by such municipal securities dealer or any person associated with such municipal securities dealer with the provisions of this section, section 78q of this title, the rules of the Board, and the rules of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, and transactions in municipal securities. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or 1818(c) of title 12, and the customers of any such municipal securities dealer shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such municipal securities dealer under any other provision of law.

(6)(A) The Commission, prior to the entry of an order of investigation, or commencement of any proceedings, against any municipal securities dealer, or person associated with any municipal

securities dealer, for which the Commission is not the appropriate regulatory agency, for violation of any provision of this section, section 78o(c)(1) or 78o(c)(2) of this title, any rule or regulation under any such section, or any rule of the Board, shall (i) give notice to the appropriate regulatory agency for such municipal securities dealer of the identity of such municipal securities dealer or person associated with such municipal securities dealer, the nature of and basis for such proposed action, and whether the Commission is seeking a monetary penalty against such municipal securities dealer or such associated person pursuant to section 78u-2 of this title; and (ii) consult with such appropriate regulatory agency concerning the effect of such proposed action on sound banking practices and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by such appropriate regulatory agency against such municipal securities dealer or associated person.

(B) The appropriate regulatory agency for a municipal securities dealer (if other than the Commission), prior to the entry of an order of investigation, or commencement of any proceedings, against such municipal securities dealer or person associated with such municipal securities dealer, for violation of any provision of this section, the rules of the Board, or the rules or regulations of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, or transactions in municipal securities shall (i) give notice to the Commission of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with the Commission concerning the effect of such proposed action on the protection of investors or municipal entities or obligated person³ and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by the Commission against such municipal securities dealer or associated person.

(C) Nothing in this paragraph shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission or the appropriate regulatory agency for a municipal securities dealer to initiate any action of a class described in this paragraph or to affect in any way the power of the Commission or such appropriate regulatory agency to initiate any other action pursuant to this chapter or any other provision of law.

(7)(A) Tests required pursuant to subsection (b)(2)(A)(iii) of this section shall be administered by or on behalf of and periodic examinations pursuant to subsection (b)(2)(E) of this section shall be conducted by—

(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association;

(ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers; and

(iii) the Commission, or its designee, in the case of municipal advisors.

(B) A registered securities association shall make a report of any examination conducted pursuant to subsection (b)(2)(E) of this section and promptly furnish the Commission a copy thereof and any data supplied to it in connection with such examination. Subject to such limitations as the Commission, by rule, determines to be necessary or appropriate in the public interest or for the protection of investors or municipal entities or obligated person,³ the Commission shall, on request, make available to the Board a copy of any report of an examination of a municipal securities broker or municipal securities dealer made by or furnished to the Commission pursuant to this paragraph or section 78q(c)(3) of this title.

(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of this chapter, to remove from office or censure any person who is, or at the time of the alleged violation or abuse was, a member or employee of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this chapter, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board.

(B) Fines collected by a registered securities association under section 78o-3(b)(7) ⁴ of this title with respect to violations of the rules of the Board shall be accounted for by such registered securities association separately from other fines collected under section 78o-3(b)(7) ⁴ of this title and shall be allocated between such registered securities association and the Board, and such allocation shall require the registered securities association to pay to the Board 1/3 of all fines collected by the registered securities association reasonably allocable to violations of the rules of the Board, or such other portion of such fines as may be directed by the Commission upon agreement between the registered securities association and the Board.

(d) Issuance of municipal securities

(1) Neither the Commission nor the Board is authorized under this chapter, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

(2) The Board is not authorized under this chapter to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: *Provided, however,* That the Board may require municipal securities brokers and municipal securities dealers or municipal advisors to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this chapter.

(e) Definitions

For purposes of this section—

(1) the term "Board" means the Municipal Securities Rulemaking Board established under subsection (b)(1);

(2) the term "guaranteed investment contract" includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

(3) the term "investment strategies" includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

(4) the term "municipal advisor"—

(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

(ii) undertakes a solicitation of a municipal entity;

(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (iii) ⁵ of subparagraph (A); and

(C) does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 77b(a)(11) of this title), any investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or persons associated with a

commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice;

(5) the term "municipal financial product" means municipal derivatives, guaranteed investment contracts, and investment strategies;

(6) the term "rules of the Board" means the rules proposed and adopted by the Board under subsection (b)(2);

(7) the term "person associated with a municipal advisor" or "associated person of an advisor" means—

(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions);

(B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and

(C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor;

(8) the term "municipal entity" means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

(C) any other issuer of municipal securities;

(9) the term "solicitation of a municipal entity or obligated person" means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2]) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

(10) the term "obligated person" means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

(June 6, 1934, ch. 404, title I, §15B, as added Pub. L. 94–29, §13, June 4, 1975, 89 Stat. 131; amended Pub. L. 98–38, §4, June 6, 1983, 97 Stat. 207; Pub. L. 100–181, title III, §§318–320, Dec. 4, 1987, 101 Stat. 1256, 1257; Pub. L. 101–429, title II, §205, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101–550, title II, §203(c)(1), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 105–353, title III, §301(b)(9), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107–204, title VI, §604(c)(1)(B), July 30, 2002, 116 Stat. 796; Pub. L. 111–203, title IX, §§925(a)(2), 929F(a), 975(a)–(e), July 21, 2010, 124 Stat. 1850, 1853, 1915–1921; Pub. L. 117–263, div. E, title LVIII, §5823(a), Dec. 23, 2022, 136 Stat. 3427.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (b)(2), (7), (c)(6)(C), (8), and (d), was in the original "this title". See References in Text note set out under section 78a of this title.

Section 78o-3(b)(7) of this title, referred to in subsec. (c)(9)(B), was in the original "section 15A(7)", and was translated as meaning section 15A(b)(7) of act June 6, 1934, to reflect the probable intent of Congress.

The Investment Advisers Act of 1940, referred to in subsec. (e)(4)(C), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(4)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

2022—Subsec. (b)(8). Pub. L. 117-263 added par. (8).

2010—Subsec. (a)(1). Pub. L. 111-203, §975(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(2), (3). Pub. L. 111-203, §975(a)(2), (3), inserted "or municipal advisor" after "municipal securities dealer" wherever appearing.

Subsec. (a)(4). Pub. L. 111-203, §975(a)(4), substituted "dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors" for "dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers".

Subsec. (a)(5). Pub. L. 111-203, §975(a)(5), added par. (5).

Subsec. (b)(1). Pub. L. 111-203, §975(b)(1)(C), which directed amendment of third sentence by striking out "initial", was executed in fourth sentence by striking out "initial" after "office of the" and after "such", to reflect the probable intent of Congress.

Pub. L. 111-203, §975(b)(1)(B), added second and third sentences and struck out former second sentence which read as follows: "The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as 'public representatives'); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'broker-dealer representatives'); and (C) five individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives')."

Pub. L. 111-203, §975(b)(1)(A), in first sentence, substituted "The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B)," for "Not later than one hundred twenty days after June 4, 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the 'Board'), to be composed initially of fifteen members appointed by the Commission".

Subsec. (b)(2). Pub. L. 111-203, §975(b)(2)(A), in introductory provisions, inserted "and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors" before period at end of first sentence and struck out "(Such rules are hereinafter collectively referred to in this chapter as 'rules of the Board'.)" before "The rules".

Subsec. (b)(2)(A). Pub. L. 111-203, §975(b)(2)(B), in introductory provisions, inserted ", and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities," after "sale of, any municipal security" and "and municipal entities or obligated persons" after "protection of investors", in cl. (i), substituted "municipal securities brokers, municipal securities dealers, and municipal advisors" for "municipal securities brokers and municipal securities dealers" in two places, in cl. (ii), inserted "and" at end, in cl. (iii), substituted period for "; and" at end, and struck out cl. (iv) which read as follows: "provide that persons in any such class other than municipal securities brokers and municipal securities dealers and partners, officers, and supervisory employees of municipal securities brokers or municipal securities dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Board finds appropriate."

Subsec. (b)(2)(B). Pub. L. 111-203, §975(b)(2)(C), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer) and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number."

Subsec. (b)(2)(C). Pub. L. 111-203, §975(b)(2)(D), inserted "and municipal financial products" after "municipal securities" the first two places appearing and ", municipal entities, obligated persons," after "to protect investors" and substituted "among customers, municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors," for "between customers, issuers, municipal securities brokers, or municipal securities dealers," and "brokers, municipal securities dealers, or municipal advisors, to regulate" for "brokers or municipal securities dealers, to regulate".

Subsec. (b)(2)(D). Pub. L. 111-203, §975(b)(2)(E), inserted "and advice concerning municipal financial products" after "transactions in municipal securities" and "municipal advisor," before "or person associated" and substituted "that no" for "That no" and "a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled" for "a municipal securities broker or municipal securities dealer may be compelled".

Subsec. (b)(2)(E). Pub. L. 111-203, §975(b)(2)(F), substituted "municipal securities brokers, municipal securities dealers, and municipal advisors" for "municipal securities brokers and municipal securities dealers" and "municipal securities broker, municipal securities dealer, or municipal advisor" for "municipal securities broker or municipal securities dealer".

Subsec. (b)(2)(G). Pub. L. 111-203, §975(b)(2)(G), substituted "municipal securities brokers, municipal securities dealers, and municipal advisors" for "municipal securities brokers and municipal securities dealers".

Subsec. (b)(2)(J). Pub. L. 111-203, §975(b)(2)(H), substituted "each municipal securities broker, municipal securities dealer, and municipal advisor" for "each municipal securities broker and each municipal securities dealer" and inserted ", which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board" after "such fees and charges".

Subsec. (b)(2)(K). Pub. L. 111-203, §975(b)(2)(I), substituted "a related account of a broker, dealer, or municipal securities dealer" for "a municipal securities investment portfolio" and substituted "any broker, dealer, or municipal securities dealer" for "any municipal securities dealer" in two places.

Subsec. (b)(2)(L). Pub. L. 111-203, §975(b)(2)(J), added subpar. (L).

Subsec. (b)(3) to (5), (7). Pub. L. 111-203, §975(b)(3), (4), added pars. (3) to (5) and redesignated former par. (3) as (7).

Subsec. (c)(1). Pub. L. 111-203, §975(c)(1), (2), inserted ", and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person," after "any municipal security" and inserted at end "A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board."

Subsec. (c)(2). Pub. L. 111-203, §975(c)(3), inserted "or municipal advisor" after "municipal securities dealer" in two places.

Subsec. (c)(3). Pub. L. 111-203, §975(c)(4), inserted "or municipal entities or obligated person" after "protection of investors" in two places and "or municipal advisor" after "municipal securities dealer" wherever appearing.

Subsec. (c)(4). Pub. L. 111-203, §975(c)(5), which directed amendment of par. (4) by inserting "or municipal advisor" after "municipal securities dealer or obligated person" each place that term appears, could not be executed because such term does not appear.

Pub. L. 111-203, §925(a)(2), substituted "12 months or bar any such person from being associated with a

broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with a municipal securities dealer,".

Subsec. (c)(6)(B). Pub. L. 111-203, §975(c)(6), inserted "or municipal entities or obligated person" after "protection of investors".

Subsec. (c)(7)(A)(iii). Pub. L. 111-203, §975(c)(7)(A), added cl. (iii).

Subsec. (c)(7)(B). Pub. L. 111-203, §975(c)(7)(B), inserted "or municipal entities or obligated person" after "protection of investors".

Subsec. (c)(8). Pub. L. 111-203, §929F(a), substituted "any person who is, or at the time of the alleged violation or abuse was, a member or employee" for "any member or employee".

Subsec. (c)(9). Pub. L. 111-203, §975(c)(8), added par. (9).

Subsec. (d)(2). Pub. L. 111-203, §975(d)(2), which directed amendment of par. (2) by inserting "or municipal advisors" before "to furnish", was executed by making the insertion before "to furnish" the second place appearing, to reflect the probable intent of Congress.

Pub. L. 111-203, §975(d)(1), substituted "through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise" for "through a municipal securities broker or municipal securities dealer or otherwise".

Subsec. (e). Pub. L. 111-203, §975(e), added subsec. (e).

2002—Subsec. (c)(2), (4). Pub. L. 107-204 substituted ", or is subject to an order or finding," for "or omission" and "(H), or (G)" for "or (G)".

1998—Subsec. (c)(4). Pub. L. 105-353 substituted "convicted of any offense" for "convicted by any offense" in first sentence.

1990—Subsec. (c)(2), (4). Pub. L. 101-550 substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (c)(6)(A). Pub. L. 101-429 substituted ", the nature" for "and the nature" and "proposed action, and whether the Commission is seeking a monetary penalty against such municipal securities dealer or such associated person pursuant to section 78u-2 of this title; and" for "proposed action and".

1987—Subsec. (b)(2)(C). Pub. L. 100-181, §318, substituted "municipal securities dealers, to regulate" for "municipal security dealers, to regulate" "purposes of this chapter" for "purposes of this chapter or the securities", and "burden on competition" for "burden or competition".

Subsec. (c)(4). Pub. L. 100-181, §319, substituted new first sentence for former first sentence which read as follows: "The Commission, by order, shall censure any person associated, or seeking to become associated with, a municipal securities dealer or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4)."

Subsec. (c)(6)(A). Pub. L. 100-181, §320, substituted "Board" for "board".

1983—Subsec. (b)(1)(A). Pub. L. 98-38, §4(a), inserted "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)" after "securities dealer".

Subsec. (b)(2)(B). Pub. L. 98-38, §4(b), inserted "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)" after "broker, dealer, or municipal securities dealer".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(a)(2) and 929F(a) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 975(a)-(e) of Pub. L. 111-203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111-203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g

of this title.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (a) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

RULEMAKING

Pub. L. 117–263, div. E, title LVIII, §5823(b), Dec. 23, 2022, 136 Stat. 3428, provided that:

"(1) IN GENERAL.—Not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title, the Securities and Exchange Commission shall issue rules to adopt the data standards required under paragraph (8) of section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)), as added by subsection (a) of this section.

"(2) SCALING OF REGULATORY REQUIREMENTS; MINIMIZING DISRUPTION.—In issuing the rules described in paragraph (1) that adopt the data standards described in that paragraph, the Securities and Exchange Commission—

"(A) may scale those data standards in order to reduce any unjustified burden on smaller regulated entities; and

"(B) shall seek to minimize disruptive changes to the persons affected by those rules."

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

¹ *So in original.*

² *So in original. No par. (6) has been enacted.*

³ *So in original. Person probably should be plural.*

⁴ *See References in Text note below.*

⁵ *So in original. Subpar. (A) does not contain a cl. (iii).*

§78o–4a. Commission Office of Municipal Securities

(a) In general

There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) Director of the Office

The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) Staffing

(1) In general

The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.

(2) Requirement

The staff of the Office of Municipal Securities shall include individuals with knowledge of and

expertise in municipal finance.

(Pub. L. 111–203, title IX, §979, July 21, 2010, 124 Stat. 1926.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§78o–5. Government securities brokers and dealers

(a) Registration requirements; notice to regulatory agencies; manner of registration; exemption from registration requirements

(1)(A) It shall be unlawful for any government securities broker or government securities dealer (other than a registered broker or dealer or a financial institution) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer is registered in accordance with paragraph (2) of this subsection.

(B)(i) It shall be unlawful for any government securities broker or government securities dealer that is a registered broker or dealer or a financial institution to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer has filed with the appropriate regulatory agency written notice that it is a government securities broker or government securities dealer. When such a government securities broker or government securities dealer ceases to act as such it shall file with the appropriate regulatory agency a written notice that it is no longer acting as a government securities broker or government securities dealer.

(ii) Such notices shall be in such form and contain such information concerning a government securities broker or government securities dealer that is a financial institution and any persons associated with such government securities broker or government securities dealer as the Board of Governors of the Federal Reserve System shall, by rule, after consultation with each appropriate regulatory agency (including the Commission), prescribe as necessary or appropriate in the public interest or for the protection of investors. Such notices shall be in such form and contain such information concerning a government securities broker or government securities dealer that is a registered broker or dealer and any persons associated with such government securities broker or government securities dealer as the Commission shall, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors.

(iii) Each appropriate regulatory agency (other than the Commission) shall make available to the Commission the notices which have been filed with it under this subparagraph, and the Commission shall maintain and make available to the public such notices and the notices it receives under this subparagraph.

(2) A government securities broker or a government securities dealer subject to the registration

requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a government securities broker or a government securities dealer if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o-3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any government securities broker or government securities dealer registered or having filed notice under paragraph (1) of this subsection or any person acting on behalf of such government securities broker or government securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) No government securities broker or government securities dealer that is required to register under paragraph (1)(A) and that is not a member of the Securities Investor Protection Corporation shall effect any transaction in any security in contravention of such rules as the Commission shall prescribe pursuant to this subsection to assure that its customers receive complete, accurate, and timely disclosure of the inapplicability of Securities Investor Protection Corporation coverage to their accounts.

(5) The Secretary of the Treasury (hereinafter in this section referred to as the "Secretary"), by rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section, other than subsection (d)(3), or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this chapter.

(b) Rules with respect to transactions in government securities

(1) The Secretary shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in government securities effected by government securities brokers and government securities dealers as follows:

(A) Such rules shall provide safeguards with respect to the financial responsibility and related practices of government securities brokers and government securities dealers including, but not

limited to, capital adequacy standards, the acceptance of custody and use of customers' securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements and in similar transactions.

(B) Such rules shall require every government securities broker and government securities dealer to make reports to and furnish copies of records to the appropriate regulatory agency, and to file with the appropriate regulatory agency, annually or more frequently, a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Secretary specifies, be certified) and information concerning its financial condition as required by such rules.

(C) Such rules shall require records to be made and kept by government securities brokers and government securities dealers and shall specify the periods for which such records shall be preserved.

(2) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

(A) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is registered as a government securities broker or government securities dealer under this section shall obtain such information and make and keep such records as the Secretary by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its capital, its liquidity, or its ability to conduct or finance its operations. The Secretary, by rule, may require summary reports of such information to be filed with the registered person's appropriate regulatory agency no more frequently than quarterly.

(B) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided pursuant to subparagraph (A) of this paragraph or other available information, the appropriate regulatory agency reasonably concludes that it has concerns regarding the financial or operational condition of any government securities broker or government securities dealer registered under this section, such agency may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The appropriate regulatory agency, in requiring reports pursuant to this subparagraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the appropriate regulatory agency or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

(C) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

(i) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to subparagraph (A) of this paragraph with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Secretary shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Secretary under this paragraph that has been published for comment, the Secretary shall respond in writing to such written comment before adopting the proposed rule. The Secretary shall, at the request of a Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(ii) USE OF BANKING AGENCY REPORTS.—A registered government securities broker or government securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to subparagraph (A) of this paragraph concerning an associated

person that is subject to examination by or reporting requirements of a Federal banking agency if such government securities broker or government securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 161 of title 12, subchapter VIII of chapter 3 of title 12, section 1817(a) of title 12, section 1467a(b) of title 12, or section 1847 of title 12. The Secretary may, however, by rule adopted pursuant to subparagraph (A), require any registered government securities broker or government securities dealer filing such reports with the appropriate regulatory agency to obtain, maintain, or report supplemental information if the Secretary makes an explicit finding, based on information provided by the appropriate regulatory agency, that such supplemental information is necessary to inform the appropriate regulatory agency regarding potential risks to such government securities broker or government securities dealer. Prior to requiring any such supplemental information, the Secretary shall first request the Federal banking agency to expand its reporting requirements to include such information.

(iii) **PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.**—Prior to making a request pursuant to subparagraph (B) of this paragraph for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the appropriate regulatory agency shall—

(I) notify such banking agency of the information required with respect to such associated person; and

(II) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the appropriate regulatory agency determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the government securities broker or government securities dealer or the stability or integrity of the securities markets.

(iv) **EXCLUSION FOR EXAMINATION REPORTS.**—Nothing in this subparagraph shall be construed to permit the Secretary or an appropriate regulatory agency to require any registered government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

(v) **CONFIDENTIALITY OF INFORMATION PROVIDED.**—No information provided to or obtained by an appropriate regulatory agency from any Federal banking agency pursuant to a request under clause (iii) of this subparagraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this clause shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(vi) **NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.**—The Secretary or appropriate regulatory agency shall notify the Federal banking agency of any concerns of the Secretary or the appropriate regulatory agency regarding significant financial or operational risks resulting from the activities of any government securities broker or government securities dealer to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

(vii) **DEFINITION.**—For purposes of this subparagraph, the term "Federal banking agency" shall have the same meaning as the term "appropriate Federal banking agency" in section 1813(q) of title 12.

(D) EXEMPTIONS.—The Secretary by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Secretary shall provide in such rule or order, from the provisions of this paragraph, and the rules thereunder. In granting such exemptions, the Secretary shall consider, among other factors—

(i) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 3401(6) ¹ of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(ii) the primary business of any associated person;

(iii) the nature and extent of domestic or foreign regulation of the associated person's activities;

(iv) the nature and extent of the registered person's securities transactions; and

(v) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

(E) CONFORMITY WITH REQUIREMENTS UNDER SECTION 78q(h).—In exercising authority pursuant to subparagraph (A) of this paragraph concerning information with respect to associated persons of government securities brokers and government securities dealers who are also associated persons of registered brokers or dealers reporting to the Commission pursuant to section 78q(h) of this title, the requirements relating to such associated persons shall conform, to the greatest extent practicable, to the requirements under section 78q(h) of this title.

(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and any appropriate regulatory agency shall not be compelled to disclose any information required to be reported under this paragraph, or any information supplied to the Secretary or any appropriate regulatory agency by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered government securities broker or a government securities dealer. Nothing in this paragraph shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3)(A) With respect to any financial institution that has filed notice as a government securities broker or government securities dealer or that is required to file notice under subsection (a)(1)(B), the appropriate regulatory agency for such government securities broker or government securities dealer may issue such rules and regulations with respect to transactions in government securities as may be necessary to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. If the Secretary of the Treasury determines, and notifies the appropriate regulatory agency, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the appropriate regulatory agency shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(B) The appropriate regulatory agency shall consult with and consider the views of the Secretary prior to approving or amending a rule or regulation under this paragraph, except where the appropriate regulatory agency determines that an emergency exists requiring expeditious and summary action and publishes its reasons therefor. If the Secretary comments in writing to the appropriate regulatory agency on a proposed rule or regulation that has been published for comment,

the appropriate regulatory agency shall respond in writing to such written comment before approving the proposed rule or regulation.

(C) In promulgating rules under this section, the appropriate regulatory agency shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers.

(4) Rules promulgated and orders issued under this section shall—

(A) be designed to prevent fraudulent and manipulative acts and practices and to protect the integrity, liquidity, and efficiency of the market for government securities, investors, and the public interest; and

(B) not be designed to permit unfair discrimination between customers, issuers, government securities brokers, or government securities dealers, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(5) In promulgating rules and issuing orders under this section, the Secretary—

(A) may appropriately classify government securities brokers and government securities dealers (taking into account relevant matters, including types of business done, nature of securities other than government securities purchased or sold, and character of business organization) and persons associated with government securities brokers and government securities dealers;

(B) may determine, to the extent consistent with paragraph (2) of this subsection and with the public interest, the protection of investors, and the purposes of this chapter, not to apply, in whole or in part, certain rules under this section, or to apply greater, lesser, or different standards, to certain classes of government securities brokers, government securities dealers, or persons associated with government securities brokers or government securities dealers;

(C) shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers; and

(D) shall consult with and consider the views of the Commission and the Board of Governors of the Federal Reserve System, except where the Secretary determines that an emergency exists requiring expeditious or summary action and publishes its reasons for such determination.

(6) If the Commission or the Board of Governors of the Federal Reserve System comments in writing on a proposed rule of the Secretary that has been published for comment, the Secretary shall respond in writing to such written comment before approving the proposed rule.

(7) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security in contravention of any rule under this section.

(c) Sanctions for violations

(1) With respect to any government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section—

(A) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such government securities broker or government securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such government securities broker or government securities dealer, or any person associated with such government securities broker or government securities dealer (whether prior or subsequent to becoming so associated), has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) Pending final determination whether registration of any government securities broker or government securities dealer shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered government securities broker or registered government securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered government securities broker or registered government securities dealer is no longer in existence or has ceased to do business as a government securities broker or government securities dealer, the Commission, by order, shall cancel the registration of such government securities broker or government securities dealer.

(C) The Commission, by order, shall censure or place limitations on the activities or functions of any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated with a government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section or suspend for a period not exceeding 12 months or bar any such person from being associated with such a government securities broker or government securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(2)(A) With respect to any government securities broker or government securities dealer which is not registered or required to register under subsection (a)(1)(A) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may, in the manner and for the reasons specified in paragraph (1)(A) of this subsection, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or bar from acting as a government securities broker or government securities dealer any such government securities broker or government securities dealer, and may sanction any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with such government securities broker or government securities dealer in the manner and for the reasons specified in paragraph (1)(C) of this subsection.

(B) In addition, where applicable, such appropriate regulatory agency may, in accordance with section 1818 of title 12, section 1464 of title 12, or section 1730 ¹ of title 12, enforce compliance by such government securities broker or government securities dealer or any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with such government securities broker or government securities dealer with the provisions of this section and the rules thereunder.

(C) For purposes of subparagraph (B) of this paragraph, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or (c) of title 12, section 1464(d)(2) or (d)(3) ¹ of title 12, or section 1730(e) or (f) ¹ of title 12, and the customers of any such government securities broker or government securities dealer shall be deemed, respectively, "depositors" as that term is used in section 1818(c) of title 12, "savings account holders" as that term is used in section 1464(d)(3) ¹ of title 12, or "insured members" as that term is used in section 1730(f) ¹ of title 12.

(D) Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such government securities broker or government securities dealer under any other provision of law.

(E) Each appropriate regulatory agency (other than the Commission) shall promptly notify the

Commission after it has imposed any sanction under this paragraph on a government securities broker or government securities dealer, or a person associated with a government securities broker or government securities dealer, and the Commission shall maintain, and make available to the public, a record of such sanctions and any sanctions imposed by it under this subsection.

(3) It shall be unlawful for any person as to whom an order entered pursuant to paragraph (1) or (2) of this subsection suspending or barring him from being associated with a government securities broker or government securities dealer is in effect willfully to become, or to be, associated with a government securities broker or government securities dealer without the consent of the appropriate regulatory agency, and it shall be unlawful for any government securities broker or government securities dealer to permit such a person to become, or remain, a person associated with it without the consent of the appropriate regulatory agency, if such government securities broker or government securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

(d) Records of brokers and dealers subject to examination

(1) All records of a government securities broker or government securities dealer are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the appropriate regulatory agency for such government securities broker or government securities dealer as such appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(2) Information received by an appropriate regulatory agency, the Secretary, or the Commission from or with respect to any government securities broker, government securities dealer, any person associated with a government securities broker or government securities dealer, or any other person subject to this section or rules promulgated thereunder, may be made available by the Secretary or the recipient agency to the Commission, the Secretary, the Department of Justice, the Commodity Futures Trading Commission, any appropriate regulatory agency, any self-regulatory organization, or any Federal Reserve Bank.

(3) GOVERNMENT SECURITIES TRADE RECONSTRUCTION.—

(A) FURNISHING RECORDS.—Every government securities broker and government securities dealer shall furnish to the Commission on request such records of government securities transactions, including records of the date and time of execution of trades, as the Commission may require to reconstruct trading in the course of a particular inquiry or investigation being conducted by the Commission for enforcement or surveillance purposes. In requiring information pursuant to this paragraph, the Commission shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission, to the Federal Reserve Bank of New York, or to an appropriate regulatory agency or self-regulatory organization with responsibility for examining the government securities broker or government securities dealer. The Commission may require that such information be furnished in machine readable form notwithstanding any limitation in subparagraph (B). In utilizing its authority to require information in machine readable form, the Commission shall minimize the burden such requirement may place on small government securities brokers and dealers.

(B) LIMITATION; CONSTRUCTION.—The Commission shall not utilize its authority under this paragraph to develop regular reporting requirements, except that the Commission may require information to be furnished under this paragraph as frequently as necessary for particular inquiries or investigations for enforcement or surveillance purposes. This paragraph shall not be construed as requiring, or as authorizing the Commission to require, any government securities broker or government securities dealer to obtain or maintain any information for purposes of this paragraph which is not otherwise maintained by such broker or dealer in accordance with any other provision of law or usual and customary business practice. The Commission shall, where feasible, avoid requiring any information to be furnished under this paragraph that the Commission may obtain from the Federal Reserve Bank of New York.

(C) PROCEDURES FOR REQUIRING INFORMATION.—At the time the Commission requests any information pursuant to subparagraph (A) with respect to any government securities

broker or government securities dealer for which the Commission is not the appropriate regulatory agency, the Commission shall notify the appropriate regulatory agency for such government securities broker or government securities dealer and, upon request, furnish to the appropriate regulatory agency any information supplied to the Commission.

(D) CONSULTATION.—Within 90 days after December 17, 1993, and annually thereafter, or upon the request of any other appropriate regulatory agency, the Commission shall consult with the other appropriate regulatory agencies to determine the availability of records that may be required to be furnished under this paragraph and, for those records available directly from the other appropriate regulatory agencies, to develop a procedure for furnishing such records expeditiously upon the Commission's request.

(E) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this paragraph shall be construed so as to permit the Commission to require any government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any appropriate regulatory agency other than the Commission or any supervisory recommendations or analysis contained in any such examination report.

(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission and the appropriate regulatory agencies shall not be compelled to disclose any information required or obtained under this paragraph. Nothing in this paragraph shall authorize the Commission or any appropriate regulatory agency to withhold information from Congress, or prevent the Commission or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Commission, or the appropriate regulatory agency. For purposes of section 552 of title 5, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(e) Membership in national securities exchange; exemptions

(1) It shall be unlawful for any government securities broker or government securities dealer registered or required to register with the Commission under subsection (a)(1)(A) to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security, unless such government securities broker or government securities dealer is a member of a national securities exchange registered under section 78f of this title or a securities association registered under section 78o-3 of this title.

(2) The Commission, after consultation with the Secretary, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any government securities broker or government securities dealer or class of government securities brokers or government securities dealers specified in such rule or order.

(f) Large position reporting

(1) Reporting requirements

The Secretary may adopt rules to require specified persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file such reports regarding such positions as the Secretary determines to be necessary and appropriate for the purpose of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and for the purpose of otherwise assisting the Commission in the enforcement of this chapter, taking into account any impact of such rules on the efficiency and liquidity of the Treasury securities market and the cost to taxpayers of funding the Federal debt. Unless otherwise specified by the Secretary, reports required under this subsection shall be filed with the Federal Reserve Bank of New York, acting as agent for the Secretary. Such reports shall, on a timely basis, be provided directly to the Commission by the person with whom they are filed.

(2) Recordkeeping requirements

Rules under this subsection may require persons holding, maintaining, or controlling large

positions in Treasury securities to make and keep for prescribed periods such records as the Secretary determines are necessary or appropriate to ensure that such persons can comply with reporting requirements under this subsection.

(3) Aggregation rules

Rules under this subsection—

(A) may prescribe the manner in which positions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control; and

(B) may define which persons (individually or as a group) hold, maintain, or control large positions.

(4) Definitional authority; determination of reporting threshold

(A) In prescribing rules under this subsection, the Secretary may, consistent with the purpose of this subsection, define terms used in this subsection that are not otherwise defined in section 78c of this title.

(B) Rules under this subsection shall specify—

(i) the minimum size of positions subject to reporting under this subsection, which shall be no less than the size that provides the potential for manipulation or control of the supply or price, or the cost of financing arrangements, of an issue or the portion thereof that is available for trading;

(ii) the types of positions (which may include financing arrangements) to be reported;

(iii) the securities to be covered; and

(iv) the form and manner in which reports shall be transmitted, which may include transmission in machine readable form.

(5) Exemptions

Consistent with the public interest and the protection of investors, the Secretary by rule or order may exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection.

(6) Limitation on disclosure of information

Notwithstanding any other provision of law, the Secretary and the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Secretary or the Commission to withhold information from Congress, or prevent the Secretary or the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Secretary, or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(g) Effect on other laws; authority of Commission

(1) Nothing in this section except paragraph (2) of this subsection shall be construed to impair or limit the authority under any other provision of law of the Commission, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Secretary of Housing and Urban Development, and the Government National Mortgage Association.

(2) Notwithstanding any other provision of this chapter, the Commission shall not have any authority to make investigations of, require the filing of a statement by, or take any other action under this chapter against a government securities broker or government securities dealer, or any person associated with a government securities broker or government securities dealer, for any violation or threatened violation of the provisions of this section, other than subsection (d)(3) ² or the rules or regulations thereunder, unless the Commission is the appropriate regulatory agency for such government securities broker or government securities dealer. Nothing in the preceding sentence

shall be construed to limit the authority of the Commission with respect to violations or threatened violations of any provision of this chapter other than this section (except subsection (d)(3)), the rules or regulations under any such other provision, or investigations pursuant to section 78u(a)(2) of this title to assist a foreign securities authority.

(h) Emergency authority

The Secretary may, by order, take any action with respect to a matter or action subject to regulation by the Secretary under this section, or the rules of the Secretary under this section, involving a government security or a market therein (or significant portion or segment of that market), that the Commission may take under section 78l(k)(2) of this title with respect to transactions in securities (other than exempted securities) or a market therein (or significant portion or segment of that market).

(June 6, 1934, ch. 404, title I, §15C, as added Pub. L. 99-571, title I, §101, Oct. 28, 1986, 100 Stat. 3208; amended Pub. L. 100-181, title VIII, §801(a), Dec. 4, 1987, 101 Stat. 1265; Pub. L. 101-73, title VII, §744(u)(3), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101-432, §4(b), Oct. 16, 1990, 104 Stat. 970; Pub. L. 101-550, title II, §203(c), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 103-202, title I, §§102-104, 106(a), 108, 109(b)(1), (c), Dec. 17, 1993, 107 Stat. 2345, 2346, 2349, 2351-2353; Pub. L. 105-353, title III, §301(b)(10), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107-204, title VI, §604(c)(1)(B), July 30, 2002, 116 Stat. 796; Pub. L. 108-458, title VII, §7803(d), Dec. 17, 2004, 118 Stat. 3863; Pub. L. 111-203, title III, §376(3), title IX, §§929F(b), 985(b)(6), July 21, 2010, 124 Stat. 1569, 1854, 1934.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (5), (b)(1), (2)(B), (4)(B), (d)(1), (f)(1), and (g)(2), was in the original "this title". See References in Text note set out under section 78a of this title.

Subchapter VIII of chapter 3 of title 12, referred to in subsec. (b)(2)(C)(ii), was in the original "section 9 of the Federal Reserve Act", meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

Section 3401(6) of title 12, referred to in subsec. (b)(2)(D)(i), was redesignated section 3401(7) of title 12 by Pub. L. 101-73, title IX, §941(1), Aug. 9, 1989, 103 Stat. 496.

Section 1730 of title 12, referred to in subsec. (c)(2)(B), (C), was repealed by Pub. L. 101-73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

Section 1464(d)(2) and (d)(3) of title 12, referred to in subsec. (c)(2)(C), was amended generally by Pub. L. 101-73, title III, §301, Aug. 9, 1989, 103 Stat. 282, and, as so amended, no longer relates to issuance of orders nor contains the term "savings account holders".

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111-203, §985(b)(6)(C), inserted after first sentence in concluding provisions: "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o-3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership."

Pub. L. 111-203, §985(b)(6)(A), (B), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, realigned margins, and, in subpar. (B), struck out "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o-3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership." after "grant or deny such registration."

Subsec. (c)(1)(C). Pub. L. 111-203, §929F(b)(1), substituted "any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated" for "any person associated, or seeking to become associated,".

Subsec. (c)(2)(A), (B). Pub. L. 111-203, §929F(b)(2)(A), (B), inserted ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person

associated".

Subsec. (g)(1). Pub. L. 111–203, §376(3), struck out "the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation," after "the Federal Deposit Insurance Corporation,".

2004—Subsec. (h). Pub. L. 108–458 added subsec. (h).

2002—Subsec. (c)(1)(A), (C). Pub. L. 107–204 substituted ", or is subject to an order or finding," for "or omission" and "(H), or (G)" for "or (G)".

1998—Subsec. (f)(5). Pub. L. 105–353 substituted "class of persons" for "class or persons".

1993—Subsec. (a)(2)(ii). Pub. L. 103–202, §109(b)(1), inserted "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 78f of this title, or a securities association registered under section 78o–3 of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership." before "The Commission may extend".

Subsec. (a)(4). Pub. L. 103–202, §108(2), added par. (4). Former par. (4) redesignated (5).

Pub. L. 103–202, §103(b)(1), inserted ", other than subsection (d)(3)," after "subsection (a), (b), or (d) of this section".

Subsec. (a)(5). Pub. L. 103–202, §108(1), redesignated par. (4) as (5).

Subsec. (b)(3) to (7). Pub. L. 103–202, §106(a), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (d)(2). Pub. L. 103–202, §109(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Information received by any appropriate regulatory agency or the Secretary from or with respect to any government securities broker or government securities dealer or with respect to any person associated therewith may be made available by the Secretary or the recipient agency to the Commission, the Secretary, any appropriate regulatory agency, and any self-regulatory organization."

Subsec. (d)(3). Pub. L. 103–202, §103(a), added par. (3).

Subsec. (f). Pub. L. 103–202, §104(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(2). Pub. L. 103–202, §103(b)(2), inserted ", other than subsection (d)(3)" after "threatened violation of the provisions of this section" and "(except subsection (d)(3))" after "other than this section".

Subsec. (g). Pub. L. 103–202, §104(1), redesignated subsec. (f) as (g).

Pub. L. 103–202, §102, struck out subsec. (g) which read as follows:

"(1) The authority of the Secretary to issue orders and to propose and adopt rules under this section shall terminate on October 1, 1991.

"(2) All orders and rules—

"(A) which have been issued or adopted by the Secretary, and

"(B) which are in effect on the date specified in paragraph (1), shall continue in effect according to their terms."

1990—Subsec. (b)(2) to (6). Pub. L. 101–432 added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (c)(1)(A), (C). Pub. L. 101–550, §203(c)(1), substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (f)(2). Pub. L. 101–550, §203(c)(2), substituted "the rules or regulations under any such other provision, or investigations pursuant to section 78u(a)(2) of this title to assist a foreign securities authority" for "or the rules or regulations under any such other provision".

1989—Subsec. (f)(1). Pub. L. 101–73 substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

1987—Subsec. (a)(1)(B)(i). Pub. L. 100–181 substituted "When such" for "When".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929F(b) and 985(b)(6) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 376(3) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE

Pub. L. 99–571, title IV, §§401–403, Oct. 28, 1986, 100 Stat. 3224, 3225, provided that:

"SEC. 401. GENERAL EFFECTIVE DATES.

"Except as provided in section 402, this Act [enacting section 78o-5 of this title and section 9110 of Title 31, Money and Finance, amending sections 78c, 78o, 78o-3, 78q, 78w, 78y, 80a-9, and 80b-3 of this title and section 3121 of Title 31, and enacting provisions set out as notes under sections 78a and 78o-5 of this title] and the amendments made by this Act shall take effect 270 days after the date of enactment of this Act [Oct. 28, 1986].

"SEC. 402. EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.

"Notwithstanding section 401, the Secretary of the Treasury and each appropriate regulatory agency shall, within 120 days after the date of enactment of this Act [Oct. 28, 1986], publish for notice and public comment such regulations as are initially required to implement this Act, which regulations shall become effective as temporary regulations 210 days after the date of enactment of this Act and as final regulations not later than 270 days after the date of enactment of this Act.

"SEC. 403. REGISTRATION DATE.

"No person may continue to act as a government securities broker or government securities dealer after 270 days after the date of enactment of this Act [Oct. 28, 1986] unless such person has been registered or has provided notice to the Commission or the appropriate regulatory agency as required by the amendment made by section 101 of this Act [enacting section 78o-5 of this title]."

TRANSITIONAL AND SAVINGS PROVISIONS

Pub. L. 99-571, title III, §301, Oct. 28, 1986, 100 Stat. 3224, provided that:

"(a) **EFFECT ON PENDING ADMINISTRATIVE PROCEEDINGS.**—The provisions of this Act [see Effective Date note above] shall not affect any proceedings pending on the effective date of this Act [see Effective Date note above].

"(b) **EFFECT ON PENDING JUDICIAL PROCEEDINGS.**—The provisions of this Act shall not affect suits commenced prior to the effective date of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

"(c) **DISCRETION OF THE FEDERAL RESERVE BANK OF NEW YORK.**—Nothing in this Act shall be construed to limit or impair the discretion or authority of the Federal Reserve Bank of New York to require reports or establish terms and conditions in connection with the Bank's relationship with any government securities broker or government securities dealer, including a primary dealer.

"(d) **JURISDICTION OF THE COMMODITY FUTURES TRADING COMMISSION.**—Nothing in this Act affects the jurisdiction of the Commodity Futures Trading Commission as set forth in the Commodity Exchange Act [7 U.S.C. 1 et seq.] over trading of commodity futures contracts and options on such contracts involving government securities."

CONSTRUCTION OF 1993 AMENDMENT

Pub. L. 103-202, title I, §111, Dec. 17, 1993, 107 Stat. 2353, provided that:

"(a) **IN GENERAL.**—No provision of, or amendment made by, this title [amending this section and sections 78c, 78o, 78o-3, 78s, and 78w of this title and enacting provisions set out as notes below] may be construed—

"(1) to govern the initial issuance of any public debt obligation, or

"(2) to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization—

"(A) to prescribe any procedure, term, or condition of such initial issuance,

"(B) to promulgate any rule or regulation governing such initial issuance, or

"(C) to otherwise regulate in any manner such initial issuance.

"(b) **EXCEPTION.**—Subsection (a) of this section shall not apply to the amendment made by section 110 of this Act [amending section 78o of this title].

"(c) **PUBLIC DEBT OBLIGATION.**—For purposes of this section, the term 'public debt obligation' means an obligation subject to the public debt limit established in section 3101 of title 31, United States Code."

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of Title 12, Banks and Banking.

CONGRESSIONAL FINDINGS

Pub. L. 103-202, title I, §101, Dec. 17, 1993, 107 Stat. 2344, provided that: "The Congress finds that—

"(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers;

"(2) the fair and honest treatment of investors will strengthen the integrity and liquidity of the government securities market;

"(3) rules promulgated by the Secretary of the Treasury pursuant to the Government Securities Act of 1986 [see Short Title of 1986 Amendment note set out under section 78a of this title] have worked well to protect investors from unregulated dealers and maintain the efficiency of the government securities market; and

"(4) extending the authority of the Secretary and providing new authority will ensure the continued strength of the government securities market."

Pub. L. 99-571, §1(b), Oct. 28, 1986, 100 Stat. 3208, provided that: "The Congress finds that transactions in government securities are affected with a public interest which makes it necessary—

"(1) to provide for the integrity, stability, and efficiency of such transactions and of matters and practices related thereto;

"(2) to impose adequate regulation of government securities brokers and government securities dealers generally; and

"(3) to require appropriate financial responsibility, recordkeeping, reporting, and related regulatory requirements;

in order to protect investors and to insure the maintenance of fair, honest, and liquid markets in such securities."

STUDY OF REGULATORY SYSTEM FOR GOVERNMENT SECURITIES

Pub. L. 103-202, title I, §112, Dec. 17, 1993, 107 Stat. 2354, provided that:

"(a) JOINT STUDY.—The Secretary of the Treasury, the Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System shall—

"(1) with respect to any rules promulgated or amended after October 1, 1991, pursuant to section 15C of the Securities Exchange Act of 1934 [15 U.S.C. 78o-5] or any amendment made by this title [amending this section and sections 78c, 78o, 78o-3, 78s, and 78w of this title], and any national securities association rule changes applicable principally to government securities transactions approved after October 1, 1991—

"(A) evaluate the effectiveness of such rules in carrying out the purposes of such Act [15 U.S.C. 78a et seq.]; and

"(B) evaluate the impact of any such rules on the efficiency and liquidity of the government securities market and the cost of funding the Federal debt;

"(2) evaluate the effectiveness of surveillance and enforcement with respect to government securities, and the impact on such surveillance and enforcement of the availability of automated, time-sequenced records of essential information pertaining to trades in such securities; and

"(3) submit to the Congress, not later than March 31, 1998, any recommendations they may consider appropriate concerning—

"(A) the regulation of government securities brokers and government securities dealers;

"(B) the dissemination of information concerning quotations for and transactions in government securities;

"(C) the prevention of sales practice abuses in connection with transactions in government securities; and

"(D) such other matters as they consider appropriate.

"(b) TREASURY STUDY.—The Secretary of the Treasury, in consultation with the Securities and Exchange Commission, shall—

"(1) conduct a study of—

"(A) the identity and nature of the business of government securities brokers and government securities dealers that are registered with the Securities and Exchange Commission under section 15C of the Securities Exchange Act of 1934 [15 U.S.C. 78o-5]; and

"(B) the continuing need for, and regulatory and financial consequences of, a separate regulatory system for such government securities brokers and government securities dealers; and

"(2) submit to the Congress, not later than 18 months after the date of enactment of this Act [Dec. 17, 1993], the Secretary's recommendations for change, if any, or such other recommendations as the Secretary considers appropriate."

STUDIES AND RECOMMENDATIONS WITH RESPECT TO EXTENSION OF TREASURY AUTHORITY

Pub. L. 99-571, title I, §103, Oct. 28, 1986, 100 Stat. 3221, directed Secretary of the Treasury, together with Securities and Exchange Commission and Board of Governors of the Federal Reserve System, to evaluate the effectiveness of the rules promulgated pursuant to 15 U.S.C. 78o-5 in effecting the purposes of this chapter, and shall submit to Congress, not later than Oct. 1, 1990, their recommendation with respect to the extension of the Secretary's authority under 15 U.S.C. 78o-5 and such other recommendations as they considered appropriate; and directed Comptroller General to conduct a study of the regulation of government securities brokers and government securities dealers pursuant to 15 U.S.C. 78o-5 and the effectiveness of the amendments made by this Act in protecting investors and in effecting the purposes described in 15 U.S.C. 78o-5(b)(2), and submit to Congress, not later than Mar. 31, 1990, his recommendations with respect to the extension of the Secretary's authority under 15 U.S.C. 78o-5 and such other recommendations as he considered appropriate.

¹ See References in Text note below.

² So in original. Probably should be followed by a comma.

§78o-6. Securities analysts and research reports

(a) Analyst protections

The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after July 30, 2002, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

(b) Disclosure

The Commission, or upon the authorization and direction of the Commission, a registered

securities association or national securities exchange, shall have adopted, not later than 1 year after July 30, 2002, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

(c) Limitation

Notwithstanding subsection (a) or any other provision of law, neither the Commission nor any national securities association registered under section 78o–3 of this title may adopt or maintain any rule or regulation in connection with an initial public offering of the common equity of an emerging growth company—

(1) restricting, based on functional role, which associated persons of a broker, dealer, or member of a national securities association, may arrange for communications between a securities analyst and a potential investor; or

(2) restricting a securities analyst from participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

(d) Definitions

In this section—

(1) the term "securities analyst" means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "securities analyst"; and

(2) the term "research report" means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

(June 6, 1934, ch. 404, title I, §15D, as added Pub. L. 107–204, title V, §501(a), July 30, 2002, 116 Stat. 791; amended Pub. L. 112–106, title I, §105(b), Apr. 5, 2012, 126 Stat. 311.)

EDITORIAL NOTES

AMENDMENTS

2012—Subsecs. (c), (d). Pub. L. 112–106 added subsec. (c) and redesignated former subsec. (c) as (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

POST OFFERING COMMUNICATIONS

Pub. L. 112–106, title I, §105(d), Apr. 5, 2012, 126 Stat. 311, provided that: "Neither the [Securities and Exchange] Commission nor any national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3] may adopt or maintain any rule or regulation prohibiting any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an emerging growth company, either—

"(1) within any prescribed period of time following the initial public offering date of the emerging growth company; or

"(2) within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date."

COMMISSION AUTHORITY

Pub. L. 107–204, title V, §501(c), July 30, 2002, 116 Stat. 793, provided that: "The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934 [15 U.S.C. 78o–6], as added by this section, as is necessary for the protection of investors and in the public interest."

§78o–7. Registration of nationally recognized statistical rating organizations

(a) Registration procedures

(1) Application for registration

(A) In general

A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this chapter (in this section referred to as the "applicant"), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

(B) Required information

An application for registration under this section shall contain information regarding—

- (i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;
- (ii) the procedures and methodologies that the applicant uses in determining credit ratings;
- (iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this chapter (or the rules and regulations hereunder), of material, nonpublic information;
- (iv) the organizational structure of the applicant;
- (v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;
- (vi) any conflict of interest relating to the issuance of credit ratings by the applicant;
- (vii) the categories described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title with respect to which the applicant intends to apply for registration under this section;
- (viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;
- (ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title, written certifications described in subparagraph (C), except as provided in subparagraph (D); and

(x) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(C) Written certifications

Written certifications required by subparagraph (B)(ix)—

(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

(ii) may address more than one category of obligors described in any of clauses (i) through (v) of section 78c(a)(62)(B) of this title;

(iii) shall include not fewer than 2 certifications for each such category of obligor; and

(iv) shall state that the qualified institutional buyer—

(I) meets the definition of a qualified institutional buyer under section 78c(a)(64) of this title; and

(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

(D) Exemption from certification requirement

A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

(E) Limitation on liability of qualified institutional buyers

No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

(2) Review of application

(A) Initial determination

Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 78c(a)(62)(B) of this title; or

(ii) institute proceedings to determine whether registration should be denied.

(B) Conduct of proceedings

(i) Content

Proceedings referred to in subparagraph (A)(ii) shall—

(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

(II) be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission under paragraph (1).

(ii) Determination

At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

(iii) Extension authorized

The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

(C) Grounds for decision

The Commission shall grant registration under this subsection—

(i) if the Commission finds that the requirements of this section are satisfied; and
(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

(I) the applicant does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

(3) Public availability of information

Subject to section 78x of this title, the Commission shall, by rule, require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (b), publicly available on its website, or through another comparable, readily accessible means, except as provided in clauses (viii) and (ix) of paragraph (1)(B).

(b) Update of registration

(1) Update

Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

(A) the information required to be filed under subsection (a)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection; or

(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by filing information under this paragraph.

(2) Certification

Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

(B) listing any material change that occurred to such information or documents during the previous calendar year.

(c) Accountability for ratings procedures

(1) Authority

The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this chapter with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of nonpublic information and conflicts of interest, that such nationally recognized statistical rating organization—

(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

(B) makes and disseminates in reports pursuant to section 78q(a) of this title or the rules and regulations thereunder.

(2) Limitation

The rules and regulations that the Commission may prescribe pursuant to this chapter, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this chapter applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of this section, or any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings. Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.

(3) Internal controls over processes for determining credit ratings

(A) In general

Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

(B) Attestation requirement

The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

- (i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);
- (ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and
- (iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.

(d) Censure, denial, or suspension of registration; notice and hearing

(1) In general

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization, or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, bar or revocation is necessary for the protection of investors and in the public interest and that such nationally recognized statistical rating organization, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 78o(b)(4) of this title, has been convicted of any offense specified in section 78o(b)(4)(B) of this title, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 78o(b)(4) of this title, during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

(B) has been convicted during the 10-year period preceding the date on which an application for registration is filed with the Commission under this section, or at any time thereafter, of—

- (i) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 78o(b)(4)(B) of this title; or

(ii) a substantially equivalent crime by a foreign court of competent jurisdiction;

(C) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization;

(D) fails to file the certifications required under subsection (b)(2);

(E) fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity; ¹

(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

(2) Suspension or revocation for particular class of securities

(A) In general

The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

(B) Considerations

In making any determination under subparagraph (A), the Commission shall consider—

(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce ratings that are accurate for that class or subclass of securities; and

(ii) such other factors as the Commission may determine.

(e) Termination of registration

(1) Voluntary withdrawal

A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission.

(2) Commission authority

In addition to any other authority of the Commission under this chapter, if the Commission finds that a nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

(f) Representations

(1) Ban on representations of sponsorship by United States or agency thereof

It shall be unlawful for any nationally recognized statistical rating organization to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that the abilities or qualifications thereof have in any respect been passed upon, by the United States or any agency, officer, or employee thereof.

(2) Ban on representation as NRSRO of unregistered credit rating agencies

It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this chapter.

(3) Statement of registration under Securities Exchange Act of 1934 provisions

No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this chapter, if such statement is true in fact and if the effect of such registration is not

misrepresented.

(g) Prevention of misuse of nonpublic information

(1) Organization policies and procedures

Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this chapter, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

(2) Commission authority

The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent misuse in violation of this chapter (or the rules or regulations hereunder) of material, nonpublic information.

(h) Management of conflicts of interest

(1) Organization policies and procedures

Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

(2) Commission authority

The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(3) Separation of ratings from sales and marketing

(A) Rules required

The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

(B) Contents of rules

The rules issued under subparagraph (A) shall provide for—

(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commission finds, on the record, after notice and opportunity for a hearing, that—

(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

(II) the violation of a rule issued under this subsection affected a rating.

(4) Look-back requirement

(A) Review by the nationally recognized statistical rating organization

Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

(B) Review by Commission

(i) In general

The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

(ii) Timing of reviews

The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

(I) not less frequently than annually; and

(II) whenever such policies are materially modified or amended.

(5) Report to Commission on certain employment transitions

(A) Report required

Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

(i) was a senior officer of such organization;

(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

(iii) supervised an employee described in clause (ii).

(B) Public disclosure

Upon receiving such a report, the Commission shall make such information publicly available.

(i) Prohibited conduct

(1) Prohibited acts and practices

The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

(A) conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

(B) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.

(2) Rule of construction

Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in section 12 of this title, except that such term includes section 45 of this title, to the extent that such section 45 applies to unfair methods of competition).

(j) Designation of compliance officer

(1) In general

Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

(2) Limitations

(A) In general

Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

(i) perform credit ratings;

(ii) participate in the development of ratings methodologies or models;

(iii) perform marketing or sales functions; or

(iv) participate in establishing compensation levels, other than for employees working for that individual.

(B) Exception

The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

(3) Other duties

Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

(A) complaints regarding credit ratings, models, methodologies, and compliance with the

securities laws and the policies and procedures developed under this section; and
(B) confidential, anonymous complaints by employees or users of credit ratings.

(4) Compensation

The compensation of each compliance officer appointed under paragraph (1) shall not be linked to the financial performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.

(5) Annual reports required

(A) Annual reports required

Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

- (i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and
- (ii) a certification that the report is accurate and complete.

(B) Submission of reports to the Commission

Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.

(k) Statements of financial condition

Each nationally recognized statistical rating organization shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(l) Sole method of registration

(1) In general

On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

(2) Prohibition on reliance on no-action relief

On and after the effective date of this section—

(A) an entity that, before that date, received advice, approval, or a no-action letter from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3-1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

- (i) during Commission consideration of the application, if such entity has filed an application for registration under this section; and
- (ii) on and after the date of approval of its application for registration under this section; and

(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

(3) Notice to other agencies

Not later than 30 days after September 29, 2006, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term "nationally recognized statistical rating organization" (as that term is used under Commission rule 15c3-1 (17 C.F.R. 240.15c3-1), as in effect on September 29, 2006).

(m) Accountability

(1) In general

The enforcement and penalty provisions of this chapter shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 78u-5 of this title.

(2) Rulemaking

The Commission shall issue such rules as may be necessary to carry out this subsection.

(n) Regulations

(1) New provisions

Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

(A) shall be issued by the Commission in final form, not later than 270 days after September 29, 2006; and

(B) shall become effective not later than 270 days after September 29, 2006.

(2) Review of existing regulations

Not later than 270 days after September 29, 2006, the Commission shall—

(A) review its existing rules and regulations which employ the term "nationally recognized statistical rating organization" or "NRSRO"; and

(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(o) NRSROs subject to Commission authority

(1) In general

No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

(2) Limitation

Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

(p) Regulation of nationally recognized statistical rating organizations

(1) Establishment of Office of Credit Ratings

(A) Office established

The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the "Office") to administer the rules of the Commission—

(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

(B) Director of the Office

The head of the Office shall be the Director, who shall report to the Chairman.

(2) Staffing

The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

(3) Commission examinations

(A) Annual examinations required

The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

(B) Conduct of examinations

Each examination under subparagraph (A) shall include a review of—

- (i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;
- (ii) the management of conflicts of interest by the nationally recognized statistical rating organization;
- (iii) implementation of ethics policies by the nationally recognized statistical rating organization;
- (iv) the internal supervisory controls of the nationally recognized statistical rating organization;
- (v) the governance of the nationally recognized statistical rating organization;
- (vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);
- (vii) the processing of complaints by the nationally recognized statistical rating organization; and
- (viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

(C) Inspection reports

The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

- (i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;
- (ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and
- (iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

(4) Rulemaking authority

The Commission shall—

- (A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this section and the rules thereunder; and
- (B) issue such rules as may be necessary to carry out this section.

(q) Transparency of ratings performance

(1) Rulemaking required

The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of

credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

(2) Content

The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested;

(E) are appropriate to the business model of a nationally recognized statistical rating organization; and

(F) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.

(r) Credit ratings methodologies

The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board; and

(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

(3) to notify users of credit ratings—

(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

(s) Transparency of credit rating methodologies and information reviewed

(1) Form for disclosures

The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

(A) information relating to—

- (i) the assumptions underlying the credit rating procedures and methodologies;
- (ii) the data that was relied on to determine the credit rating; and
- (iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

(2) Format

The form developed under paragraph (1) shall—

(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

(3) Content of form

(A) Qualitative content

Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

- (i) the credit ratings produced by the nationally recognized statistical rating organization;
- (ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products;
- (iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;
- (iv) information on the uncertainty of the credit rating, including—
 - (I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and
 - (II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—
 - (aa) any limits on the scope of historical data; and
 - (bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

(ix) such additional information as the Commission may require.

(B) Quantitative content

Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

(i) an explanation or measure of the potential volatility of the credit rating, including—

(I) any factors that might lead to a change in the credit ratings; and

(II) the magnitude of the change that a user can expect under different market conditions;

(ii) information on the content of the rating, including—

(I) the historical performance of the rating; and

(II) the expected probability of default and the expected loss in the event of default;

(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating; ²

(iv) such additional information as may be required by the Commission.

(4) Due diligence services for asset-backed securities

(A) Findings

The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

(B) Certification required

In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which such services relate, written certification, as provided in subparagraph (C).

(C) Format and content

The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

(D) Disclosure of certification

The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization

produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.

(t) Corporate governance, organization, and management of conflicts of interest

(1) Board of directors

Each nationally recognized statistical rating organization shall have a board of directors.

(2) Independent directors

(A) In general

At least $\frac{1}{2}$ of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

(B) Independence determination

In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

(II) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof; and

(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

(C) Compensation and term

The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.

(3) Duties of board of directors

In addition to the overall responsibilities of the board of directors, the board shall oversee—

(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

(4) Treatment of NRSRO subsidiaries

If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

(A) at least $\frac{1}{2}$ of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.

(5) Exception authority

If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.

(u) Duty to report tips alleging material violations of law

(1) Duty to report

Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

(2) Rule of construction

Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).

(v) Information from sources other than the issuer

In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.

(w) Data standards for information required to be submitted or published under this section

(1) Requirement

The Commission shall, by rule, adopt data standards for all collections of information required to be submitted or published by a nationally recognized statistical rating organization under this section.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(June 6, 1934, ch. 404, title I, §15E, as added Pub. L. 109–291, §4(a), Sept. 29, 2006, 120 Stat. 1329; amended Pub. L. 111–203, title IX, §§932(a), 933(a), 934, 935, July 21, 2010, 124 Stat. 1872, 1883, 1884; Pub. L. 117–263, div. E, title LVIII, §5821(c), Dec. 23, 2022, 136 Stat. 3425.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (B)(iii), (c), (e)(2), (f)(2), (3), (g), and (m)(1), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Exchange Act of 1934, referred to in subsec. (f)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to this chapter (§78a et seq.). For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2022—Subsec. (w). Pub. L. 117–263 added subsec. (w).

2010—Subsec. (b)(1)(A). Pub. L. 111–203, §932(a)(1)(A), substituted "filed" for "furnished" and "filing" for "furnishing".

Subsec. (b)(1)(B). Pub. L. 111–203, §932(a)(1)(B), substituted "filing" for "furnishing".

Subsec. (b)(2). Pub. L. 111–203, §932(a)(1)(C), substituted "file with" for "furnish to" in introductory

provisions.

Subsec. (c)(2). Pub. L. 111–203, §932(a)(2)(A), inserted "any other provision of this section, or" after "Notwithstanding" and inserted at end "Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws."

Subsec. (c)(3). Pub. L. 111–203, §932(a)(2)(B), added par. (3).

Subsec. (d). Pub. L. 111–203, §932(a)(3), designated existing provisions as par. (1), inserted heading, inserted ", or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization," before "if the Commission finds" and "bar" before "or revocation is necessary", redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1) and former subpars. (A) and (B) of par. (2) as cls. (i) and (ii), respectively, of subpar. (B), in subpar. (B), substituted "filed with" for "furnished to" in introductory provisions, in subpar. (D), substituted "file" for "furnish", and added subpar. (F) and par. (2).

Subsec. (h)(3) to (5). Pub. L. 111–203, §932(a)(4), added pars. (3) to (5).

Subsec. (j). Pub. L. 111–203, §932(a)(5), designated existing provisions as par. (1), inserted heading, and added pars. (2) to (5).

Subsec. (k). Pub. L. 111–203, §932(a)(6), substituted "file with" for "furnish to".

Subsec. (l)(2)(A)(i). Pub. L. 111–203, §932(a)(7), substituted "filed" for "furnished".

Subsec. (m). Pub. L. 111–203, §933(a), amended subsec. (m) generally. Prior to amendment, subsec. (m) provided that registration did not constitute a waiver of rights, privileges, or defenses and that this section could not be construed as creating any private right of action.

Subsecs. (p) to (t). Pub. L. 111–203, §932(a)(8), added subsecs. (p) to (t) and struck out former subsec. (p) which related to applicability date of this section.

Subsec. (u). Pub. L. 111–203, §934, added subsec. (u).

Subsec. (v). Pub. L. 111–203, §935, added subsec. (v).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

REGULATIONS

Pub. L. 111–203, title IX, §937, July 21, 2010, 124 Stat. 1885, provided that: "Unless otherwise specifically provided in this subtitle [subtitle C (§§931–939H) of title IX of Pub. L. 111–203, enacting sections 78o–8 and 78o–9 of this title, amending this section and sections 78c, 78u–4, and 80a–6 of this title, sections 24a, 1817, 1831e, and 4519 of Title 12, Banks and Banking, and section 286hh of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under this section, sections 78m and 78o–9 of this title, and section 24a of Title 12], the [Securities and Exchange] Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act [July 21, 2010]."

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS

Pub. L. 111–203, title IX, §936, July 21, 2010, 124 Stat. 1884, provided that: "Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

"(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and

"(2) is tested for knowledge of the credit rating process."

[For definitions of terms used in section 936 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

REVIEW OF RELIANCE ON RATINGS

Pub. L. 111–203, title IX, §939A, July 21, 2010, 124 Stat. 1887, provided that:

"(a) AGENCY REVIEW.—Not later than 1 year after the date of the enactment of this subtitle [July 21, 2010], each Federal agency shall, to the extent applicable, review—

"(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

"(2) any references to or requirements in such regulations regarding credit ratings.

"(b) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

"(c) REPORT.—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b)."

[For definition of "security" as used in section 939A of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS

Pub. L. 111–203, title IX, §943, July 21, 2010, 124 Stat. 1897, provided that: "Not later than 180 days after the date of enactment of this Act [July 21, 2010], the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) [now 3(a)(79)] of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by this subtitle) that—

"(1) require each national [sic] recognized statistical rating organization to include in any report accompanying a credit rating a description of—

"(A) the representations, warranties, and enforcement mechanisms available to investors; and

"(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

"(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–11(a)], as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies."

[For definitions of terms used in section 943 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

FINDINGS

Pub. L. 111–203, title IX, §931, July 21, 2010, 124 Stat. 1872, provided that: "Congress finds the following:

"(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

"(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical 'gatekeeper' role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

"(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial 'gatekeepers' do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

"(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored

and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

"(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies."

[For definitions of terms used in section 931 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Pub. L. 109–291, §2, Sept. 29, 2006, 120 Stat. 1327, provided that: "Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204] (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

"(1) their ratings, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and other means and instrumentalities of interstate commerce;

"(2) their ratings, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System;

"(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, the securities markets, the national banking system, and the national economy;

"(4) the oversight of such credit rating agencies serves the compelling interest of investor protection;

"(5) the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest; and

"(6) the Commission has indicated that it needs statutory authority to oversee the credit rating industry."

SECURITIES AND EXCHANGE COMMISSION ANNUAL REPORT

Pub. L. 109–291, §6, Sept. 29, 2006, 120 Stat. 1338, provided that: "The Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

"(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934 [15 U.S.C. 78o–7], as added by this Act;

"(2) specifies the number of and actions taken on such applications; and

"(3) specifies the views of the Commission on the state of competition, transparency, and conflicts of interest among nationally recognized statistical rating organizations."

DEFINITIONS

Pub. L. 109–291, §3(b), Sept. 29, 2006, 120 Stat. 1328, provided that: "As used in this Act [see Short Title of 2006 Amendment note set out under section 78a of this title]—

"(1) the term 'Commission' means the Securities and Exchange Commission; and

"(2) the term 'nationally recognized statistical rating organization' has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], as added by this Act."

¹ *So in original. The word "or" probably should appear.*

² *So in original. The word "and" probably should appear.*

§78o–8. Universal ratings symbols

(a) Rulemaking

The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) Rule of construction

Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

(Pub. L. 111–203, title IX, §938, July 21, 2010, 124 Stat. 1885.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§78o–9. Study and rulemaking on assigned credit ratings

(a) Definition

In this section, the term "structured finance product" means an asset-backed security, as defined in section 3(a)(77) ¹ of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(79)], as added by section 941, ¹ and any structured product based on an asset-backed security, as determined by the Commission, by rule.

(b) Study

The Commission shall carry out a study of—

(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

(D) any constitutional or other issues concerning the establishment of such a system;

- (3) the range of metrics that could be used to determine the accuracy of credit ratings; and
- (4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

(c) Report and recommendation

Not later than 24 months after July 21, 2010, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

- (1) the findings of the study required under subsection (b); and
- (2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

(d) Rulemaking

(1) Rulemaking

After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

(2) Rule of construction

Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

(Pub. L. 111–203, title IX, §939F, July 21, 2010, 124 Stat. 1889.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3(a)(77) of the Securities Exchange Act of 1934, referred to in subsec. (a), was redesignated section 3(a)(79) of that Act by Pub. L. 112–106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307, and is classified to section 78c(a)(79) of this title.

Section 941, referred to in subsec. (a), means section 941 of Pub. L. 111–203.

Section 15E of the Securities Exchange Act of 1934, referred to in subsec. (d)(1), is classified to section 78o–7 of this title.

H.R. 4173, referred to in subsec. (d)(1), became Pub. L. 111–203. As enacted, section 939D of Pub. L. 111–203 did not add a subsec. (w) to section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) but enacted provisions set out as a note below. For the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, see 156 Cong. Rec. 80 at pp. S4338, S4339 (daily ed. May 25, 2010).

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS

Pub. L. 111–203, title IX, §939D, July 21, 2010, 124 Stat. 1888, provided that:

"(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

"(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act [July 21, 2010], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process."

[For definition of "nationally recognized statistical rating organization" as used in section 939D of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

¹ [*See References in Text note below.*](#)

§78o–10. Registration and regulation of security-based swap dealers and major security-based swap participants

(a) Registration

(1) Security-based swap dealers

It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

(2) Major security-based swap participants

It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

(b) Requirements

(1) In general

A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

(2) Contents

(A) In general

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) Continual reporting

A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) Expiration

Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) Rules

Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

(5) Transition

Not later than 1 year after July 21, 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

(6) Statutory disqualification

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) Dual registration

(1) Security-based swap dealer

Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

(2) Major security-based swap participant

Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

(d) Rulemaking

(1) In general

The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

(2) Exception for prudential requirements

(A) In general

The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

(B) Applicability

Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) Capital and margin requirements

(1) In general

(A) Security-based swap dealers and major security-based swap participants that are banks

Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) Security-based swap dealers and major security-based swap participants that are not

banks

Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) Rules

(A) Security-based swap dealers and major security-based swap participants that are banks

The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

(B) Security-based swap dealers and major security-based swap participants that are not banks

The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

(C) Capital

In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

(3) Standards for capital and margin

(A) In general

To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall—

- (i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and
- (ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

(B) Rule of construction

(i) In general

Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 78o(b) of this title (except for section 78o(b)(11) thereof) in accordance with section 78o(c)(3) of this title; or

(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except for section 4f(a)(3) [7

U.S.C. 6f(a)(3)] thereof) in accordance with section 4f(b) of the Commodity Exchange Act [7 U.S.C. 6f(b)].

(ii) Futures commission merchants and other dealers

A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this chapter or the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Margin requirements

In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

- (i) preserving the financial integrity of markets trading security-based swaps; and
- (ii) preserving the stability of the United States financial system.

(D) Comparability of capital and margin requirements

(i) In general

The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) Comparability

The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

- (I) security-based swap dealers; and
- (II) major security-based swap participants.

(4) Applicability with respect to counterparties

The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a security-based swap in which a counterparty qualifies for an exception under section 78c–3(g)(1) of this title or satisfies the criteria in section 78c–3(g)(4) of this title.

(f) Reporting and recordkeeping

(1) In general

Each registered security-based swap dealer and major security-based swap participant—

(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

(2) Rules

The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

(g) Daily trading records

(1) In general

Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) Information requirements

The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) Counterparty records

Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

(4) Audit trail

Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) Rules

The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

(h) Business conduct standards

(1) In general

Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

- (A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);
- (B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;
- (C) adherence to all applicable position limits; and
- (D) such other matters as the Commission determines to be appropriate.

(2) Responsibilities with respect to special entities

(A) Advising special entities

A security-based swap dealer or major security-based swap participant that acts as an advisor to ¹ special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

(B) Entering of security-based swaps with respect to special entities

A security-based swap dealer that enters into or offers to enter into ¹ security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

(C) Special entity defined

For purposes of this subsection, the term "special entity" means—

- (i) a Federal agency;
- (ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;
- (iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of title 26.

(3) Business conduct requirements

Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the security-based swap;

(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(4) Special requirements for security-based swap dealers acting as advisors

(A) In general

It shall be unlawful for a security-based swap dealer or major security-based swap participant—

(i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;

(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or

(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(B) Duty

Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

(C) Reasonable efforts

Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

(i) the financial status of the special entity;

(ii) the tax status of the special entity;

(iii) the investment or financing objectives of the special entity; and

(iv) any other information that the Commission may prescribe by rule or regulation.

(5) Special requirements for security-based swap dealers as counterparties to special entities

(A) In general

Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

(i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)], that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the security-based swap dealer or major security-based swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act ² of 1974 [29 U.S.C. 1001 et seq.], is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

(B) Commission authority

The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(6) Rules

The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

(7) Applicability

This subsection shall not apply with respect to a transaction that is—

(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.

(i) Documentation standards

(1) In general

Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

(2) Rules

The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

(j) Duties

Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

(1) Monitoring of trading

The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

(2) Risk management procedures

The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

(3) Disclosure of general information

The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

- (A) terms and conditions of its security-based swaps;
- (B) security-based swap trading operations, mechanisms, and practices;
- (C) financial integrity protections relating to security-based swaps; and
- (D) other information relevant to its trading in security-based swaps.

(4) Ability to obtain information

The security-based swap dealer or major security-based swap participant shall—

- (A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and
- (B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

(5) Conflicts of interest

The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

- (A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this chapter; and
- (B) address such other issues as the Commission determines to be appropriate.

(6) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the security-based swap dealer or major security-based swap participant shall not—

- (A) adopt any process or take any action that results in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading or clearing.

(7) Rules

The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.

(k) Designation of chief compliance officer

(1) In general

Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

- (A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;

(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

- (i) compliance office review;
- (ii) look-back;
- (iii) internal or external audit finding;
- (iv) self-reported error; or
- (v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

- (i) the compliance of the security-based swap dealer or major swap participant with respect to this chapter (including regulations); and
- (ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) Requirements

A compliance report under subparagraph (A) shall—

- (i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and
- (ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(I) Enforcement and administrative proceeding authority

(1) Primary enforcement authority

(A) Securities and Exchange Commission

Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

(B) Prudential regulators

The prudential regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this chapter (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

(C) Referral

(i) Violations of nonprudential requirements

If the appropriate Federal banking agency for security-based swap dealers or major

security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this chapter. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(ii) Violations of prudential requirements

If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute ³ a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this chapter. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(D) Backstop enforcement authority

(i) Initiation of enforcement proceeding by prudential regulator

If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection ⁴ (C)(i), the prudential regulator may initiate an enforcement proceeding.

(ii) Initiation of enforcement proceeding by Commission

If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection ⁴ (C)(ii), the Commission may initiate an enforcement proceeding.

(2) Censure, denial, suspension; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title;

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(3) Associated persons

With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or

being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title;

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(4) Unlawful conduct

It shall be unlawful—

(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.

(June 6, 1934, ch. 404, title I, §15F, as added Pub. L. 111–203, title VII, §764(a), July 21, 2010, 124 Stat. 1784; amended Pub. L. 114–1, title III, §302(b), Jan. 12, 2015, 129 Stat. 28.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (e)(3)(B)(ii), (j)(5)(A), (6), (k)(2)(E), (3)(A)(i), and (l)(1)(B), (C), was in the original "this title", and this chapter, referred to in subsec. (h)(3)(D), (5)(B), was in the original "this Act". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsec. (e)(3)(B)(ii), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (h)(5)(A)(i)(VII), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Subtitle B of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (l)(1)(A), is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this section and subchapter II (§8341 et seq.) of chapter 109 and sections 78c–3 to 78c–5, 78j–2, and 78m–1 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2015—Subsec. (e)(4). Pub. L. 114–1 added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

¹ *So in original. Probably should be followed by "a".*

² *So in original. Probably should be capitalized.*

³ *So in original. Probably should be "constitutes".*

⁴ *So in original. Probably should be "subparagraph".*

§78o–11. Credit risk retention

(a) Definitions

In this section—

(1) the term "Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(2) the term "insured depository institution" has the same meaning as in section 1813(c) of title 12;

(3) the term "securitizer" means—

(A) an issuer of an asset-backed security; or

(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

(4) the term "originator" means a person who—

(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

(B) sells an asset directly or indirectly to a securitizer.

(b) Regulations required

(1) In general

Not later than 270 days after July 21, 2010, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

(2) Residential mortgages

Not later than 270 days after July 21, 2010, the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Federal Housing Finance Agency, shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

(c) Standards for regulations

(1) Standards

The regulations prescribed under subsection (b) shall—

(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

(B) require a securitizer to retain—

(i) not less than 5 percent of the credit risk for any asset—

(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

(C) specify—

(i) the permissible forms of risk retention for purposes of this section;

(ii) the minimum duration of the risk retention required under this section; and

(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

(D) apply, regardless of whether the securitizer is an insured depository institution;

(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), which in the determination of the Federal banking agencies and the Commission may include—

(i) retention of a specified amount or percentage of the total credit risk of the asset;

(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer;

(iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and

(iv) provision of adequate representations and warranties and related enforcement mechanisms; and ¹

(F) establish appropriate standards for retention of an economic interest with respect to collateralized debt obligations, securities collateralized by collateralized debt obligations, and similar instruments collateralized by other asset-backed securities; and

(G) provide for—

(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the

registration requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.] by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of title 26, as may be appropriate in the public interest and for the protection of investors; and

(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

(2) Asset classes

(A) Asset classes

The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

(B) Contents

For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

(d) Originators

In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

(2) consider—

(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

(e) Exemptions, exceptions, and adjustments

(1) In general

The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

(2) Applicable standards

Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

(3) Certain institutions and programs exempt

(A) Farm credit system institutions

Notwithstanding any other provision of this section, the requirements of this section shall not

apply to any loan or other financial asset made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

(B) Other Federal programs

This section shall not apply to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or an agency of the United States. For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States.

(4) Exemption for qualified residential mortgages

(A) In general

The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

(B) Qualified residential mortgage

The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term "qualified residential mortgage" for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

- (i) documentation and verification of the financial resources relied upon to qualify the mortgagor;
- (ii) standards with respect to—
 - (I) the residual income of the mortgagor after all monthly obligations;
 - (II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;
 - (III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;
- (iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;
- (iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and
- (v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

(C) Limitation on definition

The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency in defining the term "qualified residential mortgage", as required by subparagraph (B), shall define that term to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010,² and regulations adopted thereunder.

(5) Condition for qualified residential mortgage exemption

The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

(6) Certification

The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

(f) Enforcement

The regulations issued under this section shall be enforced by—

- (1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and
- (2) the Commission, with respect to any securitizer that is not an insured depository institution.

(g) Authority of Commission

The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

(h) Authority to coordinate on rulemaking

The Chairperson of the Financial Stability Oversight Council shall coordinate all joint rulemaking required under this section.

(i) Effective date of regulations

The regulations issued under this section shall become effective—

- (1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and
- (2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on which final rules under this section are published in the Federal Register.

(June 6, 1934, ch. 404, title I, §15G, as added Pub. L. 111–203, title IX, §941(b), July 21, 2010, 124 Stat. 1891.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (c)(1)(G)(iii), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

Section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010, referred to in subsec. (e)(4)(C), probably means section 129C(b)(2) of Pub. L. 90–321, as amended by title X of Pub. L. 111–203, which defines "qualified mortgage" and is classified to section 1639c(b)(2) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

¹ *So in original. The word "and" probably should not appear.*

² *See References in Text note below.*

(a) Disclosures required

(1) Directors, officers, and principal stockholders required to file

Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 78l of this title, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission.

(2) Time of filing

The statements required by this subsection shall be filed—

(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title;

(B) within 10 days after he or she becomes such beneficial owner, director, or officer, or within such shorter time as the Commission may establish by rule;

(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

(3) Contents of statements

A statement filed—

(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements or security-based swaps as have occurred since the most recent such filing under such subparagraph.

(4) Electronic filing and availability

Beginning not later than 1 year after July 30, 2002—

(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.

(b) Profits from purchase and sale of security within six months

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) or a security-based swap agreement involving any such equity security within any period of less than six months, unless such security or security-based swap agreement was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security or security-based swap agreement purchased or of not repurchasing the security or security-based swap agreement sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and

sale, or the sale and purchase, of the security or security-based swap agreement or a security-based swap involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

(c) Conditions for sale of security by beneficial owner, director, or officer

It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) Securities held in investment account, transactions in ordinary course of business, and establishment of primary or secondary market

The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 78e of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Application of section to foreign or domestic arbitrage transactions

The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.

(f) Treatment of transactions in security futures products

The provisions of this section shall apply to ownership of and transactions in security futures products.

(g) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, §16, 48 Stat. 896; Pub. L. 88-467, §8, Aug. 20, 1964, 78 Stat. 579; Pub. L. 106-554, §1(a)(5) [title II, §208(b)(3), title III, §303(g), (h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435, 2763A-455, 2763A-456; Pub. L. 107-204, title IV, §403(a), July 30, 2002, 116 Stat. 788; Pub. L. 111-203, title VII, §762(d)(5), title IX, §929R(b), July 21, 2010, 124 Stat. 1761, 1867.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203, §929R(b)(1), struck out "(and, if such security is registered on a national securities exchange, also with the exchange)" after "Commission".

Subsec. (a)(2)(B). Pub. L. 111-203, §929R(b)(2), inserted ", or within such shorter time as the Commission may establish by rule" after "officer".

Subsec. (a)(2)(C). Pub. L. 111-203, §762(d)(5)(A), struck out "(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))" after "security-based swap agreement".

Subsec. (a)(3)(B). Pub. L. 111-203, §762(d)(5)(B), which directed amendment of subpar. (B) by inserting "or security-based swaps" after "security-based swap agreement", was executed by making the insertion after "security-based swap agreements", to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 111–203, §762(d)(5)(D), which directed amendment of subsec. (b) by substituting "or a security-based swap" for "(as defined in section 206B of the Gramm-Leach Bliley Act)" in third sentence, was executed by making the substitution for "(as defined in section 206B of the Gramm-Leach-Bliley Act)" in third sentence, to reflect the probable intent of Congress.

Pub. L. 111–203, §762(d)(5)(C), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement" in first sentence.

Subsec. (g). Pub. L. 111–203, §762(d)(5)(E), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements".

2002—Pub. L. 107–204 reenacted section catchline without change, added heading and text of subsec. (a), and struck out former subsec. (a) which read as follows: "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 78l of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership and such purchases and sales of such security-based swap agreements as have occurred during such calendar month."

2000—Subsecs. (a), (b). Pub. L. 106–554, §1(a)(5) [title III, §303(g)], amended subsecs. (a) and (b) generally, revising provisions to extend application to security-based swap agreements.

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title II, §208(b)(3)], added subsec. (f).

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title III, §303(h)], added subsec. (g).

1964—Subsec. (a). Pub. L. 88–467, §8(a), substituted "registered pursuant to section 78l of this title" for "registered on a national securities exchange", "Commission (and, if such security is registered on a national securities exchange, also with the exchange)" for "exchange (and a duplicate original thereof with the Commission)", "a change" for "any change", and "Commission (and if such security is registered on a national securities exchange, shall also file with the exchange) a statement" for "exchange a statement (and a duplicate original thereof with the Commission)", and inserted "on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title" after "registration of such security".

Subsecs. (d), (e). Pub. L. 88–467, §8(b), added subsec. (d) and redesignated former subsec. (d) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929R(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 762(d)(5) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–204, title IV, §403(b), July 30, 2002, 116 Stat. 789, provided that: "The amendment made by this section [amending this section] shall be effective 30 days after the date of the enactment of this Act [July 30, 2002]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78q. Records and reports

(a) Rules and regulations

(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer municipal advisor,¹ registered securities information processor, registered transfer agent, nationally recognized statistical rating organization, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.

(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 78q–1 of this title.

(b) Records subject to examination

(1) Procedures for cooperation with other agencies

All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter: *Provided, however,* That the Commission shall, prior to conducting any such examination of a—

(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

(B) broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o–3(k) of this title, give notice to the Commodity Futures Trading Commission of such proposed examination and consults ² with the Commodity Futures Trading Commission

concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

(2) Furnishing data and reports to CFTC

The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o-3(k) of this title and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

(3) Use of CFTC reports

Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if the information available therein is sufficient for the purposes of the examination, of—

- (A) any broker or dealer registered pursuant to section 78o(b)(11) of this title;
- (B) exchange ³ registered pursuant to section 78f(g) of this title; or
- (C) national ⁴ securities association registered pursuant to section 78o-3(k) of this title;

that is made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 78o-3(k) of this title, or an exchange registered pursuant to section 78f(g) of this title.

(4) Rules of construction

(A) Notwithstanding any other provision of this subsection, the records of a broker or dealer registered pursuant to section 78o(b)(11) of this title, an exchange registered pursuant to section 78f(g) of this title, or a national securities association registered pursuant to section 78o-3(k) of this title described in this subparagraph shall not be subject to routine periodic examinations by the Commission.

(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 78o(b)(11) of this title, an exchange registered pursuant to section 78f(g) of this title, or a national securities association registered pursuant to section 78o-3(k) of this title shall be limited to records with respect to persons, accounts, agreements, contracts, and transactions involving security futures products.

(C) Nothing in the proviso in paragraph (1) shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this chapter or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

(c) Copies of reports filed with other regulatory agencies

(1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rulemaking Board shall file with each agency enumerated in section 78c(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 78s(b) of this title.

(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by

such appropriate regulatory agency against any clearing agency, transfer agent, municipal securities dealer, or person associated with a transfer agent or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency, if any, notice of the commencement of any proceeding and a copy of any order entered by the Commission against the clearing agency, transfer agent, or municipal securities dealer, or against any person associated with a transfer agent or municipal securities dealer for which the agency is the appropriate regulatory agency.

(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

(4) The Commission or the appropriate regulatory agency may specify that documents required to be filed pursuant to this subsection with the Commission or such agency, respectively, may be retained by the originating clearing agency, transfer agent, or municipal securities dealer, or filed with another appropriate regulatory agency. The Commission or the appropriate regulatory agency (as the case may be) making such a specification shall continue to have access to the document on request.

(d) Self-regulatory organizations

(1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this chapter (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce compliance by such person, with specified provisions of this chapter, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this chapter.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization, or the Commission.

(e) Balance sheet and income statement; other financial statements and information

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a ⁵ independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002,¹

prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this chapter and the accounting principles and accounting standards used in their preparation.

(f) Missing, lost, counterfeit, and stolen securities

(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission and, in the case of securities issued pursuant to chapter 31 of title 31, to the Secretary of the Treasury such information about securities that are missing, lost, counterfeit, stolen, or cancelled, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processor, national securities exchange, and national securities association shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, clearing agency, securities information processor, national securities exchange, or national securities association, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors. Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information.

(3)(A) In order to carry out the authority under paragraph (1) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the National

Crime Information Center ("NCIC") to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC's file on such securities for the financial community.

(B) In order to carry out the authority under paragraph (1) of this subsection, the Commission or its designee and the Secretary of the Treasury shall enter into an agreement whereby the Commission or its designee will receive, store, and disseminate information in the possession, and which comes into the possession, of the Department of the Treasury in regard to missing, lost, counterfeit, or stolen securities.

(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks;

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank; and

(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information.

(g) Persons extending credit

Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this chapter shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this chapter. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

(h) Risk assessment for holding company systems

(1) Obligations to obtain, maintain, and report information

Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

(2) Authority to require additional information

If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports

pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

(3) Special provisions with respect to associated persons subject to Federal banking agency regulation

(A) Cooperation in implementation

In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(B) Use of banking agency reports

A registered broker, dealer, or municipal securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 161 of title 12, subchapter VIII of chapter 3 of title 12, section 1817(a) of title 12, section 1467a(b) of title 12, or section 1847 of title 12. The Commission may, however, by rule adopted pursuant to paragraph (1), require any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

(C) Procedure for requiring additional information

Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

- (i) notify such agency of the information required with respect to such associated person; and
- (ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or the stability or integrity of the securities markets.

(D) Exclusion for examination reports

Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

(E) Confidentiality of information provided

No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding

any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(F) Notice to banking agencies concerning financial and operational condition concerns

The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

(G) "Federal banking agency" defined

For purposes of this paragraph, the term "Federal banking agency" shall have the same meaning as the term "appropriate Federal bank agency" in section 1813(q) of title 12.

(4) Exemptions

The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 3401(6) ⁶ of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(B) the primary business of any associated person;

(C) the nature and extent of domestic or foreign regulation of the associated person's activities;

(D) the nature and extent of the registered person's securities activities; and

(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

(5) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 78x(b)(2) of this title.

(i) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) ⁶ or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) ⁶ as confidential information for purposes of section 78x(b)(2) of this title.

(j) Coordination of examining authorities

(1) Elimination of duplication

The Commission and the examining authorities, through cooperation and coordination of examination and oversight activities, shall eliminate any unnecessary and burdensome duplication in the examination process.

(2) Coordination of examinations

The Commission and the examining authorities shall share such information, including reports of examinations, customer complaint information, and other nonpublic regulatory information, as appropriate to foster a coordinated approach to regulatory oversight of brokers and dealers that are subject to examination by more than one examining authority.

(3) Examinations for cause

At any time, any examining authority may conduct an examination for cause of any broker or dealer subject to its jurisdiction.

(4) Confidentiality

(A) In general

Section 78x of this title shall apply to the sharing of information in accordance with this subsection. The Commission shall take appropriate action under section 78x(c) of this title to ensure that such information is not inappropriately disclosed.

(B) Appropriate disclosure not prohibited

Nothing in this paragraph authorizes the Commission or any examining authority to withhold information from the Congress, or prevent the Commission or any examining authority from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(5) "Examining authority" defined

For purposes of this subsection, the term "examining authority" means a self-regulatory organization registered with the Commission under this chapter (other than a registered clearing agency) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.

(June 6, 1934, ch. 404, title I, §17, 48 Stat. 897; May 27, 1936, ch. 462, §4, 49 Stat. 1379; June 25, 1938, ch. 677, §5, 52 Stat. 1076; Pub. L. 94-29, §14, June 4, 1975, 89 Stat. 137; Pub. L. 99-571, title I, §102(h), (i), Oct. 28, 1986, 100 Stat. 3219; Pub. L. 100-181, title III, §321, title VIII, §801(b), Dec. 4, 1987, 101 Stat. 1257, 1265; Pub. L. 101-432, §4(a), Oct. 16, 1990, 104 Stat. 966; Pub. L.

104–290, title I, §108, Oct. 11, 1996, 110 Stat. 3425; Pub. L. 105–353, title III, §301(b)(5), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §231(a), Nov. 12, 1999, 113 Stat. 1402; Pub. L. 106–554, §1(a)(5) [title II, §204], Dec. 21, 2000, 114 Stat. 2763, 2763A–424; Pub. L. 107–204, title II, §205(c)(2), July 30, 2002, 116 Stat. 774; Pub. L. 108–386, §8(f)(5), (6), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 109–291, §5, Sept. 29, 2006, 120 Stat. 1338; Pub. L. 111–203, title VI, §617(a), title IX, §§929D, 929S, 975(h), 982(e)(2), 985(b)(7), July 21, 2010, 124 Stat. 1616, 1853, 1867, 1923, 1929, 1934.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), (d)(1)(A), (B), (e)(2), (g), and (j)(5), was in the original "this title". See References in Text note set out under section 78a of this title.

The Sarbanes-Oxley Act of 2002, referred to in subsec. (e)(1)(A), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

Subchapter VIII of chapter 3 of title 12, referred to in subsec. (h)(3)(B), was in the original "section 9 of the Federal Reserve Act", meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

Section 3401(6) of title 12, referred to in subsec. (h)(4)(A), was redesignated section 3401(7) of title 12 by Pub. L. 101–73, title IX, §941(1), Aug. 9, 1989, 103 Stat. 496.

Subsection (i) of this section, referred to in subsec. (i), was repealed, and subsec. (j) was redesignated (i), by Pub. L. 111–203, §617(a). See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §975(h), inserted "municipal advisor," after "municipal securities dealer".

Subsec. (b)(1)(B). Pub. L. 111–203, §985(b)(7), substituted "give notice to" for "gives notice to".

Subsec. (e)(1)(A). Pub. L. 111–203, §982(e)(2), substituted "independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002," for "registered public accounting firm".

Subsec. (f)(1)(A). Pub. L. 111–203, §929D(1), substituted "securities that are missing, lost, counterfeit, stolen, or cancelled" for "missing, lost, counterfeit, or stolen securities".

Subsec. (f)(1)(B). Pub. L. 111–203, §929D(2), substituted "stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe" for "or stolen".

Subsec. (f)(2). Pub. L. 111–203, §929S, in first sentence, substituted "registered clearing agency, registered securities information processor, national securities exchange, and national securities association" for "and registered clearing agency," and, in second sentence, substituted "clearing agency, securities information processor, national securities exchange, or national securities association," for "or clearing agency,".

Subsecs. (i) to (k). Pub. L. 111–203, §617(a), redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to supervision of investment bank holding companies and recordkeeping and reporting requirements.

2006—Subsec. (a)(1). Pub. L. 109–291 inserted "nationally recognized statistical rating organization," after "registered transfer agent," and inserted at end "Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission."

2004—Subsec. (f)(4)(A). Pub. L. 108–386, §8(f)(5), struck out "and banks operating under the Code of Law for the District of Columbia" before semicolon.

Subsec. (f)(4)(B). Pub. L. 108–386, §8(f)(6), struck out "or a bank operating under the Code of Law for the District of Columbia" before semicolon.

2002—Subsecs. (e)(1)(A), (i)(3)(A)(ii). Pub. L. 107–204 substituted "a registered public accounting firm" for "an independent public accountant".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(5) [title II, §204(5)], which directed amendment of subsec. (b) by adding at the end pars. (2) to (4)(B), was executed by making the addition after par. (1), to reflect the probable intent of Congress.

Pub. L. 106–554, §1(a)(5) [title II, §204(1) to (4), (6)], inserted subsec. heading, inserted par. (1) designation and heading before "All", substituted "prior to conducting any such examination of a—" for "prior

to conducting any such examination of a", inserted subpar. (A) designation before "registered clearing", added subpar. (B), designated last sentence as par. (4)(C) and substituted "Nothing in the proviso in paragraph (1)" for "Nothing in the proviso to the preceding sentence".

1999—Subsecs. (i) to (k). Pub. L. 106–102 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1998—Subsec. (g). Pub. L. 105–353 substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board" in first sentence.

1996—Subsec. (i). Pub. L. 104–290 added subsec. (i).

1990—Subsec. (h). Pub. L. 101–432 added subsec. (h).

1987—Subsec. (c)(2). Pub. L. 100–181, §321(1), substituted new par. (2) for former par. (2) which read as follows: "The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against such clearing agency, transfer agent, or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency notice of the commencement of any proceeding and a copy of any order entered by the Commission against such clearing agency, transfer agent, or municipal securities dealer."

Subsec. (f)(1)(A). Pub. L. 100–181, §801(b), substituted "securities issued pursuant to chapter 31 of title 31" for "government securities".

Subsec. (f)(2). Pub. L. 100–181, §321(2), inserted at end "Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information."

Subsec. (f)(3)(A). Pub. L. 100–181, §321(3), substituted "paragraph (1)" for "paragraphs (1) and (2)".

1986—Subsec. (c)(4). Pub. L. 99–571, §102(h), added par. (4).

Subsec. (f)(1). Pub. L. 99–571, §102(i)(1), inserted "government securities broker, government securities dealer," in introductory provisions and in subpar. (A).

Subsec. (f)(1)(A). Pub. L. 99–571, §102(i)(2), inserted "and, in the case of government securities, to the Secretary of the Treasury".

Subsec. (f)(3). Pub. L. 99–571, §102(i)(3), designated existing provisions as subpar. (A) and added subpar. (B).

1975—Subsec. (a). Pub. L. 94–29 designated existing provisions as par. (1), expanded the coverage to require registered municipal securities dealers, the Municipal Securities Rulemaking Board, registered securities information processors, and registered clearing agencies to make and keep such records, to furnish copies thereof, and to make such reports as the Commission may prescribe and clarified the Commission's authority to require the dissemination of reports submitted pursuant to the rules of the Commission, and added pars. (2) and (3).

Subsecs. (b) to (g). Pub. L. 94–29 added subsecs. (b) to (f) and redesignated former subsec. (b) as (g).

1938—Subsec. (a). Act June 25, 1938, inserted "every registered securities association".

1936—Subsec. (a). Act May 27, 1936, substituted "every broker or dealer registered pursuant to section 78o of this title" for "every broker or dealer making or creating a market for both the purchase and sale of securities through the use of the mails or of any means or instrumentality of interstate commerce".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929D, 929S, 982(e)(2), and 985(b)(7) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title VI, §617(b), July 21, 2010, 124 Stat. 1616, provided that: "The amendments made by this section [amending this section] shall take effect on the transfer date."

[For definition of "transfer date" as used in section 617(b) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Amendment by section 975(h) of Pub. L. 111–203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111–203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with

respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ *So in original.*

² *So in original. Probably should be "consult".*

³ *So in original. Probably should be preceded by "an".*

⁴ *So in original. Probably should be preceded by "a".*

⁵ *So in original. Probably should be "an".*

⁶ *See References in Text note below.*

§78q–1. National system for clearance and settlement of securities transactions

(a) Congressional findings; facilitating establishment of system

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter—

(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

(B) The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System.

(b) Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings; exemption; facilities for handling derivatives

(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this chapter and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(4)(A) A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person to participation, if the clearing agency knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

(5)(A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth—

(i) any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

(ii) the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

(B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard

upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

(C) A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and protection of investors.

(6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

(7)(A) A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security futures products that is a national securities exchange registered pursuant to section 78f(g) of this title, and that would be required to register pursuant to paragraph (1) of this subsection only because it performs the functions of a clearing agency with respect to security futures products effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that if such a clearing agency performs the functions of a clearing agency with respect to a security futures product that is not cash settled, it must have arrangements in place with a registered clearing agency to effect the payment and delivery of the securities underlying the security futures product.

(B) Any clearing agency that performs the functions of a clearing agency with respect to security futures products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security futures products, in order to permit, as of the compliance date (as defined in section 78f(h)(6)(C) ¹ of this title), security futures products to be purchased on one market and offset on another market that trades such products.

(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.], subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(c) Registration of transfer agents

(1) Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 78l of this title or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and

consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

(2) A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent and any persons associated with the transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective 45 days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

(3) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

(B) is subject to an order entered pursuant to subparagraph (C) of paragraph (4) of this subsection barring or suspending the right of such person to be associated with a transfer agent.

(4)(A) Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

(B) A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding 12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization, if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) or ² paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of

such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.

(d) Activities of clearing agencies and transfer agents; enforcement by appropriate regulatory agencies

(1) No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

(2) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 1818 of title 12, enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 78q and 78s of this title, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 1818(b) or 1818(c) of title 12, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12.

(3)(A) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective—

(i) the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

(ii) such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 78q and 78s of this title.

(B) Nothing in the preceding subparagraph or elsewhere in this chapter shall be construed to impair or limit (other than by the requirement of notification) the Commission's authority to make rules under any provision of this chapter or to enforce compliance pursuant to any provision of this chapter by any clearing agency, transfer agent, or person associated with a transfer agent with the provisions of this chapter and the rules and regulations thereunder.

(4) Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a

clearing agency, transfer agent, or person associated with a transfer agent, to make and enforce rules governing such person which are not inconsistent with this chapter and the rules and regulations thereunder.

(5) A registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, to facilitate the equitable treatment of financial institutions which issue such guarantees, or otherwise in furtherance of the purposes of this chapter.

(e) Physical movement of securities certificates

The Commission shall use its authority under this chapter to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce.

(f) Rules concerning transfer of securities and rights and obligations of involved or affected parties

(1) Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning—

(A) the transfer of certificated or uncertificated securities (other than government securities issued pursuant to chapter 31 of title 31 or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book-entry regulation) or limited interests (including security interests) therein; and

(B) rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

(2)(A) The findings described in this paragraph are findings by the Commission that—

(i) such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

(ii) in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

(iii) to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

(B) In making the findings described in subparagraph (A), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

(3) Any State may, prior to the expiration of 2 years after the Commission adopts a rule under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

(4)(A) Within 90 days after October 16, 1990, the Commission shall (and at such times thereafter

as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under chapter 10 of title 5. The Advisory Committee shall be directed to consider and report to the Commission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related Federal laws concerning the transfer of certificated or uncertificated securities, limited interests (including security interests) in such securities, or the creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers, owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

(B) The Advisory Committee shall consist of 15 members, of which—

(i) 11 shall be designated by the Commission in accordance with chapter 10 of title 5; and

(ii) 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

(C) The Advisory Committee shall conduct its activities in accordance with chapter 10 of title 5. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System.

(g) ³ Due diligence for the delivery of dividends, interest, and other valuable property rights

(1) Revision of rules required

The Commission shall revise its regulations in section 240.17Ad-17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than \$25.

(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

(D) For purposes of such revised regulations—

(i) a security holder shall be considered a "missing security holder" if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

(ii) the term "paying agent" includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

(2) Rulemaking

The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after July 21, 2010. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.

(g) ³ Registration requirement

It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to

perform the functions of a clearing agency with respect to a security-based swap.

(h) Voluntary registration

A person that clears agreements, contracts, or transactions that are not required to be cleared under this chapter may register with the Commission as a clearing agency.

(i) Standards for clearing agencies clearing security-based swap transactions

To be registered and to maintain registration as a clearing agency that clears security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this chapter, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

(j) Rules

The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this chapter.

(k) Exemptions

The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.

(l) Existing depository institutions and derivative clearing organizations

(1) In general

A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before July 21, 2010—

- (A) the depository institution cleared swaps as a multilateral clearing organization; or
- (B) the derivative clearing organization cleared swaps pursuant to an exemption from registration as a clearing agency.

(2) Conversion of depository institutions

A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) Sharing of information

The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).

(m) Modification of core principles

The Commission may conform the core principles established in this section to reflect evolving United States and international standards.

(June 6, 1934, ch. 404, title I, §17A, as added Pub. L. 94–29, §15, June 4, 1975, 89 Stat. 141; amended Pub. L. 100–181, title III, §322, Dec. 4, 1987, 101 Stat. 1257; Pub. L. 101–429, title II,

§206, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101-432, §5, Oct. 16, 1990, 104 Stat. 973; Pub. L. 101-550, title II, §203(c)(1), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 106-554, §1(a)(5) [title II, §§206(d), 207], Dec. 21, 2000, 114 Stat. 2763, 2763A-431, 2763A-434; Pub. L. 107-204, title VI, §604(c)(1)(C), July 30, 2002, 116 Stat. 796; Pub. L. 111-203, title VII, §763(b), title IX, §925(a)(3), 929W, July 21, 2010, 124 Stat. 1768, 1851, 1869; Pub. L. 117-286, §4(a)(63), Dec. 27, 2022, 136 Stat. 4312.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b)(3)(A), (F), (I), (8), (d)(1), (3)(B), (4), (5), (e), and (h) to (j), was in the original "this title". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsecs. (b)(8) and (l)(1), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

2022—Subsec. (f)(4)(A). Pub. L. 117-286, §4(a)(63)(A), substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act (5 U.S.C. App.)."

Subsec. (f)(4)(B)(i). Pub. L. 117-286, §4(a)(63)(B), substituted "chapter 10 of title 5;" for "the Federal Advisory Committee Act;"

Subsec. (f)(4)(C). Pub. L. 117-286, §4(a)(63)(C), substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act."

2010—Subsec. (c)(4)(C). Pub. L. 111-203, §925(a)(3), substituted "12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with the transfer agent,"

Subsec. (g). Pub. L. 111-203, §929W, added subsec. (g) relating to due diligence for the delivery of dividends, interest, and other valuable property rights.

Pub. L. 111-203, §763(b), added subsec. (g) relating to registration requirement.

Subsecs. (h) to (m). Pub. L. 111-203, §763(b), added subsecs. (h) to (m).

2002—Subsec. (c)(3)(A), (4)(C). Pub. L. 107-204 inserted ", or is subject to an order or finding," before "enumerated" and substituted "(H), or (G)" for "or (G)".

2000—Subsec. (b)(3)(A). Pub. L. 106-554, §1(a)(5) [title II, §207(1)], inserted "and derivative agreements, contracts, and transactions" after "prompt and accurate clearance and settlement of securities transactions".

Subsec. (b)(3)(F). Pub. L. 106-554, §1(a)(5) [title II, §207(2)], inserted "and, to the extent applicable, derivative agreements, contracts, and transactions" after "designed to promote the prompt and accurate clearance and settlement of securities transactions".

Subsec. (b)(7). Pub. L. 106-554, §1(a)(5) [title II, §206(d)], added par. (7).

Subsec. (b)(8). Pub. L. 106-554, §1(a)(5) [title II, §207(3)], added par. (8).

1990—Subsec. (a)(2). Pub. L. 101-432, §5(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents."

Subsec. (c)(3)(A), (4)(C). Pub. L. 101-550 substituted "(A), (D), (E), or (G)" for "(A), (D), or (E)".

Subsec. (d)(5). Pub. L. 101-429 added par. (5).

Subsec. (f). Pub. L. 101-432, §5(b), added subsec. (f).

1987—Subsec. (c)(2). Pub. L. 100-181, §322(1), (2), inserted "and any persons associated with the transfer agent" in first sentence and substituted "45" for "thirty" in second sentence.

Subsec. (c)(3), (4). Pub. L. 100-181, §322(3)-(5), added par. (3), struck out former par. (3)(A) which read as follows: "The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds,

on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 78q of this title or the rules or regulations thereunder.", redesignated subpars. (B) and (C) of former par. (3) as subpars. (A) and (B), respectively, of new par. (4), and added subpar. (C) to such par. (4).

Subsec. (d)(3)(B). Pub. L. 100-181, §322(6), substituted "clearing agency, transfer agent, or person associated with a transfer agent" for "clearing agency or transfer agent".

Subsec. (d)(4). Pub. L. 100-181, §322(7), substituted ", transfer agent, or person associated with a transfer agent," for "or transfer agent".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(a)(3) and 929W of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 763(b) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsecs. (b) and (c) which are effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

CLEARANCE AND SETTLEMENT OF TRANSACTIONS; REPORT TO CONGRESS

Section 8(b) of Pub. L. 101-432 directed Securities and Exchange Commission, in consultation with Commodity Futures Trading Commission, Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, to examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and to submit to Congress, not later than 2 years from Oct. 16, 1990, a report detailing and evaluating such progress.

¹ *So in original. Probably should be "section 78f(h)(7)(C)".*

² *So in original. Probably should be "of".*

³ *So in original. Two subsecs. (g) have been enacted.*

§78q-2. Automated quotation systems for penny stocks

(a) Findings

The Congress finds that—

(1) the market for penny stocks suffers from a lack of reliable and accurate quotation and last sale information available to investors and regulators;

(2) it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks; and

(3) a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and

surveillance data to that market.

(b) Mandate to facilitate establishment of automated quotation systems

(1) In general

The Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks in accordance with the findings set forth in subsection (a), with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks.

(2) Characteristics of systems

Each such automated quotation system shall—

(A) be operated by a registered securities association or a national securities exchange in accordance with such rules as the Commission and these entities shall prescribe;

(B) collect and disseminate quotation and transaction information;

(C) except as provided in subsection (c), provide bid and ask quotations of participating brokers or dealers, or comparably accurate and reliable pricing information, which shall constitute firm bids or offers for at least such minimum numbers of shares or minimum dollar amounts as the Commission and the registered securities association or national securities exchange shall require; and

(D) provide for the reporting of the volume of penny stock transactions, including last sale reporting, when the volume reaches appropriate levels that the Commission shall specify by rule or order.

(c) Exemptive authority

The Commission may, by rule or order, grant such exemptions, in whole or in part, conditionally or unconditionally, to any penny stock or class of penny stocks from the requirements of subsection (b) as the Commission determines to be consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(d) Commission reporting requirements

The Commission shall, in each of the first 5 annual reports (under section 78w(b)(1) of this title) submitted more than 12 months after October 15, 1990, include a description of the status of the penny stock automated quotation system or systems required by subsection (b). Such description shall include—

(1) a review of the development, implementation, and progress of the project, including achievement of significant milestones and current project schedule; and

(2) a review of the activities of registered securities associations and national securities exchanges in the development of the system.

(June 6, 1934, ch. 404, title I, §17B, as added Pub. L. 101–429, title V, §506, Oct. 15, 1990, 104 Stat. 955.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 78w(b)(1) of this title, referred to in subsec. (d), was omitted from the Code. For further details related to reports referred to in subsec. (d), see Codification note set out under section 78w of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

§78r. Liability for misleading statements

(a) Persons liable; persons entitled to recover; defense of good faith; suit at law or in equity; costs, etc.

Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

(b) Contribution

Every person who becomes liable to make payment under this section may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

(c) Period of limitations

No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(June 6, 1934, ch. 404, title I, §18, 48 Stat. 897; May 27, 1936, ch. 462, §5, 49 Stat. 1379.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

§78s. Registration, responsibilities, and oversight of self-regulatory organizations

(a) Registration procedures; notice of filing; other regulatory agencies

(1) The Commission shall, upon the filing of an application for registration as a national securities exchange, registered securities association, or registered clearing agency, pursuant to section 78f, 78o–3, or 78q–1 of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of a publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission,

by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it finds that the requirements of this chapter and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this subsection of such appropriate regulatory agency's (i) determination that such clearing agency is not so organized or does not have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency are not designed to assure the safeguarding of such securities or funds and (ii) reasons for such determination.

(3) A self-regulatory organization may, upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration. Upon the withdrawal of a national securities association from registration or the cancellation, suspension, or revocation of the registration of a national securities association, the registration of any association affiliated therewith shall automatically terminate.

(b) Proposed rule changes; notice; proceedings

(1) Each self-regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, as soon as practicable after the date of the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) APPROVAL PROCESS.—

(A) APPROVAL PROCESS ESTABLISHED.—

(i) IN GENERAL.—Except as provided in clause (ii), not later than 45 days after the date of publication of a proposed rule change under paragraph (1), the Commission shall—

(I) by order, approve or disapprove the proposed rule change; or

(II) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

(ii) EXTENSION OF TIME PERIOD.—The Commission may extend the period established under clause (i) by not more than an additional 45 days, if—

(I) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

(B) PROCEEDINGS.—

(i) NOTICE AND HEARING.—If the Commission does not approve or disapprove a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

(I) notice of the grounds for disapproval under consideration; and

(II) opportunity for hearing, to be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change.

(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

(II) EXTENSION OF TIME PERIOD.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

(C) STANDARDS FOR APPROVAL AND DISAPPROVAL.—

(i) APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this chapter and the rules and regulations issued under this chapter that are applicable to such organization.

(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i).

(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

(i) the Commission does not approve or disapprove the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).

(E) PUBLICATION DATE BASED ON FEDERAL REGISTER PUBLISHING.—For purposes of this paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule

change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the Commission shall thereafter send the notice to the Federal Register for publication thereof under paragraph (1) within 15 days of the date on which such website publication is made. If the Commission fails to send the notice for publication thereof within such 15 day period, then the date of publication shall be deemed to be the date on which such website publication was made.

(F) RULEMAKING.—

(i) IN GENERAL.—Not later than 180 days after July 21, 2010, after consultation with other regulatory agencies, the Commission shall promulgate rules setting forth the procedural requirements of the proceedings required under this paragraph.

(ii) NOTICE AND COMMENT NOT REQUIRED.—The rules promulgated by the Commission under clause (i) are not required to include republication of proposed rule changes or solicitation of public comment.

(3)(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change shall take effect upon filing with the Commission if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a self-regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal and State law. At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved. Commission action pursuant to this subparagraph shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be "final agency action" for purposes of section 704 of title 5.

(4) With respect to a proposed rule change filed by a registered clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing whereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(B) The Commission shall institute proceedings in accordance with paragraph (2)(B) of this subsection to determine whether any such proposed rule change should be disapproved, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of publication of notice of the filing of the proposed rule change of such appropriate

regulatory agency's (i) determination that the proposed rule change may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(C) The Commission shall disapprove any such proposed rule change if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (2)(B) of this subsection of such appropriate regulatory agency's (i) determination that the proposed rule change is inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(D)(i) The Commission shall order the temporary suspension of any change in the rules of a clearing agency made by a proposed rule change that has taken effect under paragraph (3), if the appropriate regulatory agency for the clearing agency notifies the Commission not later than 30 days after the date on which the proposed rule change was filed of—

(I) the determination by the appropriate regulatory agency that the rules of such clearing agency, as so changed, may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible; and

(II) the reasons for the determination described in subclause (I).

(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.

(5) The Commission shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary of the Treasury comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(6) In approving rules described in paragraph (5), the Commission shall consider the sufficiency and appropriateness of then existing laws and rules applicable to government securities brokers, government securities dealers, and persons associated with government securities brokers and government securities dealers.

(7) SECURITY FUTURES PRODUCT RULE CHANGES.—

(A) FILING REQUIRED.—A self-regulatory organization that is an exchange registered with the Commission pursuant to section 78f(g) of this title or that is a national securities association registered pursuant to section 78o-3(k) of this title shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a "proposed rule change") that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such self-regulatory organization's obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, promptly publish notice thereof together with the terms of substance of the proposed rule change or a description of

the subjects and issues involved. The Commission shall give interested persons an opportunity to submit data, views, and arguments concerning such proposed rule change.

(B) FILING WITH CFTC.—A proposed rule change filed with the Commission pursuant to subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission under section 7a–2(c) of title 7, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary, or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

(C) ABROGATION OF RULE CHANGES.—Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading Commission under section 7a–2(c) of title 7, the date the Commodity Futures Trading Commission determines that review of such proposed rule change is not necessary, or the date the Commodity Futures Trading Commission approves such proposed rule change, the Commission, after consultation with the Commodity Futures Trading Commission, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1), if it appears to the Commission that such proposed rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be a final agency action for purposes of section 704 of title 5.

(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

(i) PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph (C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

(I) by order approve such proposed rule change; or

(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved. Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(8) DECIMAL PRICING.—Not later than 9 months after the date on which trading in any security

futures product commences under this chapter, all self-regulatory organizations listing or trading security futures products shall file proposed rule changes necessary to implement decimal pricing of security futures products. The Commission may not require such rules to contain equal minimum increments in such decimal pricing.

(9) CONSULTATION WITH CFTC.—

(A) CONSULTATION REQUIRED.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving or disapproving a proposed rule change filed by a national securities association registered pursuant to section 78o-3(a) of this title or a national securities exchange subject to the provisions of subsection (a) that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

(B) RESPONSES TO CFTC COMMENTS AND FINDINGS.—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving or disapproving the proposed rule. If the Commodity Futures Trading Commission determines, and notifies the Commission, that such rule, if implemented or as applied, would—

- (i) adversely affect the liquidity or efficiency of the market for security futures products; or
- (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section,

the Commission shall, prior to approving or disapproving the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Commodity Futures Trading Commission's determination.

(10) ¹ RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed to be the date on which the Commission receives the proposed rule change.

(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not later than 7 business days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, except that if the Commission determines that the proposed rule change is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the self-regulatory organization of such determination not later than 7 business days after the date of receipt by the Commission and, for the purposes of subparagraph (A), a proposed rule change has not been received by the Commission, if, not later than 21 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.

(10) ¹ Notwithstanding paragraph (2), the time period within which the Commission is required by order to approve a proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved is stayed pending a determination by the Commission upon the request of the Commodity Futures Trading Commission or its Chairman that the Commission issue a determination as to whether a product that is the subject of such proposed rule change is a security pursuant to section 8306 of this title.

(c) Amendment by Commission of rules of self-regulatory organizations

The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration

of the self-regulatory organization, to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter, in the following manner:

(1) The Commission shall notify the self-regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the self-regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the self-regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the self-regulatory agency to be based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5 for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under this chapter.

(C) Any amendment to the rules of a self-regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes of this chapter to be part of the rules of such self-regulatory organization and shall not be considered to be a rule of the Commission.

(5) With respect to rules described in subsection (b)(5), the Commission shall consult with and consider the views of the Secretary of the Treasury before abrogating, adding to, and deleting from such rules, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

(d) Notice of disciplinary action taken by self-regulatory organization against a member or participant; review of action by appropriate regulatory agency; procedure

(1) If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member, the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such form and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this chapter.

(2) Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(3) The provisions of this subsection shall apply to an exchange registered pursuant to section 78f(g) of this title or a national securities association registered pursuant to section 78o-3(k) of this title only to the extent that such exchange or association imposes any final disciplinary sanction for—

(A) a violation of the Federal securities laws or the rules and regulations thereunder; or

(B) a violation of a rule of such exchange or association, as to which a proposed change would be required to be filed under this section, except that, to the extent that the exchange or association rule violation relates to any account, agreement, contract, or transaction, this subsection shall apply only to the extent such violation involves a security futures product.

(e) Disposition of review; cancellation, reduction, or remission of sanction

(1) In any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization on a member thereof or participant therein or a person associated with such a member, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the appropriate regulatory agency for such member, participant, or person associated with a member finds that such member, participant, or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the self-regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this chapter, the rules or regulations thereunder, the rules of the self-regulatory organization, or, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board as have been specified in the determination of the self-regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the self-regulatory organization for further proceedings; or

(B) if such appropriate regulatory agency does not make any such finding it shall, by order, set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings.

(2) If the appropriate regulatory agency for a member, participant, or person associated with a member, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a self-regulatory organization upon such member, participant, or person associated with a member imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter or is excessive or oppressive, the appropriate regulatory agency may cancel, reduce, or require the remission of such sanction.

(f) Dismissal of review proceeding

In any proceeding to review the denial of membership or participation in a self-regulatory organization to any applicant, the barring of any person from becoming associated with a member of a self-regulatory organization, or the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this chapter, such

appropriate regulatory agency, by order, shall dismiss the proceeding. If such appropriate regulatory agency does not make any such finding or if it finds that such denial, bar, or prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, such appropriate regulatory agency, by order, shall set aside the action of the self-regulatory organization and require it to admit such applicant to membership or participation, permit such person to become associated with a member, or grant such person access to services offered by the self-regulatory organization or member thereof.

(g) Compliance with rules and regulations

(1) Every self-regulatory organization shall comply with the provisions of this chapter, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 78q(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—

(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members;

(B) in the case of a registered securities association, with such provisions and the provisions of the rules of the Municipal Securities Rulemaking Board by its members and persons associated with its members; and

(C) in the case of a registered clearing agency, with its own rules by its participants.

(2) The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this chapter, may relieve any self-regulatory organization of any responsibility under this chapter to enforce compliance with any specified provision of this chapter or the rules or regulations thereunder by any member of such organization or person associated with such a member, or any class of such members or persons associated with a member.

(h) Suspension or revocation of self-regulatory organization's registration; censure; other sanctions

(1) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provision of this chapter, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by a member thereof or a person associated with a member thereof;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by a member thereof or a person associated with a member thereof; or

(C) in the case of a registered clearing agency, with any provision of its own rules by a participant therein.

(2) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or expel from such self-regulatory organization any member thereof or participant therein, if such member or participant is subject to an order of the Commission pursuant to section 78o(b)(4) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such member or participant has willfully violated or has effected any transaction for any other person who, such member or participant had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], this chapter, or the rules or regulations under any of such statutes;

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board; or

(C) in the case of a registered clearing agency, any provision of the rules of the clearing agency.

(3) The appropriate regulatory agency for a national securities exchange or registered securities association is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or to bar any person from being associated with a member of such national securities exchange or registered securities association, if such person is subject to an order of the Commission pursuant to section 78o(b)(6) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated or has effected any transaction for any other person who, such person associated with a member had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, or the rules or regulations under any of such statutes; or

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of the statutes, or the rules of the Municipal Securities Rulemaking Board.

(4) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to remove from office or censure any person who is, or at the time of the alleged misconduct was, an officer or director of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated any provision of this chapter, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by any member or person associated with a member;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by any member or person associated with a member; or

(C) in the case of a registered clearing agency, with any provision of the rules of the clearing agency by any participant.

(i) Appointment of trustee

If a proceeding under subsection (h)(1) of this section results in the suspension or revocation of the registration of a clearing agency, the appropriate regulatory agency for such clearing agency may, upon notice to such clearing agency, apply to any court of competent jurisdiction specified in section 78u(d) or 78aa of this title for the appointment of a trustee. In the event of such an application, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of such clearing agency and the records and assets thereof, wherever located; and the court shall appoint the appropriate regulatory agency for such clearing agency or a person designated by such appropriate regulatory agency as trustee with power to take possession and continue to operate or

terminate the operations of such clearing agency in an orderly manner for the protection of participants and investors, subject to such terms and conditions as the court may prescribe.

(June 6, 1934, ch. 404, title I, §19, 48 Stat. 898; Pub. L. 87-196, Sept. 5, 1961, 75 Stat. 465; Pub. L. 87-561, July 27, 1962, 76 Stat. 247; Pub. L. 90-438, July 29, 1968, 82 Stat. 453; Pub. L. 91-94, Oct. 20, 1969, 83 Stat. 141; Pub. L. 91-410, Sept. 25, 1970, 84 Stat. 862; Pub. L. 94-29, §16, June 4, 1975, 89 Stat. 146; Pub. L. 103-202, title I, §106(c), Dec. 17, 1993, 107 Stat. 2350; Pub. L. 105-353, title III, §301(b)(11), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, §1(a)(5) [title II, §202(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-418, 2763A-421; Pub. L. 111-203, title VII, §717(c), title IX, §916, 929F(e), July 21, 2010, 124 Stat. 1652, 1833, 1854.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b)(2)(C)(i), (3)(C), (7)(C), (8), (c), (d)(1), (e)(1)(A), (2), (f), (g), and (h), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (h), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (h), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (h), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-203, §916(b)(2), substituted "as soon as practicable after the date of the filing" for "upon the filing".

Subsec. (b)(2). Pub. L. 111-203, §916(a), added par. (2) and struck out former par. (2) which related to approval of rule change or institution of proceedings regarding disapproval of such change within thirty-five days of publication of notice or within such longer period as the Commission may designate up to ninety days of such date.

Subsec. (b)(3)(A). Pub. L. 111-203, §916(c)(1), substituted "shall take effect" for "may take effect" and inserted "on any person, whether or not the person is a member of the self-regulatory organization" after "charge imposed by the self-regulatory organization".

Subsec. (b)(3)(C). Pub. L. 111-203, §916(c)(2), substituted second sentence for former second sentence which read as follows: "At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.", added third sentence, and substituted "this subparagraph" for "the preceding sentence" in last sentence.

Subsec. (b)(4)(D). Pub. L. 111-203, §916(d), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency's (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination."

Subsec. (b)(10). Pub. L. 111-203, §916(b)(1), added par. (10) relating to rule of construction relating to filing date of proposed rule changes.

Pub. L. 111-203, §717(c), added par. (10) relating to stay pending determination whether product is a security pursuant to section 8306 of this title.

Subsec. (h)(4). Pub. L. 111–203, §929F(e), in introductory provisions, substituted "any person who is, or at the time of the alleged misconduct was, an officer or director" for "any officer or director" and "such person" for "such officer or director".

2000—Subsec. (b)(7). Pub. L. 106–554, §1(a)(5) [title II, §202(b)(1)], added par. (7).

Subsec. (b)(8). Pub. L. 106–554, §1(a)(5) [title II, §202(b)(2)], added par. (8).

Subsec. (b)(9). Pub. L. 106–554, §1(a)(5) [title II, §202(b)(3)], added par. (9).

Subsec. (d)(3). Pub. L. 106–554, §1(a)(5) [title II, §202(c)], added par. (3).

1998—Subsec. (c)(5). Pub. L. 105–353 realigned margins.

1993—Subsec. (b)(5), (6). Pub. L. 103–202, §106(c)(1), added pars. (5) and (6).

Subsec. (c)(5). Pub. L. 103–202, §106(c)(2), added par. (5).

1975—Pub. L. 94–29 amended section generally, substituting provisions covering the registration, responsibilities, and oversight of self-regulatory organizations by the Commission for provisions covering only the Commission's powers with respect to exchanges and securities, with a view to consolidating and expanding the Commission's oversight powers with respect to self-regulatory organizations, their members, participants, and officers, and with a view to giving the Commission identical powers over all self-regulatory organizations, including registered clearing agencies, and substantially strengthening the Commission's ability to assure that these organizations carry out their statutory responsibilities.

1970—Subsec. (e)(1). Pub. L. 91–410 substituted "December 31, 1970" for "September 1, 1970".

1969—Subsec. (e). Pub. L. 91–94 substituted "September 1, 1970" for "September 1, 1969" in par. (1), and "\$945,000" for "\$875,000" in par. (4).

1968—Subsec. (e). Pub. L. 90–438 added subsec. (e).

1962—Subsec. (d). Pub. L. 87–561 substituted "April 3, 1963" for "January 3, 1963" and "\$950,000" for "\$750,000".

1961—Subsec. (d). Pub. L. 87–196 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 916 and 929F(e) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 717(c) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of Title 7, Agriculture.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsec. (g) by Pub. L. 94–29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

REVIEW OF REGULATORY STRUCTURES AND PROCEDURES WITH RESPECT TO PENNY STOCKS; REPORT

Pub. L. 101–429, title V, §510, Oct. 15, 1990, 104 Stat. 957, directed Comptroller General, in consultation with Securities and Exchange Commission, to conduct a review of rules, procedures, facilities, and oversight and enforcement activities of self-regulatory organizations under Securities Exchange Act of 1934, with respect to penny stocks (within the meaning of 15 U.S.C. 78c(a)(51)), and, within one year after Oct. 15, 1990, to submit a report on the review including a statement of findings and such recommendations as the Comptroller General considered appropriate with respect to legislative or administrative changes.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ So in original. Two pars. (10) have been enacted.

§78t. Liability of controlling persons and persons who aid and abet violations

(a) Joint and several liability; good faith defense

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable (including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title), unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

(b) Unlawful activity through or by means of any other person

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this chapter or any rule or regulation thereunder through or by means of any other person.

(c) Hindering, delaying, or obstructing the making or filing of any document, report, or information

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under this chapter or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information.

(d) Liability for trading in securities while in possession of material nonpublic information

Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provisions of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege or security-based swap agreement with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.

(e) Prosecution of persons who aid and abet violations

For purposes of any action brought by the Commission under paragraph (1) or (3) of section 78u(d) of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(f) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, §20, 48 Stat. 899; May 27, 1936, ch. 462, §6, 49 Stat. 1379; Pub. L. 88-467, §9, Aug. 20, 1964, 78 Stat. 579; Pub. L. 98-376, §5, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 104-67, title I, §104, Dec. 22, 1995, 109 Stat. 757; Pub. L. 105-353, title III, §301(b)(12), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, §1(a)(5) [title II, §205(a)(3), title III, §303(i), (j)], Dec. 21,

2000, 114 Stat. 2763, 2763A–426, 2763A–456; Pub. L. 111–203, title VII, §762(d)(6), title IX, §§929O, 929P(c), July 21, 2010, 124 Stat. 1761, 1862, 1865.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929P(c), inserted "(including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title)" after "controlled person is liable".

Subsec. (d). Pub. L. 111–203, §762(d)(6)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement".

Subsec. (e). Pub. L. 111–203, §929O, inserted "or recklessly" after "knowingly".

Subsec. (f). Pub. L. 111–203, §762(d)(6)(B), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements".

2000—Subsec. (d). Pub. L. 106–554, §1(a)(5) [title III, §303(i)], amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option,, privilege, or security futures product with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation."

Pub. L. 106–554, §1(a)(5) [title II, §205(a)(3)], substituted ", privilege, or security futures product" for "or privilege".

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title III, §303(j)], added subsec. (f).

1998—Subsecs. (e), (f). Pub. L. 105–353 redesignated subsec. (f) as (e).

1995—Pub. L. 104–67, §104(1), substituted "liability of controlling persons and persons who aid and abet violations" for "Liabilities of controlling persons" in section catchline.

Subsec. (f). Pub. L. 104–67, §104(2), added subsec. (f).

1984—Subsec. (d). Pub. L. 98–376 added subsec. (d).

1964—Subsec. (c). Pub. L. 88–467 extended application of provisions of subsec. (c) by substituting the prohibition against any officer or director of, or an owner of securities issued by, a company from hindering, delaying, or obstructing the preparation or filing of any report, document, or information required to be filed under this chapter for existing provisions applicable only to filings by companies with securities registered on a national securities exchange or subject to the provisions of section 78o(d) of this title.

1936—Subsec. (c). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929O and 929P(c) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 762(d)(6) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 771 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

§78t–1. Liability to contemporaneous traders for insider trading

(a) Private rights of action based on contemporaneous trading

Any person who violates any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

(b) Limitations on liability

(1) Contemporaneous trading actions limited to profit gained or loss avoided

The total amount of damages imposed under subsection (a) shall not exceed the profit gained or loss avoided in the transaction or transactions that are the subject of the violation.

(2) Offsetting disgorgements against liability

The total amount of damages imposed against any person under subsection (a) shall be diminished by the amounts, if any, that such person may be required to disgorge, pursuant to a court order obtained at the instance of the Commission, in a proceeding brought under section 78u(d) of this title relating to the same transaction or transactions.

(3) Controlling person liability

No person shall be liable under this section solely by reason of employing another person who is liable under this section, but the liability of a controlling person under this section shall be subject to section 78t(a) of this title.

(4) Statute of limitations

No action may be brought under this section more than 5 years after the date of the last transaction that is the subject of the violation.

(c) Joint and several liability for communicating

Any person who violates any provision of this chapter or the rules or regulations thereunder by communicating material, nonpublic information shall be jointly and severally liable under subsection (a) with, and to the same extent as, any person or persons liable under subsection (a) to whom the communication was directed.

(d) Authority not to restrict other express or implied rights of action

Nothing in this section shall be construed to limit or condition the right of any person to bring an action to enforce a requirement of this chapter or the availability of any cause of action implied from a provision of this chapter.

(e) Provisions not to affect public prosecutions

This section shall not be construed to bar or limit in any manner any action by the Commission or

the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties.

(June 6, 1934, ch. 404, title I, §20A, as added Pub. L. 100–704, §5, Nov. 19, 1988, 102 Stat. 4680.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), (d), and (e), was in the original "this title". See References in Text note set out under section 78a of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

§78u. Investigations and actions

(a) Authority and discretion of Commission to investigate violations

(1) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated, or, as to any act or practice, or omission to act, while associated with a member, formerly associated with a member, the rules of a registered clearing agency in which such person is a participant, or, as to any act or practice, or omission to act, while a participant, was a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this chapter, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(2) On request from a foreign securities authority, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.

(b) Attendance of witnesses; production of records

For the purpose of any such investigation, or any other proceeding under this chapter, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production

of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(c) Judicial enforcement of investigative power of Commission; refusal to obey subpoena; criminal sanctions

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Injunction proceedings; authority of court to prohibit persons from serving as officers and directors; money penalties in civil actions; disgorgement

(1) Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

(2) **AUTHORITY OF COURT TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.**—In any proceeding under paragraph (1) of this subsection, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 78j(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(3) **CIVIL MONEY PENALTIES AND AUTHORITY TO SEEK DISGORGEMENT.**—

(A) **AUTHORITY OF COMMISSION.**—Whenever it shall appear to the Commission that any person has violated any provision of this chapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 78u-3 of this title, other than by committing a violation subject to a penalty pursuant to section 78u-1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to—

(i) impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation; and

(ii) require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of such violation.

(B) AMOUNT OF PENALTY.—

(i) **FIRST TIER.**—The amount of a civil penalty imposed under subparagraph (A)(i) shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (I) \$5,000 for a natural person or \$50,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation.

(ii) **SECOND TIER.**—Notwithstanding clause (i), the amount of a civil penalty imposed under subparagraph (A)(i) for each such violation shall not exceed the greater of (I) \$50,000 for a natural person or \$250,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(iii) **THIRD TIER.**—Notwithstanding clauses (i) and (ii), the amount of a civil penalty imposed under subparagraph (A)(i) for each violation described in that subparagraph shall not exceed the greater of (I) \$100,000 for a natural person or \$500,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(C) PROCEDURES FOR COLLECTION.—

(i) **PAYMENT OF PENALTY TO TREASURY.**—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(ii) **COLLECTION OF PENALTIES.**—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(iii) **REMEDY NOT EXCLUSIVE.**—The actions authorized by this paragraph may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(iv) **JURISDICTION AND VENUE.**—For purposes of section 78aa of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this chapter.

(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 78u–3 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged under paragraph (7) as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.

(6) **AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—**

(A) **IN GENERAL.**—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(B) **DEFINITION.**—For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(7) **DISGORGEMENT.**—In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement.

(8) **LIMITATIONS PERIODS.—**

(A) **DISGORGEMENT.**—The Commission may bring a claim for disgorgement under paragraph (7)—

(i) not later than 5 years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim occurs; or

(ii) not later than 10 years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim if the violation involves conduct that violates—

(I) section 78j(b) of this title;

(II) section 77q(a)(1) of this title;

(III) section 80b-6(1) of this title; or

(IV) any other provision of the securities laws for which scienter must be established.

(B) **EQUITABLE REMEDIES.**—The Commission may seek a claim for any equitable remedy, including for an injunction or for a bar, suspension, or cease and desist order, not later than 10 years after the latest date on which a violation that gives rise to the claim occurs.

(C) **CALCULATION.**—For the purposes of calculating any limitations period under this paragraph with respect to an action or claim, any time in which the person against which the action or claim, as applicable, is brought is outside of the United States shall not count towards the accrual of that period.

(9) **RULE OF CONSTRUCTION.**—Nothing in paragraph (7) may be construed as altering any right that any private party may have to maintain a suit for a violation of this chapter.

(e) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with

its members with the provisions of this chapter, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency.

(f) Rules of self-regulatory organizations or Board

Notwithstanding any other provision of this chapter, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization or the Public Company Accounting Oversight Board unless it appears to the Commission that (1) such self-regulatory organization or the Public Company Accounting Oversight Board is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

(g) Consolidation of actions; consent of Commission

Notwithstanding the provisions of section 1407(a) of title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

(h) Access to records

(1) The Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall apply with respect to the Commission, except as otherwise provided in this subsection.

(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3405 or 3407], the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpoena issued in conformity with the requirements of section 19(b) ¹ of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(b)], section 42(b) of the Investment Company Act of 1940 [15 U.S.C. 80a-41(b)], or section 209(b) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-9(b)], and that the Commission has reason to believe that—

(A) delay in obtaining access to such financial records, or the required notice, will result in—

- (i) flight from prosecution;
- (ii) destruction of or tampering with evidence;
- (iii) transfer of assets or records outside the territorial limits of the United States;
- (iv) improper conversion of investor assets; or
- (v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

(C) the acts, practices or course of conduct under investigation involve—

- (i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or
- (ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

(D) the acts, practices or course of conduct under investigation—

- (i) involve significant financial speculation in securities; or
- (ii) endanger the stability of any financial or investment intermediary.

(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable

specificity.

(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate judge shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made.

(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section 1109(a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3409(a), (b)(1), or (b)(2)].

(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpoena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpoena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(h) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose)."

(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(6) Repealed. Pub. L. 114–113, div. O, title VII, §708, Dec. 18, 2015, 129 Stat. 3030.

(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate judge finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

- (i) \$100 without regard to the volume of records involved;
- (ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and
- (iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorney's fees as determined by the court.

(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpoena which the Commission issues in the future for financial records of such customer for purposes of the same investigation.

(C) Whenever the court determines that the Commission has failed to comply with this subsection, other than paragraph (1), and the court finds that the circumstances raise questions of whether an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends.

(8) The relief described in paragraphs (7) and (10) shall be the only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall be deemed to

prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpoena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate judge finds that the customer's claims were made in bad faith.

(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3412], except that the customer notice required under section 1112(b) or (c) of such Act [12 U.S.C. 3412(b) or (c)] may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply.

(B) The Commission may, without notice to the customer pursuant to section 1112 or the Right to Financial Privacy Act of 1978 [12 U.S.C. 3412], transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], within 30 days of its determination, or complies with the requirements of section 1109 of such Act [12 U.S.C. 3409] regarding delay of notice.

(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].

(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] which are common to this subsection shall have the same meaning as in such Act.

(i) Information to CFTC

The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 78o(b)(11) of this title, any exchange registered pursuant to section 78f(g) of this title, or any national securities association registered pursuant to section 78o-3(k) of this title.

(June 6, 1934, ch. 404, title I, §21, 48 Stat. 899; May 27, 1936, ch. 462, §7, 49 Stat. 1379; Pub. L. 91-452, title II, §212, Oct. 15, 1970, 84 Stat. 929; Pub. L. 94-29, §17, June 4, 1975, 89 Stat. 154; Pub. L. 96-433, §§3, 4, Oct. 10, 1980, 94 Stat. 1855, 1858; Pub. L. 98-376, §2, Aug. 10, 1984, 98 Stat. 1264; Pub. L. 100-181, title III, §323, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 100-704, §§3(a)(1), 6(b), Nov. 19, 1988, 102 Stat. 4677, 4681; Pub. L. 101-429, title II, §201, Oct. 15, 1990, 104 Stat. 935; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104-67, title I, §103(b)(2), Dec. 22, 1995, 109 Stat. 756; Pub. L. 106-554, §1(a)(5) [title II, §205(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-426; Pub. L. 107-204, §3(b)(2), title III, §§305(a)(1), (b), 308(d)(1), title VI, §603(a), July 30, 2002, 116 Stat. 749, 778, 779, 785, 794; Pub. L. 111-203, title IX,

§§923(b)(1), 929F(c), (d), (g)(2), 986(a)(3), July 21, 2010, 124 Stat. 1849, 1854, 1855, 1935; Pub. L. 114–113, div. O, title VII, §708, Dec. 18, 2015, 129 Stat. 3030; Pub. L. 116–283, div. F, title LXV, §6501(a), Jan. 1, 2021, 134 Stat. 4625.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), (d)(1), (3), (e), and (f), was in the original "this title". See References in Text note set out under section 78a of this title.

This chapter, referred to in subsec. (d)(9), was in the original "this Act" meaning the Securities Exchange Act of 1934, act June 6, 1934, ch. 404. See References in Text note set out under section 78a of this title.

The Right to Financial Privacy Act of 1978, referred to in subsec. (h)(1), (8), (9)(B), (11), and (13), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Section 19(b) of the Securities Act of 1933, referred to in subsec. (h)(2), was redesignated section 19(c) by Pub. L. 107–204, title I, §108(a)(1), July 30, 2002, 116 Stat. 768, and is classified to section 77s(c) of this title.

Section 21(h) of the Securities Exchange Act of 1934, referred to in the paragraph within quotation marks following subsec. (h)(4)(C), is classified to subsection (h) of this section.

AMENDMENTS

2021—Subsec. (d)(3). Pub. L. 116–283, §6501(a)(1)(A), substituted "Civil money penalties and authority to seek disgorgement" for "Money Penalties in Civil Actions" in heading. Amendment was executed to reflect the probable intent of Congress due to minor errors in formatting of quoted text.

Subsec. (d)(3)(A). Pub. L. 116–283, §6501(a)(1)(B), substituted "jurisdiction to—" and cls. (i) and (ii) for "jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation."

Subsec. (d)(3)(B)(i). Pub. L. 116–283, §6501(a)(1)(C)(i), substituted "a civil penalty imposed under subparagraph (A)(i)" for "the penalty" in first sentence.

Subsec. (d)(3)(B)(ii). Pub. L. 116–283, §6501(a)(1)(C)(ii), substituted "amount of a civil penalty imposed under subparagraph (A)(i)" for "amount of penalty".

Subsec. (d)(3)(B)(iii). Pub. L. 116–283, §6501(a)(1)(C)(iii), substituted "amount of a civil penalty imposed under subparagraph (A)(i) for each violation described in that subparagraph" for "amount of penalty for each such violation" in introductory provisions.

Subsec. (d)(4). Pub. L. 116–283, §6501(a)(2), inserted "under paragraph (7)" after "funds disgorged".

Subsec. (d)(7) to (9). Pub. L. 116–283, §6501(a)(3), added pars. (7) to (9).

2015—Subsec. (h)(6). Pub. L. 114–113 struck out par. (6) which read as follows: "The Commission shall compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of paragraph (2) of this subsection or the provisions of the Right to Financial Privacy Act of 1978 to obtain access to financial records of a customer and include it in its annual report to the Congress. Section 1121(b) of the Right to Financial Privacy Act of 1978 shall not apply with respect to the Commission."

2010—Subsec. (a)(1). Pub. L. 111–203, §929F(g)(2), in first sentence, substituted ", a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm" for "or a person associated with such a firm".

Pub. L. 111–203, §929F(c), (d), in first sentence, inserted ", or, as to any act or practice, or omission to act, while associated with a member, formerly associated" after "member or a person associated" and "or, as to any act or practice, or omission to act, while a participant, was a participant," after "in which such person is a participant,".

Subsec. (d)(3)(C)(i). Pub. L. 111–203, §923(b)(1), inserted "and section 78u–6 of this title" after "section 7246 of this title".

Subsec. (h)(2). Pub. L. 111–203, §986(a)(3), struck out "section 18(c) of the Public Utility Holding Company Act of 1935," after "section 21(b) of the Securities Exchange Act of 1934,".

2002—Subsec. (a)(1). Pub. L. 107–204, §3(b)(2)(A), inserted "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,".

Subsec. (d)(1). Pub. L. 107–204, §3(b)(2)(B), inserted "the rules of the Public Company Accounting

Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,".

Subsec. (d)(2). Pub. L. 107-204, §305(a)(1), substituted "unfitness" for "substantial unfitness".

Subsec. (d)(3)(C)(i). Pub. L. 107-204, §308(d)(1), inserted ", except as otherwise provided in section 7246 of this title" before period at end.

Subsec. (d)(5). Pub. L. 107-204, §305(b), added par. (5).

Subsec. (d)(6). Pub. L. 107-204, §603(a), added par. (6).

Subsec. (e). Pub. L. 107-204, §3(b)(2)(C), inserted "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm," after "is a participant,".

Subsec. (f). Pub. L. 107-204, §3(b)(2)(D), inserted "or the Public Company Accounting Oversight Board" after "self-regulatory organization" in two places.

2000—Subsec. (i). Pub. L. 106-554 added subsec. (i).

1995—Subsec. (d)(4). Pub. L. 104-67 added par. (4).

1990—Subsec. (d). Pub. L. 101-429 designated existing provision as par. (1) and added pars. (2) and (3).

1988—Subsec. (a). Pub. L. 100-704, §6(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 100-704, §3(a)(1), redesignated par. (1) as entire subsec. (d) and struck out par. (2) which provided civil penalties for purchasing or selling securities while in possession of material nonpublic information.

1987—Subsec. (d). Pub. L. 100-181, §323(1), substituted "Whenever" for "Wherever".

Subsec. (e). Pub. L. 100-181, §323(2), struck out ", the United States District Court for the District of Columbia," after "the district courts of the United States".

Subsec. (g). Pub. L. 100-181, §323(3), struck out "The term 'securities laws' as used herein and in subsection (h) of this section includes the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.)." See 15 U.S.C. 78c(a)(47).

1984—Subsec. (d). Pub. L. 98-376 designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (g). Pub. L. 96-433, §4, inserted "and in subsection (h) of this section."

Subsec. (h). Pub. L. 96-433, §3, added subsec. (h).

1975—Subsec. (a). Pub. L. 94-29, §17(1), expanded the Commission's power to conduct investigations to include violations of the rules of a national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board.

Subsec. (d). Pub. L. 94-29, §17(2), redesignated subsec. (e) as (d) and amended it generally, substituting "has engaged, is engaged, or is about to engage" for "is engaged or about to engage", "any provision" for "the provisions", "the rules or regulations" for "or of any rule or regulation", and "such a showing" for "a proper showing", and inserting "the rules of a national securities exchange or registered securities association of which such persons is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board," in first sentence and inserting "as may constitute a violation of any provision of this chapter or the rules or regulations thereunder" in second sentence. Former subsec. (d) was repealed by Pub. L. 91-452. See 1970 Amendment note below.

Subsec. (e). Pub. L. 94-29, §17(2), redesignated subsec. (f) as (e) and amended it generally, substituting "mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" for "mandamus commanding any person to comply with the provisions of this chapter or any order of the Commission made in pursuance thereof or with any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" and adding cls. (2) and (3). Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 94-29, §17(3), added subsecs. (f) and (g). Former subsec. (f) redesignated (e).

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1936—Subsec. (f). Act May 27, 1936, inserted "or with any undertaking contained in a registration

statement as provided in subsection (d) of section 78o of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" wherever appearing in subsec. (h)(4)(A), (5), (7)(A), (8) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. F, title LXV, §6501(b), Jan. 1, 2021, 134 Stat. 4626, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to any action or proceeding that is pending on, or commenced on or after, the date of enactment of this Act [Jan. 1, 2021]."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 771 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 3(a)(1) of Pub. L. 100–704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–433, §5, Oct. 10, 1980, 94 Stat. 1858, provided that:

"(a) The amendments made by section 1 of this Act [amending section 78fff–3 of this title] shall take effect on the date of enactment of this Act [Oct. 10, 1980].

"(b) The amendments made by sections 2, 3, and 4 of this Act [amending this section and section 3422 of Title 12, Banks and Banking] shall take effect on November 10, 1980. Nothing in this Act [amending this section and section 78fff–3 of this title and section 3422 of Title 12] or in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall apply to any Securities and Exchange Commission subpoena issued prior to such date."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of

Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

PROMOTION OF RECIPROCAL SUBPOENA ENFORCEMENT

Pub. L. 105–353, title I, §102, Nov. 3, 1998, 112 Stat. 3233, provided that:

"(a) **COMMISSION ACTION.**—The Securities and Exchange Commission, in consultation with State securities commissions (or any agencies or offices performing like functions), shall seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission seeking to compel persons to attend, testify in, or produce documents or records in connection with an action or investigation by a State securities commission of an alleged violation of State securities laws.

"(b) **REPORT.**—Not later than 24 months after the date of enactment of this Act [Nov. 3, 1998], the Securities and Exchange Commission (hereafter in this section referred to as the 'Commission') shall submit a report to the Congress—

"(1) identifying the States that have adopted laws described in subsection (a);

"(2) describing the actions undertaken by the Commission and State securities commissions to promote the adoption of such laws; and

"(3) identifying any further actions that the Commission recommends for such purposes."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [*See References in Text note below.*](#)

§78u–1. Civil penalties for insider trading

(a) Authority to impose civil penalties

(1) Judicial actions by Commission authorized

Whenever it shall appear to the Commission that any person has violated any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security or security-based swap agreement while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options or security futures products, the Commission—

(A) may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by the person who committed such violation; and

(B) may, subject to subsection (b)(1), bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by a person who, at the time of the violation, directly or indirectly controlled the person who committed such violation.

(2) Amount of penalty for person who committed violation

The amount of the penalty which may be imposed on the person who committed such violation shall be determined by the court in light of the facts and circumstances, but shall not exceed three

times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication.

(3) Amount of penalty for controlling person

The amount of the penalty which may be imposed on any person who, at the time of the violation, directly or indirectly controlled the person who committed such violation, shall be determined by the court in light of the facts and circumstances, but shall not exceed the greater of \$1,000,000, or three times the amount of the profit gained or loss avoided as a result of such controlled person's violation. If such controlled person's violation was a violation by communication, the profit gained or loss avoided as a result of the violation shall, for purposes of this paragraph only, be deemed to be limited to the profit gained or loss avoided by the person or persons to whom the controlled person directed such communication.

(b) Limitations on liability

(1) Liability of controlling persons

No controlling person shall be subject to a penalty under subsection (a)(1)(B) unless the Commission establishes that—

(A) such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 78o(f) ¹ of this title or section 80b-4a of this title and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

(2) Additional restrictions on liability

No person shall be subject to a penalty under subsection (a) solely by reason of employing another person who is subject to a penalty under such subsection, unless such employing person is liable as a controlling person under paragraph (1) of this subsection. Section 78t(a) of this title shall not apply to actions under subsection (a) of this section.

(c) Authority of Commission

The Commission, by such rules, regulations, and orders as it considers necessary or appropriate in the public interest or for the protection of investors, may exempt, in whole or in part, either unconditionally or upon specific terms and conditions, any person or transaction or class of persons or transactions from this section.

(d) Procedures for collection

(1) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

(2) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(3) Remedy not exclusive

The actions authorized by this section may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring.

(4) Jurisdiction and venue

For purposes of section 78aa of this title, actions under this section shall be actions to enforce a liability or a duty created by this chapter.

(5) Statute of limitations

No action may be brought under this section more than 5 years after the date of the purchase or sale. This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within 5 years of such transaction.

(e) Definition

For purposes of this section, "profit gained" or "loss avoided" is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

(f) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(g) Duty of Members and employees of Congress

(1) In general

Subject to the rule of construction under section 10 of the STOCK Act and solely for purposes of the insider trading prohibitions arising under this chapter, including section 78j(b) of this title and Rule 10b-5 thereunder, each Member of Congress or employee of Congress owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person's position as a Member of Congress or employee of Congress or gained from the performance of such person's official responsibilities.

(2) Definitions

In this subsection—

(A) the term "Member of Congress" means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico; and

(B) the term "employee of Congress" means—

(i) any individual (other than a Member of Congress), whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives; and

(ii) any other officer or employee of the legislative branch (as defined in section 13101(11) of title 5).

(3) Rule of construction

Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.

(h) Duty of other Federal officials

(1) In general

Subject to the rule of construction under section 10 of the STOCK Act and solely for purposes of the insider trading prohibitions arising under this chapter, including section 78j(b) of this title, and Rule 10b-5 thereunder, each executive branch employee, each judicial officer, and each judicial employee owes a duty arising from a relationship of trust and confidence to the United States Government and the citizens of the United States with respect to material, nonpublic information derived from such person's position as an executive branch employee, judicial officer, or judicial employee or gained from the performance of such person's official responsibilities.

(2) Definitions

In this subsection—

(A) the term "executive branch employee"—

- (i) has the meaning given the term "employee" under section 2105 of title 5;
- (ii) includes—
 - (I) the President;
 - (II) the Vice President; and
 - (III) an employee of the United States Postal Service or the Postal Regulatory Commission;

(B) the term "judicial employee" has the meaning given that term in section 13101(9) of title 5; and

(C) the term "judicial officer" has the meaning given that term under section 13101(10) of title 5.

(3) Rule of construction

Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.

(i) Participation in initial public offerings

An individual described in section 13103(f) of title 5 may not purchase securities that are the subject of an initial public offering (within the meaning given such term in section 781(f)(1)(G)(i) of this title) in any manner other than is available to members of the public generally.

(June 6, 1934, ch. 404, title I, §21A, as added Pub. L. 100–704, §3(a)(2), Nov. 19, 1988, 102 Stat. 4677; amended Pub. L. 101–429, title II, §202(b), Oct. 15, 1990, 104 Stat. 938; Pub. L. 106–554, §1(a)(5) [title II, §205(a)(4), title III, §303(k), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A–426, 2763A–456, 2763A–457; Pub. L. 107–204, title III, §308(d)(2), July 30, 2002, 116 Stat. 785; Pub. L. 111–203, title VII, §762(d)(7), title IX, §923(b)(2), July 21, 2010, 124 Stat. 1761, 1850; Pub. L. 112–105, §§4(b)(2), 9(b)(2)(B), 12, Apr. 4, 2012, 126 Stat. 292, 297, 300; Pub. L. 117–286, §4(c)(24), Dec. 27, 2022, 136 Stat. 4357.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(4), (5), was in the original "this title", and this chapter, referred to in subsecs. (g)(1) and (h)(1), was in the original "this Act". See References in Text note set out under section 78a of this title.

Subsec. (f) of section 78o of this title, referred to in subsec. (b)(1)(B), was redesignated (g) by Pub. L. 111–203, title IX, §929X(c)(1), July 21, 2010, 124 Stat. 1870.

Section 10 of the STOCK Act, referred to in subsecs. (g)(1) and (h)(1), is section 10 of Pub. L. 112–105, which is set out as a note preceding section 13101 of Title 5, Government Organization and Employees.

AMENDMENTS

2022—Subsec. (g)(2)(B)(ii). Pub. L. 117–286, §4(c)(24)(A), substituted "section 13101(11) of title 5." for "section 109(11) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(11))."

Subsec. (h)(2)(B). Pub. L. 117–286, §4(c)(24)(B)(i), substituted "section 13101(9) of title 5;" for "section 109(8) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(8));".

Subsec. (h)(2)(C). Pub. L. 117–286, §4(c)(24)(B)(ii), substituted "section 13101(10) of title 5." for "section 109(10) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(10))."

Subsec. (i). Pub. L. 117–286, §4(c)(24)(C), substituted "section 13103(f) of title 5" for "section 101(f) of the Ethics in Government Act of 1978".

2012—Subsec. (g). Pub. L. 112–105, §4(b)(2), added subsec. (g).

Subsec. (h). Pub. L. 112–105, §9(b)(2)(B), added subsec. (h).

Subsec. (i). Pub. L. 112–105, §12, added subsec (i).

2010—Subsec. (a)(1). Pub. L. 111–203, §762(d)(7)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement" in introductory provisions.

Subsec. (d)(1). Pub. L. 111–203, §923(b)(2)(A), struck out "(subject to subsection (e) of this section)" after "shall" and inserted "and section 78u–6 of this title" after "section 7246 of this title".

Subsec. (e). Pub. L. 111–203, §923(b)(2)(B), (C), redesignated subsec. (f) as (e) and struck out former subsec. (e). Prior to amendment, text of subsec. (e) read as follows: "Notwithstanding the provisions of subsection (d)(1) of this section, there shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review."

Subsec. (f). Pub. L. 111–203, §923(b)(2)(C), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 111–203, §762(d)(7)(B), which directed amendment of subsec. (g) by striking out "(as defined in section 206B of the Gramm-Leach-Bliley Act)", was executed by making the strike out after "security-based swap agreements" in subsec. (f), to reflect the probable intent of Congress and the redesignation of subsec. (g) as (f) by Pub. L. 111–203, §923(b)(2)(C). See above and Effective Date of 2010 Amendment note below.

Subsec. (g). Pub. L. 111–203, §923(b)(2)(C), redesignated subsec. (g) as (f).

2002—Subsec. (d)(1). Pub. L. 107–204 inserted ", except as otherwise provided in section 7246 of this title" before period at end.

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title III, §303(k)], inserted "or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)" after "purchasing or selling a security" in introductory provisions.

Pub. L. 106–554, §1(a)(5) [title II, §205(a)(4)], substituted "standardized options or security futures products, the Commission—" for "standardized options, the Commission—" in introductory provisions.

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title III, §303(l)], added subsec. (g).

1990—Pub. L. 101–429 inserted "for insider trading" in section catchline.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 923(b)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 762(d)(7) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

AFFIRMATION OF DUTY OF GOVERNMENT OFFICERS AND EMPLOYEES

Pub. L. 112–105, §4(b)(1), Apr. 4, 2012, 126 Stat. 292, provided that: "The purpose of the amendment made by this subsection [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each Member of Congress and each employee of Congress."

[For definitions of "Member of Congress" and "employee of Congress", see section 2 of Pub. L. 112–105, set out as a note under section 13101 of Title 5, Government Organization and Employees.]

Pub. L. 112–105, §9(b)(2)(A), Apr. 4, 2012, 126 Stat. 297, provided that: "The purpose of the amendment made by this paragraph [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each executive branch employee, judicial officer, and judicial employee."

[For definitions of "executive branch employee", "judicial officer", and "judicial employee", see section 2 of Pub. L. 112–105, set out as a note under section 13101 of Title 5, Government Organization and

Employees.]

CONGRESSIONAL FINDINGS

Pub. L. 100-704, §2, Nov. 19, 1988, 102 Stat. 4677, provided that: "The Congress finds that—

"(1) the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing trading while in possession of material, nonpublic information are, as required by such Act, necessary and appropriate in the public interest and for the protection of investors;

"(2) the Commission has, within the limits of accepted administrative and judicial construction of such rules and regulations, enforced such rules and regulations vigorously, effectively, and fairly; and

"(3) nonetheless, additional methods are appropriate to deter and prosecute violations of such rules and regulations."

COMMISSION RECOMMENDATIONS FOR ADDITIONAL CIVIL PENALTY AUTHORITY REQUIRED

Pub. L. 100-704, §3(c), Nov. 19, 1988, 102 Stat. 4680, provided that the Securities and Exchange Commission should, within 60 days after Nov. 19, 1988, submit to Congress any recommendations the Commission considers appropriate with respect to the extension of the Commission's authority to seek civil penalties or impose administrative fines for violations other than those described in this section.

¹ See References in Text note below.

§78u-2. Civil remedies in administrative proceedings

(a) Commission authority to assess money penalties

(1) In general

In any proceeding instituted pursuant to sections 78o(b)(4), 78o(b)(6), 78o-6, 78o-4, 78o-5, 78o-7, or 78q-1 of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(A) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or this chapter, or the rules or regulations thereunder, or the rules of the Municipal Securities Rulemaking Board;

(B) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(C) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or

(D) has failed reasonably to supervise, within the meaning of section 78o(b)(4)(E) of this title, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision; ¹

(2) Cease-and-desist proceedings

In any proceeding instituted under section 78u-3 of this title against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

(A) is violating or has violated any provision of this chapter, or any rule or regulation issued under this chapter; or

(B) is or was a cause of the violation of any provision of this chapter, or any rule or

regulation issued under this chapter.

(b) Maximum amount of penalty

(1) First tier

The maximum amount of penalty for each act or omission described in subsection (a) shall be \$5,000 for a natural person or \$50,000 for any other person.

(2) Second tier

Notwithstanding paragraph (1), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(3) Third tier

Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

(A) the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(B) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(c) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider—

(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(2) the harm to other persons resulting either directly or indirectly from such act or omission;

(3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title;

(5) the need to deter such person and other persons from committing such acts or omissions; and

(6) such other matters as justice may require.

(d) Evidence concerning ability to pay

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission or the appropriate regulatory agency may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(e) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Security-based swaps

(1) Clearing agency

Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c–3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c–3 of this title.

(2) Security-based swap dealer or major security-based swap participant

Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c–3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c–3 of this title.

(June 6, 1934, ch. 404, title I, §21B, as added Pub. L. 101–429, title II, §202(a), Oct. 15, 1990, 104 Stat. 937; amended Pub. L. 107–204, title V, §501(b), July 30, 2002, 116 Stat. 793; Pub. L. 109–291, §4(b)(1)(B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title VII, §773, title IX, §929P(a)(2), July 21, 2010, 124 Stat. 1802, 1863.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1)(A), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(1)(A), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

This chapter, referred to in subsec. (a)(1)(A), (C), (2), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929P(a)(2), designated existing provisions as par. (1) and inserted heading, inserted "that such penalty is in the public interest and" before "that such person—" in introductory provisions, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1) and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added par. (2).

Subsec. (f). Pub. L. 111–203, §773, added subsec. (f).

2006—Subsec. (a). Pub. L. 109–291 inserted "78o–7," after "78o–5," in introductory provisions.

2002—Subsec. (a). Pub. L. 107–204 inserted "78o–6," before "78o–4," in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929P(a)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 773 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under

section 77g of this title.

¹ So in original. The semicolon probably should be a period.

§78u–3. Cease-and-desist proceedings

(a) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this chapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(b) Hearing

The notice instituting proceedings pursuant to subsection (a) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(c) Temporary order

(1) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) Applicability

Paragraph (1) shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, registered public accounting firm (as defined in section 7201 of this title), or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(3) Temporary freeze

(A) In general

(i) Issuance of temporary order

Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

(ii) Standard

A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

(iii) Effective period

A temporary order issued under clause (i) shall—

(I) become effective immediately;

(II) be served upon the parties subject to it; and

(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

(iv) Extensions authorized

The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

(B) Process on determination of violations

(i) Violations charged

If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

(ii) Violations not charged

If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person.

(d) Review of temporary orders

(1) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (c), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(2) Judicial review

Within—

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

(3) No automatic stay of temporary order

The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(4) Exclusive review

Section 78y of this title shall not apply to a temporary order entered pursuant to this section.

(e) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under subsection (a), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Authority of the Commission to prohibit persons from serving as officers or directors

In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 78j(b) of this title or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.

(June 6, 1934, ch. 404, title I, §21C, as added Pub. L. 101-429, title II, §203, Oct. 15, 1990, 104 Stat. 939; amended Pub. L. 107-204, §3(b)(3), title XI, §§1103, 1105(a), July 30, 2002, 116 Stat. 749, 807, 809; Pub. L. 111-203, title IX, §985(b)(8), July 21, 2010, 124 Stat. 1934.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

Section 7201 of this title, referred to in subsec. (c)(2), was in the original "section 2 of the Sarbanes-Oxley Act of 2002", Pub. L. 107-204, which enacted section 7201 of this title and amended section 78c of this title.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111-203 substituted "Paragraph (1)" for "paragraph (1) subsection".

2002—Subsec. (c)(2). Pub. L. 107-204, §1103(b), substituted "paragraph (1)" for "This".

Pub. L. 107-204, §3(b)(3), inserted "registered public accounting firm (as defined in section 7201 of this title)," after "government securities dealer,".

Subsec. (c)(3). Pub. L. 107-204, §1103(a), added par. (3).

Subsec. (f). Pub. L. 107-204, §1105(a), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

§78u–4. Private securities litigation

(a) Private class actions

(1) In general

The provisions of this subsection shall apply in each private action arising under this chapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

(2) Certification filed with complaint

(A) In general

Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

- (i) states that the plaintiff has reviewed the complaint and authorized its filing;
- (ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this chapter;
- (iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;
- (iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;
- (v) identifies any other action under this chapter, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and
- (vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

(B) Nonwaiver of attorney-client privilege

The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

(3) Appointment of lead plaintiff

(A) Early notice to class members

(i) In general

Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

- (I) of the pendency of the action, the claims asserted therein, and the purported class period; and
- (II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the

purported class.

(ii) Multiple actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

(iii) Additional notices may be required under Federal rules

Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

(B) Appointment of lead plaintiff

(i) In general

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

(ii) Consolidated actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

(iii) Rebuttable presumption

(I) In general

Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that—

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

(II) Rebuttal evidence

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

(iv) Discovery

For purposes of this subparagraph, discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

(v) Selection of lead counsel

The most adequate plaintiff shall, subject to the approval of the court, select and retain

counsel to represent the class.

(vi) Restrictions on professional plaintiffs

Except as the court may otherwise permit, consistent with the purposes of this section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

(4) Recovery by plaintiffs

The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class.

(5) Restrictions on settlements under seal

The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

(6) Restrictions on payment of attorneys' fees and expenses

Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

(7) Disclosure of settlement terms to class members

Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

(A) Statement of plaintiff recovery

The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

(B) Statement of potential outcome of case

(i) Agreement on amount of damages

If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this chapter, a statement concerning the average amount of such potential damages per share.

(ii) Disagreement on amount of damages

If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this chapter, a statement from each settling party concerning the issue or issues on which the parties disagree.

(iii) Inadmissibility for certain purposes

A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

(C) Statement of attorneys' fees or costs sought

If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average

per share basis), and a brief explanation supporting the fees and costs sought. Such information shall be clearly summarized on the cover page of any notice to a party of any proposed or final settlement agreement.

(D) Identification of lawyers' representatives

The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

(E) Reasons for settlement

A brief statement explaining the reasons why the parties are proposing the settlement.

(F) Other information

Such other information as may be required by the court.

(8) Security for payment of costs in class actions

In any private action arising under this chapter that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court may require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, or from the attorneys for the defendant, the defendant, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of fees and expenses that may be awarded under this subsection.

(9) Attorney conflict of interest

If a plaintiff class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the plaintiff class.

(b) Requirements for securities fraud actions

(1) Misleading statements and omissions

In any private action arising under this chapter in which the plaintiff alleges that the defendant—

(A) made an untrue statement of a material fact; or

(B) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

(2) Required state of mind

(A) In general

Except as provided in subparagraph (B), in any private action arising under this chapter in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(B) Exception

In the case of an action for money damages brought against a credit rating agency or a controlling person under this chapter, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

(i) to conduct a reasonable investigation of the rated security with respect to the factual

elements relied upon by its own methodology for evaluating credit risk; or

(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.

(3) Motion to dismiss; stay of discovery

(A) Dismissal for failure to meet pleading requirements

In any private action arising under this chapter, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of paragraphs (1) and (2) are not met.

(B) Stay of discovery

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(C) Preservation of evidence

(i) In general

During the pendency of any stay of discovery pursuant to this paragraph, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

(ii) Sanction for willful violation

A party aggrieved by the willful failure of an opposing party to comply with clause (i) may apply to the court for an order awarding appropriate sanctions.

(D) Circumvention of stay of discovery

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.

(4) Loss causation

In any private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages.

(c) Sanctions for abusive litigation

(1) Mandatory review by court

In any private action arising under this chapter, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) Mandatory sanctions

If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Prior to making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.

(3) Presumption in favor of attorneys' fees and costs

(A) In general

Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction—

- (i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation; and
- (ii) for substantial failure of any complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action.

(B) Rebuttal evidence

The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

- (i) the award of attorneys' fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust, and the failure to make such an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or
- (ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

(C) Sanctions

If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.

(d) Defendant's right to written interrogatories

In any private action arising under this chapter in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

(e) Limitation on damages

(1) In general

Except as provided in paragraph (2), in any private action arising under this chapter in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(2) Exception

In any private action arising under this chapter in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(3) "Mean trading price" defined

For purposes of this subsection, the "mean trading price" of a security shall be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in paragraph (1).

(f) Proportionate liability

(1) Applicability

Nothing in this subsection shall be construed to create, affect, or in any manner modify, the

standard for liability associated with any action arising under the securities laws.

(2) Liability for damages

(A) Joint and several liability

Any covered person against whom a final judgment is entered in a private action shall be liable for damages jointly and severally only if the trier of fact specifically determines that such covered person knowingly committed a violation of the securities laws.

(B) Proportionate liability

(i) In general

Except as provided in subparagraph (A), a covered person against whom a final judgment is entered in a private action shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that covered person, as determined under paragraph (3).

(ii) Recovery by and costs of covered person

In any case in which a contractual relationship permits, a covered person that prevails in any private action may recover the attorney's fees and costs of that covered person in connection with the action.

(3) Determination of responsibility

(A) In general

In any private action, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, with respect to each covered person and each of the other persons claimed by any of the parties to have caused or contributed to the loss incurred by the plaintiff, including persons who have entered into settlements with the plaintiff or plaintiffs, concerning—

- (i) whether such person violated the securities laws;
- (ii) the percentage of responsibility of such person, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and
- (iii) whether such person knowingly committed a violation of the securities laws.

(B) Contents of special interrogatories or findings

The responses to interrogatories, or findings, as appropriate, under subparagraph (A) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each covered person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs.

(C) Factors for consideration

In determining the percentage of responsibility under this paragraph, the trier of fact shall consider—

- (i) the nature of the conduct of each covered person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs; and
- (ii) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff or plaintiffs.

(4) Uncollectible share

(A) In general

Notwithstanding paragraph (2)(B), upon ¹ motion made not later than 6 months after a final judgment is entered in any private action, the court determines that all or part of the share of the judgment of the covered person is not collectible against that covered person, and is also not collectible against a covered person described in paragraph (2)(A), each covered person described in paragraph (2)(B) shall be liable for the uncollectible share as follows:

(i) Percentage of net worth

Each covered person shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is equal to less than \$200,000.

(ii) Other plaintiffs

With respect to any plaintiff not described in subclauses (I) and (II) of clause (i), each covered person shall be liable for the uncollectible share in proportion to the percentage of responsibility of that covered person, except that the total liability of a covered person under this clause may not exceed 50 percent of the proportionate share of that covered person, as determined under paragraph (3)(B).

(iii) Net worth

For purposes of this subparagraph, net worth shall be determined as of the date immediately preceding the date of the purchase or sale (as applicable) by the plaintiff of the security that is the subject of the action, and shall be equal to the fair market value of assets, minus liabilities, including the net value of the investments of the plaintiff in real and personal property (including personal residences).

(B) Overall limit

In no case shall the total payments required pursuant to subparagraph (A) exceed the amount of the uncollectible share.

(C) Covered persons subject to contribution

A covered person against whom judgment is not collectible shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

(5) Right of contribution

To the extent that a covered person is required to make an additional payment pursuant to paragraph (4), that covered person may recover contribution—

(A) from the covered person originally liable to make the payment;

(B) from any covered person liable jointly and severally pursuant to paragraph (2)(A);

(C) from any covered person held proportionately liable pursuant to this paragraph who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(6) Nondisclosure to jury

The standard for allocation of damages under paragraphs (2) and (3) and the procedure for reallocation of uncollectible shares under paragraph (4) shall not be disclosed to members of the jury.

(7) Settlement discharge

(A) In general

A covered person who settles any private action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling covered person arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(i) by any person against the settling covered person; and

(ii) by the settling covered person against any person, other than a person whose liability has been extinguished by the settlement of the settling covered person.

(B) Reduction

If a covered person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

- (i) an amount that corresponds to the percentage of responsibility of that covered person; or
- (ii) the amount paid to the plaintiff by that covered person.

(8) Contribution

A covered person who becomes jointly and severally liable for damages in any private action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(9) Statute of limitations for contribution

In any private action determining liability, an action for contribution shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a covered person who was required to make an additional payment pursuant to paragraph (4) may be brought not later than 6 months after the date on which such payment was made.

(10) Definitions

For purposes of this subsection—

(A) a covered person "knowingly commits a violation of the securities laws"—

(i) with respect to an action that is based on an untrue statement of material fact or omission of a material fact necessary to make the statement not misleading, if—

(I) that covered person makes an untrue statement of a material fact, with actual knowledge that the representation is false, or omits to state a fact necessary in order to make the statement made not misleading, with actual knowledge that, as a result of the omission, one of the material representations of the covered person is false; and

(II) persons are likely to reasonably rely on that misrepresentation or omission; and

(ii) with respect to an action that is based on any conduct that is not described in clause (i), if that covered person engages in that conduct with actual knowledge of the facts and circumstances that make the conduct of that covered person a violation of the securities laws;

(B) reckless conduct by a covered person shall not be construed to constitute a knowing commission of a violation of the securities laws by that covered person;

(C) the term "covered person" means—

(i) a defendant in any private action arising under this chapter; or

(ii) a defendant in any private action arising under section 77k of this title, who is an outside director of the issuer of the securities that are the subject of the action; and

(D) the term "outside director" shall have the meaning given such term by rule or regulation of the Commission.

(June 6, 1934, ch. 404, title I, §21D, as added and amended Pub. L. 104–67, title I, §101(b), title II, §201(a), Dec. 22, 1995, 109 Stat. 743, 758; Pub. L. 105–353, title I, §101(b)(2), title III, §301(b)(13), Nov. 3, 1998, 112 Stat. 3233, 3236; Pub. L. 111–203, title IX, §933(b), July 21, 2010, 124 Stat. 1883.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Civil Procedure, referred to in subsecs. (a)(1), (3)(A)(iii), (B)(iii)(I)(cc), (vi), (8),

(b)(3)(C)(i), and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–203 designated existing provisions as subpar. (A), inserted heading, substituted "Except as provided in subparagraph (B), in any" for "In any", and added subpar. (B).

1998—Subsec. (b)(3)(D). Pub. L. 105–353, §101(b)(2), added subpar. (D).

Subsecs. (f), (g). Pub. L. 105–353, §301(b)(13)(B), redesignated subsec. (g) as (f).

Subsec. (g)(2)(B)(i). Pub. L. 105–353, §301(b)(13)(A), substituted "subparagraph (A)" for "paragraph (1)".

1995—Subsec. (g). Pub. L. 104–67, §201(a), added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(b)(2) of Pub. L. 105–353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105–353, set out as a note under section 77p of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under securities laws commenced before and pending on Dec. 22, 1995, see section 202 of Pub. L. 104–67, set out as a note under section 77k of this title.

EFFECTIVE DATE

This section not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104–67, set out as a note under section 78j–1 of this title.

¹ So in original. Probably should be preceded by "if."

§78u–5. Application of safe harbor for forward-looking statements

(a) Applicability

This section shall apply only to a forward-looking statement made by—

- (1) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section 78m(a) of this title or section 78o(d) of this title;
- (2) a person acting on behalf of such issuer;
- (3) an outside reviewer retained by such issuer making a statement on behalf of such issuer; or
- (4) an underwriter, with respect to information provided by such issuer or information derived from information provided by such issuer.

(b) Exclusions

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, this section shall not apply to a forward-looking statement—

- (1) that is made with respect to the business or operations of the issuer, if the issuer—
 - (A) during the 3-year period preceding the date on which the statement was first made—
 - (i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of

section 78o(b)(4)(B) of this title; or

(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

(I) prohibits future violations of the antifraud provisions of the securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or

(III) determines that the issuer violated the antifraud provisions of the securities laws;

(B) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(C) issues penny stock;

(D) makes the forward-looking statement in connection with a rollup transaction; or

(E) makes the forward-looking statement in connection with a going private transaction; or

(2) that is—

(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

(B) contained in a registration statement of, or otherwise issued by, an investment company;

(C) made in connection with a tender offer;

(D) made in connection with an initial public offering;

(E) made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program; or

(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 78m(d) of this title.

(c) Safe harbor

(1) In general

Except as provided in subsection (b), in any private action arising under this chapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) the forward-looking statement is—

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity; 1 was—

(I) made by or with the approval of an executive officer of that entity; and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

(2) Oral forward-looking statements

In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 78m(a) of this title or section 78o(d) of this title, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—

(A) if the oral forward-looking statement is accompanied by a cautionary statement—

(i) that the particular oral statement is a forward-looking statement; and

(ii) that the actual results might differ materially from those projected in the

forward-looking statement; and

(B) if—

(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to materially differ from those in the forward-looking statement is contained in a readily available written document, or portion thereof;

(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and

(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

(3) Availability

Any document filed with the Commission or generally disseminated shall be deemed to be readily available for purposes of paragraph (2).

(4) Effect on other safe harbors

The exemption provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (g).

(d) Duty to update

Nothing in this section shall impose upon any person a duty to update a forward-looking statement.

(e) Dispositive motion

On any motion to dismiss based upon subsection (c)(1), the court shall consider any statement cited in the complaint and any cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

(f) Stay pending decision on motion

In any private action arising under this chapter, the court shall stay discovery (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) during the pendency of any motion by a defendant for summary judgment that is based on the grounds that—

(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(2) the exemption provided for in this section precludes a claim for relief.

(g) Exemption authority

In addition to the exemptions provided for in this section, the Commission may, by rule or regulation, provide exemptions from or under any provision of this chapter, including with respect to liability that is based on a statement or that is based on projections or other forward-looking information, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.

(h) Effect on other authority of Commission

Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.

(i) Definitions

For purposes of this section, the following definitions shall apply:

(1) Forward-looking statement

The term "forward-looking statement" means—

(A) a statement containing a projection of revenues, income (including income loss), earnings

(including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

(D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);

(E) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

(2) Investment company

The term "investment company" has the same meaning as in section 80a-3(a) of this title.

(3) Going private transaction

The term "going private transaction" has the meaning given that term under the rules or regulations of the Commission issued pursuant to section 78m(e) of this title.

(4) Person acting on behalf of an issuer

The term "person acting on behalf of an issuer" means any officer, director, or employee of such issuer.

(5) Other terms

The terms "blank check company", "rollup transaction", "partnership", "limited liability company", "executive officer of an entity" and "direct participation investment program", have the meanings given those terms by rule or regulation of the Commission.

(June 6, 1934, ch. 404, title I, §21E, as added Pub. L. 104-67, title I, §102(b), Dec. 22, 1995, 109 Stat. 753.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1), (f), and (g), was in the original "this title". See References in Text note set out under section 78a of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

This section not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as an Effective Date of 1995 Amendment note under section 771 of this title.

CONSTRUCTION

Nothing in section to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104-67, set out as a note under section 78j-1 of this title.

¹ *So in original. The semicolon probably should be a comma.*

§78u-6. Securities whistleblower incentives and protection

(a) Definitions

In this section the following definitions shall apply:

(1) Covered judicial or administrative action

The term "covered judicial or administrative action" means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding \$1,000,000.

(2) Fund

The term "Fund" means the Securities and Exchange Commission Investor Protection Fund.

(3) Original information

The term "original information" means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(4) Monetary sanctions

The term "monetary sanctions", when used with respect to any judicial or administrative action, means—

(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

(5) Related action

The term "related action", when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

(6) Whistleblower

The term "whistleblower" means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

(b) Awards

(1) In general

In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) Payment of awards

Any amount paid under paragraph (1) shall be paid from the Fund.

(c) Determination of amount of award; denial of award

(1) Determination of amount of award

(A) Discretion

The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

(B) Criteria

In determining the amount of an award made under subsection (b), the Commission—

(i) shall take into consideration—

(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

(III) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

(ii) shall not take into consideration the balance of the Fund.

(2) Denial of award

No award under subsection (b) shall be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

(i) an appropriate regulatory agency;

(ii) the Department of Justice;

(iii) a self-regulatory organization;

(iv) the Public Company Accounting Oversight Board; or

(v) a law enforcement organization;

(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of section 78j-1 of this title; or

(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

(d) Representation

(1) Permitted representation

Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) Required representation

(A) In general

Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

(B) Disclosure of identity

Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

(e) No contract necessary

No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

(f) Appeals

Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission. The court shall review the determination made by the Commission in accordance with section 706 of title 5.

(g) Investor Protection Fund

(1) Fund established

There is established in the Treasury of the United States a fund to be known as the "Securities and Exchange Commission Investor Protection Fund".

(2) Use of Fund

The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

(A) paying awards to whistleblowers as provided in subsection (b); and

(B) funding the activities of the Inspector General of the Commission under section 78d(i) of this title.

(3) Deposits and credits

(A) In general

There shall be deposited into or credited to the Fund an amount equal to—

(i) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds \$300,000,000;

(ii) any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds \$200,000,000; and

(iii) all income from investments made under paragraph (4).

(B) Additional amounts

If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in the covered judicial or administrative action on which the award is based.

(4) Investments

(A) Amounts in Fund may be invested

The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

(B) Eligible investments

Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with

maturities suitable to the needs of the Fund as determined by the Commission on the record.

(C) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

(5) Reports to Congress

Not later than October 30 of each fiscal year beginning after July 21, 2010, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

- (A) the whistleblower award program, established under this section, including—
 - (i) a description of the number of awards granted; and
 - (ii) the types of cases in which awards were granted during the preceding fiscal year;
- (B) the balance of the Fund at the beginning of the preceding fiscal year;
- (C) the amounts deposited into or credited to the Fund during the preceding fiscal year;
- (D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;
- (E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);
- (F) the balance of the Fund at the end of the preceding fiscal year; and
- (G) a complete set of audited financial statements, including—
 - (i) a balance sheet;
 - (ii) income statement; and
 - (iii) cash flow analysis.

(h) Protection of whistleblowers

(1) Prohibition against retaliation

(A) In general

No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

- (i) in providing information to the Commission in accordance with this section;
- (ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or
- (iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), this chapter, including section 78j–1(m) of this title, section 1513(e) of title 18, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

(B) Enforcement

(i) Cause of action

An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

(ii) Subpoenas

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

(iii) Statute of limitations

(I) In general

An action under this subsection may not be brought—

- (aa) more than 6 years after the date on which the violation of subparagraph (A)

occurred; or

(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

(II) Required action within 10 years

Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(C) Relief

Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

- (i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;
- (ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and
- (iii) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.

(2) Confidentiality

(A) In general

Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.

(B) Exempted statute

For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(C) Rule of construction

Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(D) Availability to government agencies

(i) In general

Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this chapter and to protect investors, be made available to—

- (I) the Attorney General of the United States;
- (II) an appropriate regulatory authority;
- (III) a self-regulatory organization;
- (IV) a State attorney general in connection with any criminal investigation;
- (V) any appropriate State regulatory authority;
- (VI) the Public Company Accounting Oversight Board;
- (VII) a foreign securities authority; and
- (VIII) a foreign law enforcement authority.

(ii) Confidentiality

(I) In general

Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain

such information as confidential in accordance with the requirements established under subparagraph (A).

(II) Foreign authorities

Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

(3) Rights retained

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

(i) Provision of false information

A whistleblower shall not be entitled to an award under this section if the whistleblower—

(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

(j) Rulemaking authority

The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(June 6, 1934, ch. 404, title I, §21F, as added Pub. L. 111–203, title IX, §922(a), July 21, 2010, 124 Stat. 1841.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Sarbanes-Oxley Act of 2002, referred to in subsec. (h)(1)(A)(iii), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

This chapter, referred to in subsec. (h)(1)(A)(iii), was in the original "the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)". This chapter, referred to in subsec. (h)(2)(D)(i), was in the original "this Act". See References in Text note set out under section 78a of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§78u–7. Implementation and transition provisions for whistleblower protection

(a) Implementing rules

The Commission shall issue final regulations implementing the provisions of section 78u–6 of this title, as added by this subtitle, not later than 270 days after July 21, 2010.

(b) Original information

Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 78u–6(a)(3) of this title, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, if the information is provided by the whistleblower after July 21, 2010.

(c) Awards

A whistleblower may receive an award pursuant to section 78u-6 of this title, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to July 21, 2010.

(d) Administration and enforcement

The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 78u-6 of this title (as add ¹ by section 922(a)).² Such office shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its activities, whistleblower complaints, and the response of the Commission to such complaints.

(Pub. L. 111-203, title IX, §924, July 21, 2010, 124 Stat. 1850.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a) to (c), means subtitle B (§§921-929Z) of title IX of Pub. L. 111-203.

Section 922(a), referred to in subsec. (d), means section 922(a) of Pub. L. 111-203.

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of "Commission" and "securities laws" as used in this section, see section 5301 of Title 12, Banks and Banking.

¹ *So in original. Probably should be "added".*

² *See References in Text note below.*

§78v. Hearings by Commission

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

(June 6, 1934, ch. 404, title I, §22, 48 Stat. 901.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78w. Rules, regulations, and orders; annual reports

(a) Power to make rules and regulations; considerations; public disclosure

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter for which they are responsible or for the execution of the functions vested in them by this chapter, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 78c(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission and the Secretary of the Treasury, in making rules and regulations pursuant to any provisions of this chapter, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission and the Secretary of the Treasury shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter. The Commission and the Secretary of the Treasury shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this chapter, the reasons for the Commission's or the Secretary's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this chapter.

(3) The Commission and the Secretary, in making rules and regulations pursuant to any provision of this chapter, considering any application for registration in accordance with section 78s(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 78s(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and the Secretary and all written communications between the Commission or the Secretary and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however,* That the Commission and the Secretary shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5.

(b) Annual report to Congress

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this chapter with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any such organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this chapter with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this chapter against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any

examination of any such organization, any material recommendation presented to any such organization for changes in its organization or rules, and any action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this chapter, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(D) the number of requests for exemptions from provisions of this chapter received, the number granted, and the basis upon which any such exemption was granted;

(E) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(F) a statement of the time elapsed between the filing of reports pursuant to section 78m(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(G) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets;

(H) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, including a copy of the report filed pursuant to subsection (d) of such section; and

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

(c) Procedure for adjudication

The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this chapter of adjudication (as defined in section 551 of title 5) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(d) Cease-and-desist procedures

Within 1 year after October 15, 1990, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 78u-3 of this title, section 77h-1 of this title, section 80a-9(f) of this title, and section 80b-3(k) of this title.

(June 6, 1934, ch. 404, title I, §23, 48 Stat. 901; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; May 27, 1936, ch. 462, §8, 49 Stat. 1379; Pub. L. 88-467, §10, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, §18, June 4, 1975, 89 Stat. 155; Pub. L. 99-571, title I, §102(j), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100-181, title III, §§324, 325, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 101-429, title II, §204, Oct. 15, 1990, 104 Stat. 940; Pub. L. 103-202, title I, §107, Dec. 17, 1993, 107 Stat. 2351; Pub. L. 109-351, title IV, §401(a)(3), Oct. 13, 2006, 120 Stat. 1973; Pub. L. 111-203, title III, §376(4), July 21, 2010, 124 Stat. 1569.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–203 struck out ", other than the Office of Thrift Supervision," before "shall each make".

2006—Subsec. (b)(1). Pub. L. 109–351 inserted "other than the Office of Thrift Supervision," before "shall each".

1993—Subsec. (b)(4)(C) to (K). Pub. L. 103–202, §107, redesignated subpars. (E) to (G) and (I) to (K) as (C) to (E) and (F) to (H), respectively, added a new subpar. (I), and struck out former subpars. (C), (D), and (H). Prior to amendment, subpars. (C), (D), and (H) read as follows:

"(C) beginning in 1975 and ending in 1980, information, data, and recommendations with respect to the development of a national system for the prompt and accurate clearance and settlement of securities transactions, including a summary of the regulatory activities, operational capabilities, financial resources, and plans of self-regulatory organizations and registered transfer agents with respect thereto;

"(D) beginning in 1975 and ending in 1980, a description of the steps taken, and an evaluation of the progress made, toward the establishment of a national market system, and recommendations for further legislation it considers advisable with respect to such system;

"(H) beginning in 1975 and ending in 1980, a description of the effect the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members for effecting transactions on a national securities exchange is having on the maintenance of fair and orderly markets and the development of a national market system for securities;"

1990—Subsec. (d). Pub. L. 101–429 added subsec. (d).

1987—Subsec. (a)(1). Pub. L. 100–181, §324(1), inserted "or" before "any self-regulatory organization" in last sentence.

Subsec. (a)(3). Pub. L. 100–181, §324(2), inserted "shall" after "section 78s(b) of this title,".

Subsec. (b)(4)(F). Pub. L. 100–181, §325, substituted "the" for "The".

1986—Subsec. (a)(2). Pub. L. 99–571, §102(j)(1), (2), inserted "and the Secretary of the Treasury" in three places and "or the Secretary's" in one place.

Subsec. (a)(3). Pub. L. 99–571, §102(j)(3), (4), inserted "and the Secretary" in three places and "or the Secretary" in one place.

1975—Subsec. (a). Pub. L. 94–29 designated existing provisions as par. (1), inserted references to other agencies enumerated in section 78c(a)(34) of this title, regulations appropriate to implement the provisions of this chapter for which the agencies are responsible, the classification of persons, transactions, statements, applications, and reports, the prescribing of greater, lesser, or different requirements for different classifications, and the non-liability of self-regulatory organization, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94–29 designated existing provisions as par. (1), substituted "The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title, shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter" for "The Commission and the Board of Governors of the Federal Reserve System, respectively, shall include in their annual reports to Congress such information, data, and recommendation for further legislation as they may deem advisable with regard to matters within their respective jurisdictions under this chapter. The Commission shall include in its annual reports to the Congress for the fiscal years ended on June 30 of 1965, 1966, and 1967 information, data, and recommendations specifically related to the operation of the amendments to this chapter made by the Securities Acts Amendments of 1964", and added pars. (2) to (4).

Subsec. (c). Pub. L. 94–29 added subsec. (c).

1964—Subsec. (b). Pub. L. 88–467 required the Commission in its annual reports to Congress for fiscal years ending June 30, 1965, 1966, and 1967, to furnish information, data, and recommendations specifically related to the operations of the amendments to the Securities Exchange Act of 1934 made by the Securities Act Amendments of 1964.

1936—Subsec. (a). Act May 27, 1936, inserted second sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–467 effective Aug. 20, 1964, see section 13 of Pub. L. 88–467, set out as a note under section 78c of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 2nd item on page 143, the 18th item on page 167, the 7th item on page 172, and 18th item on page 190 identify a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78x. Public availability of information

(a) "Records" defined

For purposes of section 552 of title 5 the term "records" includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise.

(b) Disclosure or personal use

It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment to such information.

(c) Confidential disclosures

The Commission may, in its discretion and upon a showing that such information is needed, provide all "records" (as defined in subsection (a)) and other information in its possession to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records or information provides such assurances of confidentiality as the Commission deems appropriate.

(d) Records obtained from foreign securities authorities

Except as provided in subsection (g), the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(e) Freedom of Information Act

For purposes of section 552(b)(8) of title 5 (commonly referred to as the Freedom of Information Act)—

- (1) the Commission is an agency responsible for the regulation or supervision of financial institutions; and
- (2) any entity for which the Commission is responsible for regulating, supervising, or examining under this chapter is a financial institution.

(f) Sharing privileged information with other authorities

(1) Privileged information provided by the Commission

The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

- (A) any agency (as defined in section 6 of title 18);
- (B) the Public Company Accounting Oversight Board;
- (C) any self-regulatory organization;
- (D) any foreign securities authority;
- (E) any foreign law enforcement authority; or
- (F) any State securities or law enforcement authority.

(2) Nondisclosure of privileged information provided to the Commission

The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

(3) Nonwaiver of privileged information provided to the Commission

(A) In general

Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or

permitting that information to be used by the Commission.

(B) Exception

The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

(4) Definitions

For purposes of this subsection—

(A) the term "privilege" includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

(B) the term "foreign law enforcement authority" means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

(C) the term "State securities or law enforcement authority" means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.

(g) Savings provision

Nothing in this section shall—

(1) alter the Commission's responsibilities under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as limited by section 78u(h) of this title, with respect to transfers of records covered by such statutes, or

(2) authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(June 6, 1934, ch. 404, title I, §24, 48 Stat. 901; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 94–29, §19, June 4, 1975, 89 Stat. 158; Pub. L. 101–550, title II, §202(a), Nov. 15, 1990, 104 Stat. 2715; Pub. L. 111–203, title IX, §§929I(a), 929K, July 21, 2010, 124 Stat. 1857, 1860; Pub. L. 111–257, §1(a), Oct. 5, 2010, 124 Stat. 2646.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e)(2), was in the original "this title". See References in Text note set out under section 78a of this title.

The Right to Financial Privacy Act, referred to in subsec. (g)(1), probably means the Right to Financial Privacy Act of 1978, title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203, §929K(1), substituted "subsection (g)" for "subsection (f)".
Pub. L. 111–203, §929I(a)(1), substituted "subsection (f)" for "subsection (e)".

Subsec. (e). Pub. L. 111–257 added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows:

"(1) IN GENERAL.—Except as provided in subsection (g), the Commission shall not be compelled to disclose records or information obtained pursuant to section 78q(b) of this title, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this chapter, including surveillance, risk assessments, or other regulatory and oversight activities.

"(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 78q of this title shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44."

Pub. L. 111–203, §929K(2), substituted "subsection (g)" for "subsection (f)" in par. (1).

Pub. L. 111–203, §929I(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 111–203, §929K(4), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 111–203, §929I(a)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 111–203, §929K(3), redesignated subsec. (f) as (g).

1990—Subsec. (b). Pub. L. 101–550, §202(a)(1), struck out at end "Nothing in this subsection shall authorize the Commission to withhold information from the Congress."

Subsecs. (c) to (e). Pub. L. 101–550, §202(a)(2), added subsecs. (c) to (e).

1975—Subsec. (a). Pub. L. 94–29 substituted "For purposes of section 552 of title 5, the term 'records' includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise" for "Nothing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission under this chapter".

Subsecs. (b), (c). Pub. L. 94–29 redesignated subsec. (c) as (b) and substituted "application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment for such information. Nothing in this subsection shall authorize the Commission to withhold information from Congress" for "application, report, or document filed with the Commission which is not made available to the public pursuant to subsection (b) of this section: Provided, That the Commission may make available to the Board of Governors of the Federal Reserve System any information requested by the Board for the purpose of enabling it to perform its duties under this chapter". Former subsec. (b), providing for written objection to public disclosure of information, was struck out.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Section 203(a) of act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78y. Court review of orders and rules

(a) Final Commission orders; persons aggrieved; petition; record; findings; affirmance, modification, enforcement, or setting aside of orders; remand to adduce additional evidence

(1) A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated by the Commission for that purpose. Thereupon the

Commission shall file in the court the record on which the order complained of is entered, as provided in section 2112 of title 28 and the Federal Rules of Appellate Procedure.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the record, to affirm or modify and enforce or to set aside the order in whole or in part.

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

(b) Commission rules; persons adversely affected; petition; record; affirmance, enforcement, or setting aside of rules; findings; transfer of proceedings

(1) A person adversely affected by a rule of the Commission promulgated pursuant to section 78f, 78i(h)(2), 78k, 78k-1, 78o(c)(5) or (6), 78o-3, 78q, 78q-1, or 78s of this title may obtain review of this rule in the United States Court of Appeals for the circuit in which he resides or has his principal place of business or for the District of Columbia Circuit, by filing in such court, within sixty days after the promulgation of the rule, a written petition requesting that the rule be set aside.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated for that purpose. Thereupon, the Commission shall file in the court the rule under review and any documents referred to therein, the Commission's notice of proposed rulemaking and any documents referred to therein, all written submissions and the transcript of any oral presentations in the rulemaking, factual information not included in the foregoing that was considered by the Commission in the promulgation of the rule or proffered by the Commission as pertinent to the rule, the report of any advisory committee received or considered by the Commission in the rulemaking, and any other materials prescribed by the court.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2) of this subsection, to affirm and enforce or to set aside the rule.

(4) The findings of the Commission as to the facts identified by the Commission as the basis, in whole or in part, of the rule, if supported by substantial evidence, are conclusive. The court shall affirm and enforce the rule unless the Commission's action in promulgating the rule is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.

(5) If proceedings have been instituted under this subsection in two or more courts of appeals with respect to the same rule, the Commission shall file the materials set forth in paragraph (2) of this subsection in that court in which a proceeding was first instituted. The other courts shall thereupon transfer all such proceedings to the court in which the materials have been filed. For the convenience of the parties in the interest of justice that court may thereafter transfer all the proceedings to any other court of appeals.

(c) Objections not urged before Commission; stay of orders and rules; transfer of enforcement or review proceedings

(1) No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so.

(2) The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to

preserve status or rights pending its review; but (notwithstanding section 705 of title 5) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b)(2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

(3) When the same order or rule is the subject of one or more petitions for review filed under this section and an action for enforcement filed in a district court of the United States under section 78u(d) or (e) of this title, that court in which the petition or the action is first filed has jurisdiction with respect to the order or rule to the exclusion of any other court, and thereupon all such proceedings shall be transferred to that court; but, for the convenience of the parties in the interest of justice, that court may thereafter transfer all the proceedings to any other court of appeals or district court of the United States, whether or not a petition for review or an action for enforcement was originally filed in the transferee court. The scope of review by a district court under section 78u(d) or (e) of this title is in all cases the same as by a court of appeals under this section.

(d) Other appropriate regulatory agencies

(1) For purposes of the preceding subsections of this section, the term "Commission" includes the agencies enumerated in section 78c(a)(34) of this title insofar as such agencies are acting pursuant to this chapter and the Secretary of the Treasury insofar as he is acting pursuant to section 78o-5 of this title.

(2) For purposes of subsection (a)(4) of this section and section 706 of title 5, an order of the Commission pursuant to section 78s(a) of this title denying registration to a clearing agency for which the Commission is not the appropriate regulatory agency or pursuant to section 78s(b) of this title disapproving a proposed rule change by such a clearing agency shall be deemed to be an order of the appropriate regulatory agency for such clearing agency insofar as such order was entered by reason of a determination by such appropriate regulatory agency pursuant to section 78s(a)(2)(C) or 78s(b)(4)(C) of this title that such registration or proposed rule change would be inconsistent with the safeguarding of securities or funds.

(June 6, 1934, ch. 404, title I, §25, 48 Stat. 901; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §10, Aug. 28, 1958, 72 Stat. 945; Pub. L. 94-29, §20, June 4, 1975, 89 Stat. 158; Pub. L. 99-571, title I, §102(k), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 101-432, §6(b), Oct. 16, 1990, 104 Stat. 975.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(1), was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Appellate Procedure, referred to in subsec. (a)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101-432 inserted "78i(h)(2)," after "section 78f,".

1986—Subsec. (d)(1). Pub. L. 99-571 inserted "and the Secretary of the Treasury insofar as he is acting pursuant to section 78o-5 of this title".

1975—Subsec. (a). Pub. L. 94-29 revised existing provisions into five numbered paragraphs.

Subsec. (b). Pub. L. 94-29 substituted provisions permitting persons adversely affected by any rule promulgated by the Commission pursuant to sections 78f, 78k, 78k-1, 78o(c)(5) or (6), 78o-3, 78q, 78q-1, or 78s of this title to obtain direct review in an appropriate Court of Appeals for provisions that commencement of proceedings under subsec. (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

Subsecs. (c), (d). Pub. L. 94-29 added subsecs. (c) and (d).

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", struck out "certify and" before "file in the court", struck out "a transcript of" after "file

in the court", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals for District of Columbia".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78z. Unlawful representations

No action or failure to act by the Commission or the Board of Governors of the Federal Reserve System, in the administration of this chapter shall be construed to mean that the particular authority has in any way passed upon the merits of, or given approval to, any security or any transaction or transactions therein, nor shall such action or failure to act with regard to any statement or report filed with or examined by such authority pursuant to this chapter or rules and regulations thereunder, be deemed a finding by such authority that such statement or report is true and accurate on its face or that it is not false or misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser or seller of a security any representation that any such action or failure to act by any such authority is to be so construed or has such effect.

(June 6, 1934, ch. 404, title I, §26, 48 Stat. 902; Pub. L. 105–353, title III, §301(b)(5), Nov. 3, 1998, 112 Stat. 3236.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1998—Pub. L. 105–353 substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78aa. Jurisdiction of offenses and suits

(a) In general

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this chapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

(b) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this chapter involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(June 6, 1934, ch. 404, title I, §27, 48 Stat. 902; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 100–181, title III, §326, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 111–203, title IX, §§929E(b), 929P(b)(2), July 21, 2010, 124 Stat. 1853, 1865.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

As originally enacted section contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". Pub. L. 100–181 struck out reference to the United States District Court for the

District of Columbia. Previously, such words had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which provides that "the District of Columbia constitutes one judicial district".

AMENDMENTS

2010—Pub. L. 111–203, §929P(b)(2), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 111–203, §929E(b), inserted "In any action or proceeding instituted by the Commission under this chapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence." after "defendant may be found."

1987—Pub. L. 100–181 struck out ", the United States District Court for the District of Columbia," after "district courts of the United States" and substituted "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)". See Codification note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78aa–1. Special provision relating to statute of limitations on private causes of action

(a) Effect on pending causes of action

The limitation period for any private civil action implied under section 78j(b) of this title that was commenced on or before June 19, 1991, shall be the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) Effect on dismissed causes of action

Any private civil action implied under section 78j(b) of this title that was commenced on or before June 19, 1991—

(1) which was dismissed as time barred subsequent to June 19, 1991, and

(2) which would have been timely filed under the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991,

shall be reinstated on motion by the plaintiff not later than 60 days after December 19, 1991.

(June 6, 1934, ch. 404, title I, §27A, as added Pub. L. 102–242, title IV, §476, Dec. 19, 1991, 105 Stat. 2387.)

EDITORIAL NOTES

CONSTITUTIONALITY

For information regarding the constitutionality of certain provisions of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

§78bb. Effect on existing law

(a) Limitation on judgments

(1) In general

No person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this chapter, nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations under this chapter.

(2) Rule of construction

Except as provided in subsection (f), the rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(3) State bucket shop laws

No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities, shall invalidate—

(A) any put, call, straddle, option, privilege, or other security subject to this chapter (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

(B) any security-based swap between eligible contract participants; or

(C) any security-based swap effected on a national securities exchange registered pursuant to section 78f(b) of this title.

(4) Other State provisions

No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.

(b) Modification of disciplinary procedures

Nothing in this chapter shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby.

(c) Continuing validity of disciplinary sanctions

The stay, setting aside, or modification pursuant to section 78s(e) of this title of any disciplinary sanction imposed by a self-regulatory organization on a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of

such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: *Provided*, That such action is not inconsistent with the provisions of this chapter or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

(d) Physical location of facilities of registered clearing agencies or registered transfer agents not to subject changes in beneficial or record ownership of securities to State or local taxes

No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change in beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

(e) Exchange, broker, and dealer commissions; brokerage and research services

(1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: *Provided, however*, That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this chapter or otherwise.

(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

(4) The provisions of this subsection shall not apply with regard to securities that are security

futures products.

(f) Limitations on remedies

(1) Class action limitations

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(2) Removal of covered class actions

Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

(3) Preservation of certain actions

(A) Actions under State law of State of incorporation

(i) Actions preserved

Notwithstanding paragraph (1) or (2), a covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(ii) Permissible actions

A covered class action is described in this clause if it involves—

(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(B) State actions

(i) In general

Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

(ii) State pension plan defined

For purposes of this subparagraph, the term "State pension plan" means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

(C) Actions under contractual agreements between issuers and indenture trustees

Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(D) Remand of removed actions

In an action that has been removed from a State court pursuant to paragraph (2), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

(4) Preservation of State jurisdiction

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

(5) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Affiliate of the issuer

The term "affiliate of the issuer" means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

(B) Covered class action

The term "covered class action" means—

(i) any single lawsuit in which—

(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members;

or

(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

(I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(C) Exception for derivative actions

Notwithstanding subparagraph (B), the term "covered class action" does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

(D) Counting of certain class members

For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

(E) Covered security

The term "covered security" means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933 [15 U.S.C. 77r(b)], at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] pursuant to rules issued by the Commission under section 4(2) ¹ of that Act [15 U.S.C. 77d(a)(2)].

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

(June 6, 1934, ch. 404, title I, §28, 48 Stat. 903; Pub. L. 94–29, §21, June 4, 1975, 89 Stat. 160; Pub. L. 97–303, §4, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title III, §§327–329, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 104–290, title I, §103(b), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105–353, title I, §101(b)(1), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 106–554, §1(a)(5) [title II, §§203(a)(2), 210], Dec. 21, 2000, 114 Stat. 2763, 2763A–422, 2763A–436; Pub. L. 111–203, title VII, §767, July 21, 2010, 124 Stat. 1799.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (f)(5)(E), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. Section 4(2) of the Act was redesignated section 4(a)(2) by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314, and is classified to section 77d(a)(2) of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to rights and remedies provided by this chapter and applicability of certain State securities laws.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §210], inserted "subject to this chapter" after "privilege, or other security", substituted "any such security" for "any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title", and inserted at end "No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability."

Subsec. (e)(4). Pub. L. 106–554, §1(a)(5) [title II, §203(a)(2)], added par. (4).

1998—Subsec. (a). Pub. L. 105–353, §101(b)(1)(A), substituted "Except as provided in subsection (f) of this section, the rights and remedies" for "The rights and remedies".

Subsec. (f). Pub. L. 105–353, §101(b)(1)(B), added subsec. (f).

1996—Subsec. (a). Pub. L. 104–290 substituted "Except as otherwise specifically provided in this chapter, nothing" for "Nothing".

1987—Subsec. (c). Pub. L. 100–181, §327, substituted "on" for "or" after "self-regulatory organization".

Subsec. (d). Pub. L. 100–181, §328, substituted "change in beneficial" for "change is beneficial".

Subsec. (e)(1). Pub. L. 100–181, §329, substituted "subsequent to the date of enactment of the Securities Acts Amendments of 1975" for "subsequent to the date of enactment of the Securities Acts Amendments in 1975", which for purposes of codification was translated as "subsequent to June 4, 1975," thus requiring no change in text.

1982—Subsec. (a). Pub. L. 97–303 inserted provision that no State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities, shall invalidate any put, call, straddle, option, privilege, or other security, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title.

1975—Subsec. (b). Pub. L. 94–29, §21(1), struck out provisions that nothing in this chapter be construed to modify existing law with regard to the binding effect on any member of an exchange of any disciplinary action taken by the authorities of an exchange and made the remaining provisions applicable to all members of and participants in all self-regulatory organizations as well as municipal securities professionals.

Subsecs. (c) to (e). Pub. L. 94–29, §21(2), added subsecs. (c) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60

days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105–353, set out as a note under section 77p of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [*See References in Text note below.*](#)

§78cc. Validity of contracts

(a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void.

(b) Contract provisions in violation of chapter

Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation: *Provided*, (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title, and (B) that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) or (2) of subsection (c) of section 78o of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation. The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.

(c) Validity of loans, extensions of credit, and creation of liens; actual knowledge of violation

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension

of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(June 6, 1934, ch. 404, title I, §29, 48 Stat. 903; June 25, 1938, ch. 677, §3, 52 Stat. 1076; Pub. L. 101-429, title V, §507, Oct. 15, 1990, 104 Stat. 956; Pub. L. 111-203, title IX, §§927, 929T, July 21, 2010, 124 Stat. 1852, 1867.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §§927, 929T, amended subsec. (a) identically, substituting "a self-regulatory organization," for "an exchange required thereby".

1990—Subsec. (b). Pub. L. 101-429 substituted in cl. (A) "paragraph (3)" for "paragraph (2) or (3)" and in cl. (B) "paragraph (1) or (2)" for "paragraph (1)", and inserted at end "The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection."

1938—Subsec. (b). Act June 25, 1938, inserted proviso.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

§78dd. Foreign securities exchanges

(a) Unlawful transactions on foreign securities exchanges

It shall be unlawful for any broker or dealer, directly or indirectly, to make use of the mails or of any means or instrumentality of interstate commerce for the purpose of effecting on an exchange not within or subject to the jurisdiction of the United States, any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place within or subject to the jurisdiction of the United States, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors or to prevent the evasion of this chapter.

(b) Business without the jurisdiction of the United States

The provisions of this chapter or of any rule or regulation thereunder shall not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States, unless he transacts such business in contravention of such rules and regulations as the Commission may

prescribe as necessary or appropriate to prevent the evasion of this chapter.

(c) Rule of construction

No provision of this chapter that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this chapter that was added by the Wall Street Transparency and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this chapter, as in effect prior to July 21, 2010.

(June 6, 1934, ch. 404, title I, §30, 48 Stat. 904; Pub. L. 111–203, title VII, §772(b), July 21, 2010, 124 Stat. 1802.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

The Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of this title and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§78dd–1. Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii)

inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (g) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (g) that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by Attorney General

Not later than one year after August 23, 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this

section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5 and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) Definitions

For purposes of this section:

(1)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

- (i) an organization that is designated by Executive order pursuant to section 288 of title 22; or
- (ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(2)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

- (i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
- (ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(3)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

- (i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- (ii) processing governmental papers, such as visas and work orders;
- (iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
- (iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
- (v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decisionmaking process to encourage a decision to award new business to or continue business with a particular party.

(g) Alternative jurisdiction

(1) It shall also be unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof and which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 1101 of title 8) or any corporation, partnership, association, joint-stock

company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

(June 6, 1934, ch. 404, title I, §30A, as added Pub. L. 95–213, title I, §103(a), Dec. 19, 1977, 91 Stat. 1495; amended Pub. L. 100–418, title V, §5003(a), Aug. 23, 1988, 102 Stat. 1415; Pub. L. 105–366, §2(a)–(c), Nov. 10, 1998, 112 Stat. 3302, 3303.)

EDITORIAL NOTES

AMENDMENTS

1998—Subsec. (a)(1)(A). Pub. L. 105–366, §2(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or".

Subsec. (a)(2)(A). Pub. L. 105–366, §2(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,".

Subsec. (a)(3)(A). Pub. L. 105–366, §2(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or".

Subsec. (b). Pub. L. 105–366, §2(c)(2), substituted "Subsections (a) and (g)" for "Subsection (a)".

Subsec. (c). Pub. L. 105–366, §2(c)(3), substituted "subsection (a) or (g)" for "subsection (a)".

Subsec. (f)(1). Pub. L. 105–366, §2(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality."

Subsec. (g). Pub. L. 105–366, §2(c)(1), added subsec. (g).

1988—Pub. L. 100–418 substituted "Prohibited foreign trade" for "Foreign corrupt" in section catchline and amended text generally, revising and restating provisions of subsec. (a) relating to prohibitions, adding subsecs. (b) to (e), and redesignating provisions of subsec. (b) relating to definitions as subsec. (f) and amending those provisions generally.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TREATMENT OF INTERNATIONAL ORGANIZATIONS PROVIDING COMMERCIAL COMMUNICATIONS SERVICES

Pub. L. 105–366, §5, Nov. 10, 1998, 112 Stat. 3309, provided that:

"(a) **DEFINITION.**—For purposes of this section:

"(1) **INTERNATIONAL ORGANIZATION PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.**—The term 'international organization providing commercial communications services' means—

"(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

"(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

"(2) **PRO-COMPETITIVE PRIVATIZATION.**—The term 'pro-competitive privatization' means a privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services.

"(b) **TREATMENT AS PUBLIC INTERNATIONAL ORGANIZATIONS.**—

"(1) **TREATMENT.**—An international organization providing commercial communications services

shall be treated as a public international organization for purposes of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2 [and 78dd-3]) until such time as the President certifies to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committees on Banking, Housing and Urban Affairs and Commerce, Science, and Transportation that such international organization providing commercial communications services has achieved a pro-competitive privatization.

"(2) LIMITATION ON EFFECT OF TREATMENT.—The requirement for a certification under paragraph (1), and any certification made under such paragraph, shall not be construed to affect the administration by the Federal Communications Commission of the Communications Act of 1934 [47 U.S.C. 151 et seq.] in authorizing the provision of services to, from, or within the United States over space segment of the international satellite organizations, or the privatized affiliates or successors thereof.

"(c) EXTENSION OF LEGAL PROCESS.—

"(1) IN GENERAL.—Except as required by international agreements to which the United States is a party, an international organization providing commercial communications services, its officials and employees, and its records shall not be accorded immunity from suit or legal process for any act or omission taken in connection with such organization's capacity as a provider, directly or indirectly, of commercial telecommunications services to, from, or within the United States.

"(2) NO EFFECT ON PERSONAL LIABILITY.—Paragraph (1) shall not affect any immunity from personal liability of any individual who is an official or employee of an international organization providing commercial communications services.

"(3) EFFECTIVE DATE.—This subsection shall take effect on May 1, 1999.

"(d) ELIMINATION OR LIMITATION OF EXCEPTIONS.—

"(1) ACTION REQUIRED.—The President shall, in a manner that is consistent with requirements in international agreements to which the United States is a party, expeditiously take all appropriate actions necessary to eliminate or to reduce substantially all privileges and immunities that are accorded to an international organization described in subparagraph (A) or (B) of subsection (a)(1), its officials, its employees, or its records, and that are not eliminated pursuant to subsection (c).

"(2) DESIGNATION OF AGREEMENTS.—The President shall designate which agreements constitute international agreements to which the United States is a party for purposes of this section.

"(e) PRESERVATION OF LAW ENFORCEMENT AND INTELLIGENCE FUNCTIONS.—Nothing in subsection (c) or (d) of this section shall affect any immunity from suit or legal process of an international organization providing commercial communications services, or the privatized affiliates or successors thereof, for acts or omissions—

"(1) under chapter 119, 121, 206, or 601 of title 18, United States Code, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 884), or Rule 104, 501, or 608 of the Federal Rules of Evidence [28 U.S.C. App.];

"(2) under similar State laws providing protection to service providers cooperating with law enforcement agencies pursuant to State electronic surveillance or evidence laws, rules, regulations, or procedures; or

"(3) pursuant to a court order.

"(f) RULES OF CONSTRUCTION.—

"(1) NEGOTIATIONS.—Nothing in this section shall affect the President's existing constitutional authority regarding the time, scope, and objectives of international negotiations.

"(2) PRIVATIZATION.—Nothing in this section shall be construed as legislative authorization for the privatization of INTELSAT or Inmarsat, nor to increase the President's authority with respect to negotiations concerning such privatization."

[Memorandum of President of the United States, Nov. 16, 1998, 63 F.R. 65997, delegated to Secretary of State functions and authorities vested in the President by section 5(d)(2) of Pub. L. 105-366, set out above.]

ENFORCEMENT AND MONITORING

Pub. L. 105-366, §6, Nov. 10, 1998, 112 Stat. 3311, provided that:

"(a) REPORTS REQUIRED.—Not later than July 1 of 1999 and each of the 5 succeeding years, the Secretary of Commerce shall submit to the House of Representatives and the Senate a report that contains the following information with respect to implementation of the Convention:

"(1) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

"(2) DOMESTIC LEGISLATION.—A description of domestic laws enacted by each party to the Convention that implement commitments under the Convention, and assessment of the compatibility of such laws with the Convention.

"(3) ENFORCEMENT.—As assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

"(A) an assessment of the enforcement of the domestic laws described in paragraph (2);

"(B) an assessment of the efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose; and

"(C) an assessment of the effectiveness, transparency, and viability of the monitoring process for the Convention, including its inclusion of input from the private sector and nongovernmental organizations.

"(4) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.—An explanation of the domestic laws enacted by each party to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

"(5) NEW SIGNATORIES.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

"(6) SUBSEQUENT EFFORTS.—An assessment of the status of efforts to strengthen the Convention by extending the prohibitions contained in the Convention to cover bribes to political parties, party officials, and candidates for political office.

"(7) ADVANTAGES.—Advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the organizations described in section 5(a) [set out as a note above], the reason for such advantages, and an assessment of progress toward fulfilling the policy described in that section.

"(8) BRIBERY AND TRANSPARENCY.—An assessment of anti-bribery programs and transparency with respect to each of the international organizations covered by this Act [enacting section 78dd–3 of this title, amending this section and sections 78dd–2 and 78ff of this title, and enacting provisions set out as notes under this section].

"(9) PRIVATE SECTOR REVIEW.—A description of the steps taken to ensure full involvement of United States private sector participants and representatives of nongovernmental organizations in the monitoring and implementation of the Convention.

"(10) ADDITIONAL INFORMATION.—In consultation with the private sector participants and representatives of nongovernmental organizations described in paragraph (9), a list of additional means for enlarging the scope of the Convention and otherwise increasing its effectiveness. Such additional means shall include, but not be limited to, improved recordkeeping provisions and the desirability of expanding the applicability of the Convention to additional individuals and organizations and the impact on United States business of section 30A of the Securities Exchange Act of 1934 [15 U.S.C. 78dd–1] and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 [15 U.S.C. 78dd–2, 78dd–3].

"(b) DEFINITION.—For purposes of this section, the term 'Convention' means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on November 21, 1997, and signed on December 17, 1997, by the United States and 32 other nations."

INTERNATIONAL AGREEMENTS CONCERNING ACTS PROHIBITED WITH RESPECT TO ISSUERS AND DOMESTIC CONCERNS; REPORT TO CONGRESS

Pub. L. 100–418, title V, §5003(d), Aug. 23, 1988, 102 Stat. 1424, provided that:

"(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section [amending sections 78dd–1, 78dd–2, and 78ff of this title]. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

"(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act [Aug. 23, 1988], the President shall submit to the Congress a report on—

"(i) the progress of the negotiations referred to in paragraph (1),[:]

"(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate any competitive disadvantage of United States businesses

that results when persons from other countries commit the acts described in paragraph (1); and

"(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

"(B) The President shall include in the report submitted under subparagraph (A)—

"(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

"(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

"(iii) an assessment of the current and future role of private initiatives in curtailing such acts."

[For delegation of functions of the President under section 5003(d)(1) of Pub. L. 100-418 to the Secretary of State, see section 3-101 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13259. DESIGNATION OF PUBLIC INTERNATIONAL ORGANIZATIONS FOR PURPOSES OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE FOREIGN CORRUPT PRACTICES ACT OF 1977

Ex. Ord. No. 13259, Mar. 19, 2002, 67 F.R. 13239, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 30A(f)(1)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1(f)(1)(B)(ii)) and sections 104(h)(2)(B)(ii) and 104A(f)(2)(B)(ii) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(h)(2)(B)(ii), 78dd-3(f)(2)(B)(ii)), I hereby designate as "public international organizations" for the purposes of application of section 30A of the Securities Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977:

(a) The European Union, including: the European Communities (the European Community, the European Coal & Steel Community, and the European Atomic Energy Community); institutions of the European Union, such as the European Commission, the Council of the European Union, the European Parliament, the European Court of Justice, the European Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Central Bank, and the European Investment Bank; and any departments, agencies, and instrumentalities thereof; and

(b) The European Police Office (Europol), including any departments, agencies, and instrumentalities thereof.

Designation in this Executive Order is intended solely to further the purposes of the statutes mentioned above and is not determinative of whether an entity is a public international organization for the purpose of other statutes or regulations.

GEORGE W. BUSH.

§78dd-2. Prohibited foreign trade practices by domestic concerns

(a) Prohibition

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (i) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (i) that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) or (i) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of

any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Guidelines by Attorney General

Not later than 6 months after August 23, 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it

was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5 and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) Penalties

(1)(A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be fined not more than \$2,000,000.

(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (i) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that is designated by Executive order pursuant to section 288 of title 22; or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

(i) Alternative jurisdiction

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 1101 of title 8) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

(Pub. L. 95-213, title I, §104, Dec. 19, 1977, 91 Stat. 1496; Pub. L. 100-418, title V, §5003(c), Aug. 23, 1988, 102 Stat. 1419; Pub. L. 103-322, title XXXIII, §330005, Sept. 13, 1994, 108 Stat. 2142; Pub. L. 105-366, §3, Nov. 10, 1998, 112 Stat. 3304.)

CODIFICATION

Section was enacted as part of Pub. L. 95-213, the Foreign Corrupt Practices Act of 1977, and not as part of act June 6, 1934, ch. 404, 48 Stat. 881, the Securities Exchange Act of 1934, which comprises this chapter.

AMENDMENTS

1998—Subsec. (a)(1)(A). Pub. L. 105-366, §3(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or".

Subsec. (a)(2)(A). Pub. L. 105-366, §3(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,".

Subsec. (a)(3)(A). Pub. L. 105-366, §3(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or".

Subsec. (b). Pub. L. 105-366, §3(d)(2), substituted "Subsections (a) and (i)" for "Subsection (a)".

Subsec. (c). Pub. L. 105-366, §3(d)(3), substituted "subsection (a) or (i)" for "subsection (a)" in introductory provisions.

Subsec. (d)(1). Pub. L. 105-366, §3(d)(4), substituted "subsection (a) or (i)" for "subsection (a)".

Subsec. (g)(1). Pub. L. 105-366, §3(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"(1)(A) Any domestic concern that violates subsection (a) of this section shall be fined not more than \$2,000,000.

"(B) Any domestic concern that violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General."

Subsec. (g)(2). Pub. L. 105-366, §3(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) of this section shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates subsection (a) of this section, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General."

Subsec. (h)(2). Pub. L. 105-366, §3(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality."

Subsec. (h)(4)(A). Pub. L. 105-366, §3(e), substituted "The" for "For purposes of paragraph (1), the" in introductory provisions.

Subsec. (i). Pub. L. 105-366, §3(d)(1), added subsec. (i).

1994—Subsec. (a)(3). Pub. L. 103-322 substituted "domestic concern" for "issuer" in closing provisions.

1988—Pub. L. 100-418 substituted "Prohibited foreign trade" for "Foreign corrupt" in section catchline and amended text generally, revising and restating as subsecs. (a) to (h) provisions of former subsecs. (a) to (d).

§78dd-3. Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 78dd-1 of this title or a domestic concern (as defined in section 78dd-2 of this title), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable

and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Penalties

(1)(A) Any juridical person that violates subsection (a) of this section shall be fined not more than \$2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

(1) The term "person", when referring to an offender, means any natural person other than a national of the United States (as defined in section 1101 of title 8 ¹ or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that is designated by Executive order pursuant to section 288 of title 22; or
(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is knowing, with respect to conduct, a circumstance or a result if—

- (i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
- (ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

- (i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- (ii) processing governmental papers, such as visas and work orders;
- (iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
- (iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
- (v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

- (A) a telephone or other interstate means of communication, or
- (B) any other interstate instrumentality.

(Pub. L. 95–213, title I, §104A, as added Pub. L. 105–366, §4, Nov. 10, 1998, 112 Stat. 3306.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of Pub. L. 95–213, the Foreign Corrupt Practices Act of 1977, and not as part of act June 6, 1934, ch. 404, 48 Stat. 881, the Securities Exchange Act of 1934, which comprises this chapter.

¹ So in original. A closing parenthesis probably should appear.

§78ee. Transaction fees

(a) Recovery of costs of annual appropriation

The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.

(b) Exchange-traded securities

Subject to subsection (j), each national securities exchange shall pay to the Commission a fee at a rate equal to \$15 ¹ per \$1,000,000 of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) transacted on such national securities exchange.

(c) Off-exchange trades of exchange registered and last-sale-reported securities

Subject to subsection (j), each national securities association shall pay to the Commission a fee at a rate equal to \$15 ¹ per \$1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.

(d) Assessments on security futures transactions

Each national securities exchange and national securities association shall pay to the Commission an assessment equal to \$0.009 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to \$0.0042 for each such transaction.

(e) Dates for payments

The fees and assessments required by subsections (b), (c), and (d) of this section shall be paid—

(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and

(2) on or before September 25, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.

(f) Exemptions

The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

(g) Publication

The Commission shall publish in the Federal Register notices of the fee and assessment rates applicable under this section for each fiscal year not later than 30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted, together with any estimates or projections on which such fees are based.

(h) Pro rata application

The rates per \$1,000,000 required by this section shall be applied pro rata to amounts and balances of less than \$1,000,000.

(i) Deposit of fees

(1) Offsetting collections

Fees collected pursuant to subsections (b), (c), and (d) for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in subsection (k), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(2) General revenues prohibited

No fees collected pursuant to subsections (b), (c), and (d) for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(j) Adjustments to fee rates

(1) Annual adjustment

Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.

(2) Mid-year adjustment

Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than March 1, adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees collected during such five-month period and assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by subsection (l).

(3) Review

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review.

(4) Effective date

(A) Annual adjustment

Subject to subsections (i)(1)(B) and (k), an adjusted rate prescribed under paragraph (1) shall take effect on the later of—

- (i) the first day of the fiscal year to which such rate applies; or
- (ii) 60 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted.

(B) Mid-year adjustment

An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.

(k) Lapse of appropriation

If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) at the rate in effect during the preceding fiscal year, until 60 days after the date such a regular appropriation is enacted.

(l) Baseline estimate of the aggregate dollar amount of sales

The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other

evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 907 of title 2.

(m) Transmittal of Commission budget requests

(1) Budget required

For fiscal year 2012, and each fiscal year thereafter, the Commission shall prepare and submit a budget to the President. Whenever the Commission submits a budget estimate or request to the President or the Office of Management and Budget, the Commission shall concurrently transmit copies of the estimate or request to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(2) Submission to Congress

The President shall submit each budget submitted under paragraph (1) to Congress, in unaltered form, together with the annual budget for the Administration submitted by the President.

(3) Contents

The Commission shall include in each budget submitted under paragraph (1)—

(A) an itemization of the amount of funds necessary to carry out the functions of the Commission.

(B) an amount to be designated as contingency funding to be used by the Commission to address unanticipated needs; and

(C) a designation of any activities of the Commission for which multi-year budget authority would be suitable.

(June 6, 1934, ch. 404, title I, §31, 48 Stat. 904; Mar. 17, 1944, ch. 101, 58 Stat. 117; Pub. L. 94–29, §22, June 4, 1975, 89 Stat. 162; Pub. L. 104–290, title IV, §405(a), Oct. 11, 1996, 110 Stat. 3442; Pub. L. 105–353, title III, §301(b)(14), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–554, §1(a)(5) [title II, §206(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–432; Pub. L. 107–123, §§2, 3, Jan. 16, 2002, 115 Stat. 2390; Pub. L. 111–203, title IX, §991(a)(1), (d)(1), July 21, 2010, 124 Stat. 1950, 1954.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §991(a)(1)(A), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals, and costs related to such supervision and regulation, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities."

Subsec. (e)(2). Pub. L. 111–203, §991(a)(1)(B), substituted "September 25" for "September 30".

Subsec. (g). Pub. L. 111–203, §991(a)(1)(C), substituted "30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted" for "April 30 of the fiscal year preceding the fiscal year to which such rate applies".

Subsec. (j). Pub. L. 111–203, §991(a)(1)(D), added subsec. (j) and struck out former subsec. (j) which related to recapture of projection windfalls for further rate reductions.

Subsec. (k). Pub. L. 111–203, §991(a)(1)(E), substituted "60 days" for "30 days".

Subsec. (l). Pub. L. 111–203, §991(a)(1)(F), substituted "Baseline estimate of the aggregate dollar amount of sales" for "Definitions" in heading and struck out introductory provisions "For purposes of this section:", par. (2) designation and heading "Baseline estimate of the aggregate dollar amount of sales", and par. (1) which provided table of target offsetting collection amounts for fiscal years 2002 through 2011.

Subsec. (m). Pub. L. 111-203, §991(d)(1), added subsec. (m).

2002—Subsec. (b). Pub. L. 107-123, §3(a)(1), substituted "Subject to subsection (j), each" for "Every" and struck out at end "Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury."

Pub. L. 107-123, §2(1)-(3), substituted "\$15 per \$1,000,000" for "1/300 of one percent" and "security futures products, and options on securities indexes (excluding a narrow-based security index)" for "and security futures products" and struck out ", except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to 1/800 of one percent of such aggregate dollar amount of sales" before period at end of first sentence.

Subsec. (c). Pub. L. 107-123, §3(a)(3), redesignated subsec. (d) as (c), substituted "Off-exchange trades of exchange registered and last-sale-reported securities" for "Off-exchange trades of last-sale-reported securities" in subsec. heading, struck out par. (1) heading, substituted "Subject to subsection (j), each national securities" for "Each national securities", inserted "registered on a national securities exchange or" after "narrow-based security index)", struck out ", excluding any sales for which a fee is paid under subsection (c) of this section" after "national securities association", and struck out pars. (2) and (3), which related to deposit of fees and lapse of appropriations.

Pub. L. 107-123, §3(a)(2), struck out heading and text of former subsec. (c). Text read as follows: "Each national securities association shall pay to the Commission a fee at a rate equal to 1/300 of one percent of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities registered on such an exchange (other than bonds, debentures, other evidences of indebtedness, and security futures products), except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to 1/800 of one percent of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury."

Pub. L. 107-123, §2(1),(2), (4), which directed that subsec. (d) be amended by substituting "\$15 per \$1,000,000" for "1/300 of one percent" and "security futures products, and options on securities indexes (excluding a narrow-based security index)" for "and security futures products", and striking out ", except that for fiscal year 2007, or any succeeding fiscal year, such rate shall be equal to 1/800 of one percent of such aggregate dollar amount of sale" before period at end of par. (1), was executed by making the amendment in subsec. (c), to reflect the probable intent of Congress and the amendment by Pub. L. 107-123, §3(a)(3), which redesignated subsec. (d) as (c). See above.

Subsec. (d). Pub. L. 107-123, §3(a)(4), (6), redesignated subsec. (e) as (d) and substituted "except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to \$0.0042 for each such transaction" for "except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to \$0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury". Former subsec. (d) redesignated (c).

Pub. L. 107-123, §2(5), which directed that subsec. (e) be amended by substituting "\$0.009" for "\$0.02", was executed by making the amendment in subsec. (d), to reflect the probable intent of Congress and the amendment by Pub. L. 107-123, §3(a)(4), (6) which redesignated subsec. (e) as (d). See above.

Subsec. (e). Pub. L. 107-123, §3(a)(5), (6), redesignated subsec. (f) as (e) and substituted "Dates for payments" for "Dates for payment of fees" in heading and "The fees and assessments required" for "The fees required" in introductory provisions. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 107-123, §3(a)(6), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 107-123, §3(a)(6), (b)(2), redesignated subsec. (h) as (g) and inserted before period at end "not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based". Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 107-123, §3(a)(6), redesignated subsec. (i), as enacted by Pub. L. 107-123, §2(6), as (h). See below. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107-123, §3(a)(7), added subsec. (i).

Pub. L. 107-123, §2(6), added subsec. (i).

Subsecs. (j) to (l). Pub. L. 107-123, §3(b)(1), added subsecs. (j) to (l).

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title II, §206(f)(1)], inserted "and assessments" after "fees".

Subsecs. (b), (c), (d)(1). Pub. L. 106-554, §1(a)(5) [title II, §206(f)(2)], substituted "other evidences of indebtedness, and security futures products" for "and other evidences of indebtedness".

Subsec. (e). Pub. L. 106-554, §1(a)(5) [title II, §206(f)(6)], added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §206(f)(5)], redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Pub. L. 106-554, §1(a)(5) [title II, §206(f)(3)], inserted "or assessment" after "fee".

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(5)], redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 106–554, §1(a)(5) [title II, §206(f)(4)], inserted "and assessment" after "fee".

Subsec. (h). Pub. L. 106–554, §1(a)(5) [title II, §206(f)(5)], redesignated subsec. (g) as (h).

1998—Subsec. (a). Pub. L. 105–353 substituted "this section" for "this subsection".

1996—Pub. L. 104–290 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: *Provided, however,* That no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system."

1975—Pub. L. 94–29 amended section generally, extending provisions requiring the payment of fees to include transactions in listed securities which occur in the over-the-counter market.

1944—Act Mar. 17, 1944, amended section generally, inserting provisions exempting from the payment of the fee securities designated for exemption by the Secretary of the Treasury.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 991(d)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title IX, §991(a)(2), July 21, 2010, 124 Stat. 1951, provided that: "The amendments made by this subsection [amending this section] shall take effect on the later of—

"(A) October 1, 2011; or

"(B) the date of enactment of an Act making a regular appropriation to the [Securities and Exchange] Commission for fiscal year 2012 [Div. C of Pub. L. 112–74, approved Dec. 23, 2011]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–123, §11, Jan. 16, 2002, 115 Stat. 2401, provided that:

"(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] shall take effect on October 1, 2001.

"(b) IMMEDIATE TRANSACTION FEE REDUCTIONS.—The amendments made by section 2 [amending this section] shall take effect on the later of—

"(1) the first day of fiscal year 2002; or

"(2) thirty days after the date on which a regular appropriation to the Commission for such fiscal year is enacted.

"(c) ADDITIONAL EXCEPTIONS.—The authorities provided by section 6(b)(9) of the Securities Act of 1933 [15 U.S.C. 77f(b)(9)] and sections 13(e)(9), 14(g)(9), and 31(k) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(e)(9), 78n(g)(9), and 78ee(k)], as so designated by this Act, shall not apply until October 1, 2002."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–290, title IV, §405(b), Oct. 11, 1996, 110 Stat. 3443, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions in securities that occur on or after October 1, 1997.

"(2) OFF-EXCHANGE TRADES OF LAST SALE REPORTED TRANSACTIONS.—The amendment made by subsection (a) [amending this section] shall apply with respect to transactions described in section

31(d)(1) of the Securities Exchange Act of 1934 [subsec. (d)(1) of this section] (as amended by subsection (a) of this section) that occur on or after September 1, 1997."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective Jan. 1, 1976, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

SECURITIES AND EXCHANGE COMMISSION OVERPAYMENT CREDIT

Pub. L. 115-174, title V, §505, May 24, 2018, 132 Stat. 1362, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'Commission' means the Securities and Exchange Commission;

"(2) the term 'national securities association' means an association that is registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3); and

"(3) the term 'national securities exchange' means an exchange that is registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

"(b) CREDIT FOR OVERPAYMENT OF FEES.—Notwithstanding section 31(j) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee(j)), and subject to subsection (c) of this section, if a national securities exchange or a national securities association has paid fees and assessments to the Commission in an amount that is more than the amount that the exchange or association was required to pay under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) and, not later than 10 years after the date of such payment, the exchange or association informs the Commission about the payment of such excess amount, the Commission shall offset future fees and assessments due by that exchange or association in an amount that is equal to the difference between the amount that the exchange or association paid and the amount that the exchange or association was required to pay under such section 31.

"(c) APPLICABILITY.—Subsection (b) shall apply only to fees and assessments that a national securities exchange or a national securities association was required to pay to the Commission before the date of enactment of this Act [May 24, 2018]."

BUDGET OF THE PRESIDENT

Pub. L. 111-203, title IX, §991(d)(2), July 21, 2010, 124 Stat. 1954, provided that: "For fiscal year 2012, and each fiscal year thereafter, the annual budget for the Administration submitted by the President to Congress shall reflect the amendments made by this section [amending this section and sections 77f, 78d, 78m, 78n, and 78kk of this title]."

STUDY OF THE EFFECT OF FEE REDUCTIONS

Pub. L. 107-123, §9, Jan. 16, 2002, 115 Stat. 2400, provided that:

"(a) STUDY.—The Office of Economic Analysis of the Securities and Exchange Commission (hereinafter referred to as the 'Office') shall conduct a study of the extent to which the benefits of reductions in fees effected as a result of this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] are passed on to investors.

"(b) FACTORS FOR CONSIDERATION.—In conducting the study under subsection (a), the Office shall—

"(1) consider the various elements of the securities industry directly and indirectly benefiting from the fee reductions, including purchasers and sellers of securities, members of national securities exchanges, issuers, broker-dealers, underwriters, participants in investment companies, retirement programs, and others;

"(2) consider the impact on different types of investors, such as individual equity holders, individual investment company shareholders, businesses, and other types of investors;

"(3) include in the interpretation of the term 'investor' shareholders of entities subject to the fee reductions; and

"(4) consider the economic benefits to investors flowing from the fee reductions to include such factors as market efficiency, expansion of investment opportunities, and enhanced liquidity and capital formation.

"(c) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act [Jan. 16, 2002], the Securities and Exchange Commission shall submit to the Congress the report prepared by the Office on the findings of the study conducted under subsection (a)."

FEES FROM NATIONAL SECURITIES ASSOCIATIONS FOR MEMBER TRANSACTIONS OTHER THAN ON NATIONAL SECURITIES EXCHANGES

Pub. L. 104-208, div. A, title I, §101(a) [title V], Sept. 30, 1996, 110 Stat. 3009, 3009-61, provided in part:

"That effective January 1, 1997, every national securities association shall pay to the Commission a fee at a rate of one-three-hundredth of one percentum of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee), and such increase shall be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals: *Provided further*, That the fee due from every national securities association shall be paid on or before September 30, 1997, with respect to transactions and sales occurring during the period beginning on January 1, 1997, and ending at the close of August 31, 1997".

ADJUSTMENT OF TRANSACTION FEE RATE

By order dated Jan. 26, 2023, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$8.00 per \$1,000,000, effective Feb. 27, 2023, see 88 F.R. 5051.

By order dated Apr. 8, 2022, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$22.90 per \$1,000,000, effective May 14, 2022, see 87 F.R. 21931.

By order dated Jan. 15, 2021, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$5.10 per \$1,000,000, effective Feb. 25, 2021, see 86 F.R. 6694.

By order dated Jan. 9, 2020, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$22.10 per \$1,000,000, effective Feb. 18, 2020, see 85 F.R. 2218.

By order dated Mar. 15, 2019, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$20.70 per \$1,000,000, effective Apr. 16, 2019, see 84 F.R. 9576.

By order dated Apr. 17, 2018, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$13.00 per \$1,000,000, effective May 22, 2018, see 83 F.R. 17577.

By order dated May 31, 2017, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$23.10 per \$1,000,000, effective July 4, 2017, see 82 F.R. 25895.

By order dated Jan. 7, 2016, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$21.80 per \$1,000,000, effective Feb. 16, 2016, see 81 F.R. 1458.

By order dated Jan. 15, 2015, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$18.40 per \$1,000,000, effective Feb. 14, 2015, see 80 F.R. 2978.

By order dated Feb. 12, 2014, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$22.10 per \$1,000,000, effective Mar. 18, 2014, see 79 F.R. 9504.

By order dated Apr. 25, 2013, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$17.40 per \$1,000,000, effective May 25, 2013, see 78 F.R. 25515.

By order dated Mar. 1, 2012, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$22.40 per \$1,000,000, effective Apr. 1, 2012, see 77 F.R. 13663.

By order dated Jan. 20, 2012, the Securities and Exchange Commission adjusted the fee rates applicable under subsecs. (b) and (c) of this section to \$18.00 per \$1,000,000, effective Feb. 21, 2012, see 77 F.R. 3818.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [See Adjustment of Transaction Fee Rate notes below.](#)

§78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd–1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly

makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding \$25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)(A) Any issuer that violates subsection (a) or (g) of section 78dd-1 of this title shall be fined not more than \$2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd-1 of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(2)(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd-1 of this title shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd-1 of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

(June 6, 1934, ch. 404, title I, §32, 48 Stat. 904; May 27, 1936, ch. 462, §9, 49 Stat. 1380; June 25, 1938, ch. 677, §4, 52 Stat. 1076; Pub. L. 88-467, §11, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, §§23, 27(b), June 4, 1975, 89 Stat. 162, 163; Pub. L. 95-213, title I, §103(b), Dec. 19, 1977, 91 Stat. 1496; Pub. L. 98-376, §3, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 100-418, title V, §5003(b), Aug. 23, 1988, 102 Stat. 1419; Pub. L. 100-704, §4, Nov. 19, 1988, 102 Stat. 4680; Pub. L. 105-366, §2(d), Nov. 10, 1998, 112 Stat. 3303; Pub. L. 107-204, title XI, §1106, July 30, 2002, 116 Stat. 810.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-204 substituted "\$5,000,000, or imprisoned not more than 20 years" for "\$1,000,000, or imprisoned not more than 10 years" and "\$25,000,000" for "\$2,500,000".

1998—Subsec. (c)(1). Pub. L. 105-366, §2(d)(1), (2), substituted "subsection (a) or (g) of section 78dd-1" for "section 78dd-1(a)" in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 105-366, §2(d)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) of this title shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 78dd-1(a) of this title, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 78dd-1(a) of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission."

1988—Subsec. (a). Pub. L. 100-704 substituted "\$1,000,000" for "\$100,000", "10 years" for "five years", "is a person other than a natural person" for "is an exchange", and "\$2,500,000" for "\$500,000".

Subsec. (c). Pub. L. 100-418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(1) Any issuer which violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$1,000,000.

"(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

"(3) Whenever an issuer is found to have violated section 78dd-1(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

"(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer."

1984—Subsec. (a). Pub. L. 98-376 substituted "\$100,000" for "\$10,000".

1977—Subsec. (a). Pub. L. 95-213, §103(b)(1), inserted "(other than section 78dd-1 of this title)" after "Any person who willfully violates any provision of this chapter".

Subsec. (c). Pub. L. 95-213, §103(b)(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 94-29, §§23(1), 27(b), inserted "or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof," and substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

Subsec. (c). Pub. L. 94-29, §23(2), struck out subsec. (c) which rendered this section inapplicable to violations of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title.

1964—Subsec. (b). Pub. L. 88-467 substituted "required to be filed under" for "pursuant to an undertaking contained in a registration statement as provided in" and inserted "or any rule or regulation thereunder" after "section 78o of this title."

1938—Subsec. (c). Act June 25, 1938, added subsec. (c).

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

Subsec. (b). Act May 27, 1936, added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note

under section 78c of this title.

§78gg. Separability

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 6, 1934, ch. 404, title I, §33, 48 Stat. 905.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act". See References in Text note set out under section 78a of this title.

§78hh. Effective date

This chapter shall become effective on July 1, 1934, except that sections 78f and 78l(b to e) of this title shall become effective on September 1, 1934; and sections 78e, 78g, 78h, 78i(a)(6), 78j, 78k, 78l(a), 78m, 78n, 78o, 78p, 78q, 78r, 78s, and 78dd of this title shall become effective on October 1, 1934.

(June 6, 1934, ch. 404, title I, §34, 48 Stat. 905.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "This Act". See References in Text note set out under section 78a of this title.

§78hh–1. Effective date of certain sections

This Act shall become effective on May 27, 1936; except that clause (2) of subsection (f) of section 78l of this title, and subsections (a) and (d) of section 78o of this title, shall become effective ninety days after May 27, 1936, and that clause (3) of subsection (f) of section 78l of this title shall become effective six months after May 27, 1936.

(May 27, 1936, ch. 462, §12, 49 Stat. 1380.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375, popularly known as the Unlisted Securities Trading Act, which enacted sections 78l–1, 78o–1, 78o–2, and 78hh–1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§78ii. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act June 6, 1934, ch. 404, title II, §210, 48 Stat. 908, transferred the powers, duties and functions of the Federal Trade Commission under subchapter I of chapter 2A of this title to the Securities and Exchange Commission. Pending proceedings before the Federal Trade Commission were continued before the Securities and Exchange Commission.

§78jj. Repealed. Pub. L. 100–181, title III, §330, Dec. 4, 1987, 101 Stat. 1259

Section, act June 6, 1934, ch. 404, title II, §211, 48 Stat. 909, provided for a study and report by Securities and Exchange Commission of reorganization proceedings. Study as basis for Trust Indenture Act of 1939, see section 77bbb of this title.

§78kk. Authorization of appropriations

In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

- (1) for fiscal year 2011, \$1,300,000,000;
- (2) for fiscal year 2012, \$1,500,000,000;
- (3) for fiscal year 2013, \$1,750,000,000;
- (4) for fiscal year 2014, \$2,000,000,000; and
- (5) for fiscal year 2015, \$2,250,000,000.

(June 6, 1934, ch. 404, title I, §35, as added Pub. L. 94–29, §24, June 4, 1975, 89 Stat. 162; amended Pub. L. 95–20, Apr. 13, 1977, 91 Stat. 47; Pub. L. 95–211, Dec. 19, 1977, 91 Stat. 1492; Pub. L. 95–425, §1, Oct. 6, 1978, 92 Stat. 962; Pub. L. 96–477, title IV, §401, Oct. 21, 1980, 94 Stat. 2291; Pub. L. 100–181, title I, §101, Dec. 4, 1987, 101 Stat. 1249; Pub. L. 100–704, §8, Nov. 19, 1988, 102 Stat. 4683; Pub. L. 101–550, title I, §102, Nov. 15, 1990, 104 Stat. 2713; Pub. L. 104–290, title IV, §403, Oct. 11, 1996, 110 Stat. 3441; Pub. L. 105–353, title II, §201, Nov. 3, 1998, 112 Stat. 3233; Pub. L. 107–204, title VI, §601, July 30, 2002, 116 Stat. 793; Pub. L. 111–203, title IX, §991(c), July 21, 2010, 124 Stat. 1953.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 94–29, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

AMENDMENTS

2010—Pub. L. 111–203 amended section generally. Prior to amendment, section related to appropriation for fiscal year 2003 and specified amounts to fund certain additional compensation, for mitigation activities after the Sept. 11, 2001, attacks, and to add additional oversight personnel and improve investigative and disciplinary efforts.

2002—Pub. L. 107–204 amended section generally, updating fiscal year from 1999 to 2003, striking out subsec. designations, and substituting provisions relating to funding of additional compensation, terrorist-related information technology, security enhancements, and recovery and mitigation activities, and an additional 200 qualified professionals to provide enhanced oversight for provisions relating to miscellaneous expenses such as meetings and official functions.

1998—Pub. L. 105–353 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission \$300,000,000 for fiscal year 1997, in addition to any other funds authorized to be appropriated to the Commission."

1996—Pub. L. 104–290 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

"(1) \$178,023,000 for the fiscal year ending September 30, 1990; and

"(2) \$212,609,000 for the fiscal year ending September 30, 1991."

1990—Pub. L. 101–550 amended section generally, substituting present provisions for former provisions which provided for fiscal years 1988 and 1989: in subsec. (a), for authorization of appropriations for the Commission; in subsec. (b), for amounts for the EDGAR system; and in subsec. (c), for amounts for reception and representation expenses and for membership in the International Organization of Securities Commissions.

1988—Subsec. (c). Pub. L. 100–704 added subsec. (c).

1987—Pub. L. 100–181 amended section generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$51,000,000 for the fiscal year ending June 30, 1976, \$56,500,000 for the fiscal year ending September 30, 1977, \$63,750,000 for the fiscal year ending September 30, 1978, \$69,000,000 for the fiscal year ending September 30, 1979, \$79,000,000 for the fiscal year ending September 30, 1980, \$85,500,000 for the fiscal year ending September 30, 1981, \$96,640,000 for the fiscal year ending September 30, 1982, and \$106,610,000 for the fiscal year ending September 30, 1983. For fiscal years succeeding fiscal year 1983, there may be appropriated such sums as the Congress may hereafter authorize by law."

1980—Pub. L. 96–477 authorized appropriations of \$85,500,000 for fiscal year ending Sept. 30, 1981, \$96,640,000 for fiscal year ending Sept. 30, 1982, and \$106,610,000 for fiscal year ending Sept. 30, 1983, and provided that for fiscal years succeeding 1983, there may be appropriated such sums as Congress may authorize by law.

1978—Pub. L. 95–425 inserted provision authorizing appropriations of not to exceed \$69,000,000, and \$79,000,000 for fiscal years ending Sept. 30, 1979 and 1980, respectively, and substituted "fiscal year 1980" for "fiscal year 1978".

1977—Pub. L. 95–211 authorized appropriations of not to exceed \$63,750,000 for fiscal year ending Sept. 30, 1978, and substituted "For the fiscal years succeeding fiscal year 1978" for "For fiscal years succeeding the 1977 fiscal year" in provisions relating to appropriations for succeeding fiscal years.

Pub. L. 95–20 substituted "\$56,500,000" for "\$55,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as a note under section 78o of this title.

EFFECTIVE DATE

Section effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§78ll. Requirements for the EDGAR system

The Commission, by rule or regulation—

(1) shall provide that any information in the EDGAR system that is required to be disseminated by the contractor—

(A) may be sold or disseminated by the contractor only pursuant to a uniform schedule of fees prescribed by the Commission;

(B) may be obtained by a purchaser by direct interconnection with the EDGAR system;

(C) shall be equally available on equal terms to all persons; and

(D) may be used, resold, or redisseminated by any person who has lawfully obtained such information without restriction and without payment of additional fees or royalties; and

(2) shall require that persons, or classes of persons, required to make filings with the Commission submit such filings in a form and manner suitable for entry into the EDGAR system

and shall specify the date that such requirement is effective with respect to that person or class; except that the Commission may exempt persons or classes of persons, or filings or classes of filings, from such rules or regulations in order to prevent hardships or to avoid imposing unreasonable burdens or as otherwise may be necessary or appropriate.

(June 6, 1934, ch. 404, title I, §35A, as added Pub. L. 100–181, title I, §102, Dec. 4, 1987, 101 Stat. 1249; amended Pub. L. 105–353, title II, §202, Nov. 3, 1998, 112 Stat. 3234.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–181, which directed amendment of the Securities Exchange Act of 1934 by adding this section after section 35 of the Act, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress. See Codification note set out under section 78kk of this title.

AMENDMENTS

1998—Subsecs. (a) to (c). Pub. L. 105–353, §202(1), struck out subsecs. (a) to (c) which: in subsec. (a) required certifications and reports as prerequisite to obligation or expenditure of funds for establishment or operation of EDGAR system, and provided that former section 78kk(b) amounts were to be exclusive source of funds for systems procurement and operation; in subsec. (b) required report on status of EDGAR development, implementation, and progress to certain Congressional committees at six-month intervals; and in subsec. (c) required certification to Congressional committees of total costs, cost/benefit analysis, assurances of compliance, capabilities of system, competence of personnel, and review of test group filings prior to entering into contract for EDGAR system.

Subsec. (d). Pub. L. 105–353, §202(2), struck out "(d)" before "The Commission" in introductory provisions, in par. (2) substituted period for "; and" at end, and struck out par. (3) which read as follows: "shall require all persons who make any filing with the Commission, in addition to complying with such other rules concerning the form and manner of filing as the Commission may prescribe, to submit such filings in written or printed form—

"(A) for a period of at least one year after the effective date specified for such person or class under paragraph (2); or

"(B) for a shorter period if the Commission determines that the EDGAR system (i) is reliable, (ii) provides a suitable alternative to such written and printed filings, and (iii) assures that the provision of information through the EDGAR system is as effective and efficient for filers, users, and disseminators as provision of such information in written or printed form."

Subsec. (e). Pub. L. 105–353, §202(1), struck out subsec. (e) which read as follows: "For the purposes of carrying out its responsibilities under subsection (d)(3) of this section, the Commission shall consult with representatives of persons filing, disseminating, and using information contained in filings with the Commission."

§78mm. General exemptive authority

(a) Authority

(1) In general

Except as provided in subsection (b), but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this chapter or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(2) Procedures

The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to

entertain any application for an order of exemption under this section.

(b) Limitation

The Commission may not, under this section, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from section 78o-5 of this title or the rules or regulations issued thereunder or (for purposes of section 78o-5 of this title and the rules and regulations issued thereunder) from any definition in paragraph (42), (43), (44), or (45) of section 78c(a) of this title.

(c) Derivatives

Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs (65), (66), (68), (69), (70), (71), (72), (73), (74), (75), (76), and (79) of section 78c(a) of this title, and sections 78j-2(a), 78j-2(b), 78j-2(c), 78m-1, 78o-10, 78q-1(g), 78q-1(h), 78q-1(i), 78q-1(j), 78q-1(k), and 78q-1(l) of this title; provided that the Commission shall have exemptive authority under this chapter with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 6(c) of title 7.

(June 6, 1934, ch. 404, title I, §36, as added Pub. L. 104-290, title I, §105(b), Oct. 11, 1996, 110 Stat. 3424; amended Pub. L. 111-203, title VII, §772(a), July 21, 2010, 124 Stat. 1801.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (c), was in the original "this title". See References in Text note set out under section 78a of this title.

The Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c), is title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of this title and enacted and amended numerous other sections and notes in the Code. Subtitle B of the Act enacted subchapter II (§8341 et seq.) of chapter 109 and sections 78c-3 to 78c-5, 78j-2, 78m-1, and 78o-10 of this title, amended sections 77b, 77b-1, 77e, 77q, 78c, 78c-1, 78f, 78i, 78j, 78m, 78o, 78p, 78q-1, 78t, 78u-1, 78u-2, 78bb, 78dd, 78mm, 80a-2, and 80b-2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-203 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

§78nn. Tennessee Valley Authority

(a) In general

Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10-K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall file with the Commission, in accordance with such rules and regulations as the Commission has prescribed or may prescribe, such periodic, current, and supplementary

information, documents, and reports as would be required pursuant to section 78m of this title if the Tennessee Valley Authority were an issuer of a security registered pursuant to section 78l of this title. Notwithstanding the preceding sentence, the Tennessee Valley Authority shall not be required to register any securities under this chapter, and shall not be deemed to have registered any securities under this chapter.

(b) Limited treatment as issuer

Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10-K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall be deemed to be an issuer for purposes of section 78j-1 of this title, other than for subsection (m)(1) or (m)(3) of section 78j-1 of this title. The Tennessee Valley Authority shall not be required by this subsection to comply with the rules issued by any national securities exchange or national securities association in response to rules issued by the Commission pursuant to section 78j-1(m)(1) of this title.

(c) No effect on TVA authority

Nothing in this section shall be construed to diminish, impair, or otherwise affect the authority of the Board of Directors of the Tennessee Valley Authority to carry out its statutory functions under the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831 et seq.].

(June 6, 1934, ch. 404, title I, §37, as added Pub. L. 108-447, div. H, title V, §520(2), Dec. 8, 2004, 118 Stat. 3267.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title and Codification note below.

The Tennessee Valley Authority Act of 1933, referred to in subsec. (c), is act May 18, 1933, ch. 32, 48 Stat. 58, which is classified generally to chapter 12A (§831 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 831 of Title 16 and Tables.

CODIFICATION

Pub. L. 108-447, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

§78oo. Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Home Loan Banks

(a) Federal National Mortgage Association and Federal Home Loan Mortgage Corporation

No class of equity securities of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall be treated as an exempted security for purposes of section 78l, 78m, 78n, or 78p of this title.

(b) Federal Home Loan Banks

(1) Registration

Each Federal Home Loan Bank shall register a class of its common stock under section 78l(g) of this title, not later than 120 days after July 30, 2008, and shall thereafter maintain such registration and be treated for purposes of this chapter as an "issuer", the securities of which are required to be registered under section 78l of this title, regardless of the number of members holding such stock at any given time.

(2) Standards relating to audit committees

Each Federal Home Loan Bank shall comply with the rules issued by the Commission under

section 78j-1(m) of this title.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Federal Home Loan Bank; member

The terms "Federal Home Loan Bank" and "member", have the same meanings as in section 1422 of title 12.

(2) Federal National Mortgage Association

The term "Federal National Mortgage Association" means the corporation created by the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.].

(3) Federal Home Loan Mortgage Corporation

The term "Federal Home Loan Mortgage Corporation" means the corporation created by the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(June 6, 1934, ch. 404, title I, §38, as added Pub. L. 110-289, div. A, title I, §1112, July 30, 2008, 122 Stat. 2677.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this title". See References in Text note set out under section 78a of this title and Codification note below.

The Federal National Mortgage Association Charter Act, referred to in subsec. (c)(2), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of Title 12 and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (c)(3), is title III of Pub. L. 91-351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of Title 12 and Tables.

CODIFICATION

Pub. L. 110-289, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

§78pp. Investor Advisory Committee

(a) Establishment and purpose

(1) Establishment

There is established within the Commission the Investor Advisory Committee (referred to in this section as the "Committee").

(2) Purpose

The Committee shall—

(A) advise and consult with the Commission on—

- (i) regulatory priorities of the Commission;
- (ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;
- (iii) initiatives to protect investor interest; and
- (iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

(b) Membership

(1) In general

The members of the Committee shall be—

- (A) the Investor Advocate;
- (B) a representative of State securities commissions;
- (C) a representative of the interests of senior citizens; and
- (D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—
 - (i) represent the interests of individual equity and debt investors, including investors in mutual funds;
 - (ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;
 - (iii) are knowledgeable about investment issues and decisions; and
 - (iv) have reputations of integrity.

(2) Term

Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

(3) Members not Commission employees

Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

(c) Chairman; vice chairman; secretary; assistant secretary

(1) In general

The members of the Committee shall elect, from among the members of the Committee—

- (A) a chairman, who may not be employed by an issuer;
- (B) a vice chairman, who may not be employed by an issuer;
- (C) a secretary; and
- (D) an assistant secretary.

(2) Term

Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

(d) Meetings

(1) Frequency of meetings

The Committee shall meet—

- (A) not less frequently than twice annually, at the call of the chairman of the Committee; and
- (B) from time to time, at the call of the Commission.

(2) Notice

The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

(e) Compensation and travel expenses

Each member of the Committee who is not a full-time employee of the United States shall—

- (1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5 for each day during which the member is engaged in the actual performance of the duties of the Committee; and
- (2) while away from the home or regular place of business of the member in the performance of

services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) ¹ of title 5.

(f) Staff

The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

(g) Review by Commission

The Commission shall—

- (1) review the findings and recommendations of the Committee; and
- (2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—
 - (A) assessing the finding or recommendation of the Committee; and
 - (B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

(h) Committee findings

Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

(i) Chapter 10 of title 5

Chapter 10 of title 5 shall not apply with respect to the Committee and its activities.

(j) Authorization of appropriations

There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.

(June 6, 1934, ch. 404, title I, §39, as added Pub. L. 111–203, title IX, §911, July 21, 2010, 124 Stat. 1822; amended Pub. L. 117–286, §4(a)(64), Dec. 27, 2022, 136 Stat. 4312.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (i). Pub. L. 117–286 substituted "Chapter 10 of title 5" for "Federal Advisory Committee Act" in heading and "Chapter 10 of title 5" for "The Federal Advisory Committee Act (5 U.S.C. App.)" in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

¹ *So in original. Section 5703 of Title 5 does not contain a subsec. (b).*

§78qq. Small Business Capital Formation Advisory Committee

(a) Establishment and purpose

(1) Establishment

There is established within the Commission the Small Business Capital Formation Advisory Committee (hereafter in this section referred to as the "Committee").

(2) Functions

(A) In general

The Committee shall provide the Commission with advice on the Commission's rules, regulations, and policies with regard to the Commission's mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as such rules, regulations, and policies relate to—

- (i) capital raising by emerging, privately held small businesses ("emerging companies") and publicly traded companies with less than \$250,000,000 in public market capitalization ("smaller public companies") through securities offerings, including private and limited offerings and initial and other public offerings;
- (ii) trading in the securities of emerging companies and smaller public companies; and
- (iii) public reporting and corporate governance requirements of emerging companies and smaller public companies.

(B) Limitation

The Committee shall not provide any advice with respect to any policies, practices, actions, or decisions concerning the Commission's enforcement program.

(b) Membership

(1) In general

The members of the Committee shall be—

- (A) the Advocate for Small Business Capital Formation;
- (B) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals—
 - (i) who represent—
 - (I) emerging companies engaging in private and limited securities offerings or considering initial public offerings ("IPO") (including the companies' officers and directors);
 - (II) the professional advisors of such companies (including attorneys, accountants, investment bankers, and financial advisors); and
 - (III) the investors in such companies (including angel investors, venture capital funds, and family offices);
 - (ii) who are officers or directors of minority-owned small businesses or women-owned small businesses;
 - (iii) who represent—
 - (I) smaller public companies (including the companies' officers and directors);
 - (II) the professional advisors of such companies (including attorneys, auditors, underwriters, and financial advisors); and
 - (III) the pre-IPO and post-IPO investors in such companies (both institutional, such as venture capital funds, and individual, such as angel investors); and
 - (iv) who represent participants in the marketplace for the securities of emerging companies and smaller public companies, such as securities exchanges, alternative trading systems, analysts, information processors, and transfer agents; and
- (C) three non-voting members—
 - (i) one of whom shall be appointed by the Investor Advocate;
 - (ii) one of whom shall be appointed by the North American Securities Administrators Association; and
 - (iii) one of whom shall be appointed by the Administrator of the Small Business Administration.

(2) Term

Each member of the Committee appointed under subparagraph (B), (C)(ii), or (C)(iii) of

paragraph (1) shall serve for a term of 4 years.

(3) Members not Commission employees

Members appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall not be treated as employees or agents of the Commission solely because of membership on the Committee.

(c) Chairman; vice chairman; secretary; assistant secretary

(1) In general

The members of the Committee shall elect, from among the members of the Committee—

- (A) a chairman;
- (B) a vice chairman;
- (C) a secretary; and
- (D) an assistant secretary.

(2) Term

Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

(d) Meetings

(1) Frequency of meetings

The Committee shall meet—

- (A) not less frequently than four times annually, at the call of the chairman of the Committee; and
- (B) from time to time, at the call of the Commission.

(2) Notice

The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

(e) Compensation and travel expenses

Each member of the Committee who is not a full-time employee of the United States shall—

- (1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5 for each day during which the member is engaged in the actual performance of the duties of the Committee; and
- (2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(f) Staff

The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

(g) Review by Commission

The Commission shall—

- (1) review the findings and recommendations of the Committee; and
- (2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—
 - (A) assessing the finding or recommendation of the Committee; and
 - (B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

(h) Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) ¹ shall not apply with respect to the

Committee and its activities.

(June 6, 1934, ch. 404, title I, §40, as added Pub. L. 114–284, §2(b), Dec. 16, 2016, 130 Stat. 1450.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§1001 et seq.) of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

¹ [*See References in Text note below.*](#)

§78rr. Data standards for security-based swap reporting

(a) Requirement

The Commission shall, by rule, adopt data standards for all reports related to security-based swaps that are required under this chapter.

(b) Consistency

The data standards required under subsection (a) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(June 6, 1934, ch. 404, title I, §41, as added Pub. L. 117–263, div. E, title LVIII, §5821(h), Dec. 23, 2022, 136 Stat. 3427.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act". See References in Text note set out under section 78a of this title.

CODIFICATION

Pub. L. 117–263, which directed amendment of the Securities Exchange Act of 1934 by adding this section at the end, is reflected in the source credit above as adding this section to title I of the Securities Exchange Act of 1934, to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Enactment of section not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

CHAPTER 2B–1—SECURITIES INVESTOR PROTECTION

Sec.

78aaa. Short title.

78bbb. Application of Securities Exchange Act of 1934.

78ccc. Securities Investor Protection Corporation.

78ddd. SIPC Fund.

78eee.	Protection of customers.
78fff.	General provisions of a liquidation proceeding.
78fff-1.	Powers and duties of a trustee.
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78iii.	Functions of self-regulatory organizations.
78jjj.	Prohibited acts.
78kkk.	Miscellaneous provisions.
78lll.	Definitions.

§78aaa. Short title

This chapter may be cited as the "Securities Investor Protection Act of 1970".
(Pub. L. 91-598, §1(a), Dec. 30, 1970, 84 Stat. 1636.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "This Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-283, §1, May 21, 1978, 92 Stat. 249, provided that: "This Act [enacting sections 78fff-1 to 78fff-4 of this title, amending sections 77c, 78c, 78k, and 78ccc to 78lll of this title and enacting provisions set out as a note under section 78k of this title] may be cited as the 'Securities Investor Protection Act Amendments of 1978'."

§78bbb. Application of Securities Exchange Act of 1934

Except as otherwise provided in this chapter, the provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] (hereinafter referred to as the "1934 Act") apply as if this chapter constituted an amendment to, and was included as a section of, such Act.

(Pub. L. 91-598, §2, Dec. 30, 1970, 84 Stat. 1637.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

§78ccc. Securities Investor Protection Corporation

(a) Creation and membership

(1) Creation

There is hereby established a body corporate to be known as the "Securities Investor Protection Corporation" (hereafter in this chapter referred to as "SIPC"). SIPC shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. SIPC shall—

(A) not be an agency or establishment of the United States Government; and

(B) except as otherwise provided in this chapter, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act.

(2) Membership

(A) Members of SIPC

SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 78o(b) of this title, other than—

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions;

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and

(iii) persons who are registered as a broker or dealer pursuant to section 78o(b)(11)(A) of this title.

(B) Commission review

SIPC shall file with the Commission a copy of any determination made pursuant to subparagraph (A)(i). Within thirty days after the date of such filing, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall, consistent with the public interest and the purposes of this chapter, affirm, reverse, or amend any such determination of SIPC.

(C) Additional members

SIPC shall provide by rule that persons excluded from membership in SIPC under subparagraph (A)(i) may become members of SIPC under such conditions and upon such terms as SIPC shall require by rule, taking into account such matters as the availability of assets and the ability to conduct a liquidation if necessary.

(D) Disclosure

Any broker or dealer excluded from membership in SIPC under subparagraph (A)(i) shall, as required by the Commission by rule, make disclosures of its exclusion and other relevant information to the customers of such broker or dealer who are living in the United States or its territories and possessions.

(b) Powers

In addition to the powers granted to SIPC elsewhere in this chapter, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any State, Federal, or other court;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by its Board of Directors, such bylaws as may be necessary or appropriate to carry out the purposes of this chapter, including bylaws relating to—

(A) the conduct of its business; and

(B) the indemnity of its directors, officers, and employees (including any such person acting as trustee or otherwise in connection with a liquidation proceeding) for liabilities and expenses

actually and reasonably incurred by any such person in connection with the defense or settlement of an action or suit if such person acted in good faith and in a manner reasonably believed to be consistent with the purposes of this chapter.

(4) to adopt, amend, and repeal, by its Board of Directors, such rules as may be necessary or appropriate to carry out the purposes of this chapter, including rules relating to—

(A) the definition of terms used in this chapter, other than those terms for which a definition is provided in section 78III of this title;

(B) the procedures for the liquidation of members and direct payment procedures, including the transfer of customer accounts, the distribution of customer property, and the advance and payment of SIPC funds; and

(C) the exercise of all other rights and powers granted to it by this chapter;

(5) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(6) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(7) subject to the provisions of subsection (c), to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter; and

(9) by bylaw, to establish its fiscal year.

(c) Board of Directors

(1) Functions

SIPC shall have a Board of Directors which, subject to the provisions of this chapter, shall determine the policies which shall govern the operations of SIPC.

(2) Number and appointment

The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group, and who have not had any such association during the two years preceding appointment.

(3) Chairman and Vice Chairman

The President shall designate a Chairman and Vice Chairman from among those directors

appointed under paragraph (2)(C)(ii) of this subsection.

(4) Terms

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)—

- (i) two shall hold office for a term expiring on December 31, 1971,
- (ii) two shall hold office for a term expiring on December 31, 1972, and
- (iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) Compensation

All matters relating to compensation of directors shall be as provided in the bylaws of SIPC.

(d) Meetings of Board

The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) Bylaws and rules

(1) Proposed bylaw changes

The Board of Directors of SIPC shall file with the Commission a copy of any proposed bylaw or any proposed amendment to or repeal of any bylaw of SIPC (hereinafter in this paragraph collectively referred to as a "proposed bylaw change"), accompanied by a concise general statement of the basis and purpose of such proposed bylaw change. Each such proposed bylaw change shall take effect thirty days after the date of the filing of a copy thereof with the Commission, or upon such later date as SIPC may designate or such earlier date as the Commission may determine, unless—

(A) the Commission, by notice to SIPC setting forth the reasons therefor, disapproves such proposed bylaw change as being contrary to the public interest or contrary to the purposes of this chapter; or

(B) the Commission finds that such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures set forth in paragraph (2) be followed with respect to such proposed bylaw change, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(2) Proposed rule changes

(A) Filing of proposed rule changes

The Board of Directors of SIPC shall file with the Commission, in accordance with such rules as the Commission may prescribe, a copy of any proposed rule or any proposed amendment to or repeal of any rule of SIPC (hereinafter in this subsection collectively referred to as a "proposed rule change"), accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof, together with the terms of substance of such proposed rule change or a description of the subjects and issues involved. The Commission shall give

interested persons an opportunity to submit written data, views, and arguments with respect to such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this paragraph.

(B) Action by the Commission

Within thirty-five days after the date of publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which SIPC consents, the Commission shall—

- (i) by order approve such proposed rule change; or
- (ii) institute proceedings to determine whether such proposed rule change should be disapproved.

(C) Proceedings

Proceedings instituted with respect to a proposed rule change pursuant to subparagraph (B)(ii) shall include notice of the grounds for disapproval under consideration and opportunity for hearing, and shall be concluded within one hundred eighty days after the date of publication of notice of the filing of such proposed rule change. At the conclusion of such proceedings, the Commission shall, by order, approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for not more than sixty days if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which SIPC consents.

(D) Grounds for approval or disapproval

The Commission shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of this chapter, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The Commission shall disapprove a proposed rule change if it does not make the finding referred to in the preceding sentence. The Commission shall not approve any proposed rule change prior to thirty days after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(E) Exception

Notwithstanding any other provision of this paragraph, a proposed rule change may take effect—

- (i) upon the date of filing with the Commission, if such proposed rule change is designated by SIPC as relating solely to matters which the Commission, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or
- (ii) upon such date as the Commission shall for good cause determine. Any proposed rule change which takes effect under this clause shall be filed promptly thereafter and reviewed in accordance with the provisions of subparagraph (A).

At any time within sixty days after the date of filing of any rule change which has taken effect pursuant to this subparagraph, the Commission may summarily abrogate such rule change and require that it be refiled and reviewed in accordance with the provisions of this paragraph, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any action of the Commission pursuant to the preceding sentence shall not affect the validity or force of a rule change during the period it was in effect and shall not be reviewable under section 78y of this title or deemed to be final agency action for purposes of section 704 of title 5.

(3) Action required by Commission

The Commission may, by such rules as it determines to be necessary or appropriate in the public interest or to carry out the purposes of this chapter, require SIPC to adopt, amend, or repeal

any SIPC bylaw or rule, whenever adopted.

(Pub. L. 91-598, §3, Dec. 30, 1970, 84 Stat. 1637; Pub. L. 95-283, §§2-5, May 21, 1978, 92 Stat. 249-251; Pub. L. 106-554, §1(a)(5) [title II, §203(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-424.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1)(B), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

AMENDMENTS

2000—Subsec. (a)(2)(A)(iii). Pub. L. 106-554 added cl. (iii).

1978—Subsec. (a). Pub. L. 95-283, §2(a), substituted "Creation and membership" for "Creation" in heading, redesignated introductory text and cls. (1) and (3) as par. (1), and added par. 2 which incorporated provisions formerly contained in cl. (2) as par. (2)(A).

Subsec. (b). Pub. L. 95-283, §3, in par. (1) substituted "State, Federal, or other court" for "court, State, or Federal", in par. (3) substituted provisions relating to adoption, etc., of bylaws by the Board of Directors, for provisions relating to adoption, etc., of bylaws and rules by the Board of Directors, added par. (4), and redesignated former pars. (4) to (8) as (5) to (9), respectively.

Subsec. (c)(2)(C)(ii). Pub. L. 95-283, §4(a), substituted "a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group," for "any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group".

Subsec. (c)(5). Pub. L. 95-283, §4(b), substituted "Compensation" for "Compensation, etc." in heading, and in text struck out provisions relating to determinations of dollar volume of trading on exchanges.

Subsec. (e). Pub. L. 95-283, §5, inserted "and rules" after "Bylaws" in heading, and in text substituted provisions relating to procedures applicable to proposed changes in the bylaws and rules of SIPC and required action by the Commission with respect to any SIPC bylaw or rule, for provisions relating to procedures applicable to adoption of initial bylaws and rules of SIPC and any alteration, supplement, repeal, or addition, effective date of any such bylaw or rule, and required action by the Commission with respect to any SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, §2(b), struck out subsec. (f) which set forth qualifications for other members of SIPC.

§78ddd. SIPC Fund

(a) In general

(1) Establishment of fund

SIPC shall establish a "SIPC Fund" (hereinafter in this chapter referred to as the "fund"). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) Balance of the fund

Except as otherwise provided in this section, the balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Such confirmed lines of credit as SIPC may from time to time maintain, other than those maintained pursuant to paragraph (4).

(3) Confirmed lines of credit

For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(4) Other lines

SIPC may maintain such other confirmed lines of credit as it considers necessary or appropriate, and such other confirmed lines of credit shall not be included in the balance of the fund, but amounts received from such lines of credit may be disbursed by SIPC under this chapter as though such amounts were part of the fund.

(b) Initial required balance for fund

Within one hundred and twenty days from December 30, 1970, the balance of the fund shall aggregate not less than \$75,000,000, less any amounts expended from the fund within that period.

(c) Assessments

(1) Initial assessments

Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 78iii(a) of this title, on or before the one hundred and twentieth day following December 30, 1970, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than \$150.

(2) General assessment authority

SIPC shall, by bylaw, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A), any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) Limitations

Notwithstanding any other provision of this chapter—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum during any twelve-month period if SIPC determines, in accordance with a bylaw, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments

shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) Requirements respecting assessments and lines of credit

(1) Assessments

(A) ½ of 1 percent assessment

Subject to subsection (c)(3), SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

- (i) until the balance of the fund aggregates not less than \$150,000,000 (or such other amount as the Commission may determine in the public interest),
- (ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and
- (iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below \$100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) ¼ of 1 percent assessment

During any period during which—

- (i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than \$150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or
- (ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(C) Minimum assessment

The minimum assessment imposed upon each member of SIPC shall be \$25 per annum through the year ending December 31, 1979, and thereafter shall be the amount from time to time set by SIPC bylaw, but in no event shall the minimum assessment be greater than 0.02 percent of the gross revenues from the securities business of such member of SIPC.

(2) Lines of credit

(A) \$50,000,000 limit after 1973

After December 31, 1973, confirmed lines of credit shall not constitute more than \$50,000,000 of the balance of the fund.

(B) Phaseout requirement

When the balance of the fund aggregates \$150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) Prior trusts; overpayments and underpayments

(1) Prior trusts

There may be contributed and transferred at any time to SIPC any funds held by any trust established by a self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2). No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) Overpayments

To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw.

(3) Underpayments

If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC bylaw and, in addition to such interest, SIPC may impose such penalty charge as may be determined by SIPC bylaw. Any such penalty charge imposed upon a SIPC member shall not exceed 25 per centum of any unpaid portion of the assessment. SIPC may waive such penalty charge in whole or in part in circumstances where it considers such waiver appropriate.

(f) Borrowing authority

SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g). The interest payable on a borrowing pursuant to subsection (g) shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this chapter, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC loans to SIPC

In the event that the fund is or may reasonably appear to be insufficient for the purposes of this chapter, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and the SIPC has submitted a plan which provides as reasonable an

assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h). If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than \$5,000. For the purposes of the next preceding sentence, (1) the fee shall be based upon the total dollar amount of each purchase; (2) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 78o(b) of this title unless such purchase is for an investment account of such broker or dealer (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (3) the Commission may, by rule, exempt any transaction in the over-the-counter markets or on any national securities exchange where necessary to provide for the assessment of fees on purchasers in transactions in such markets and exchanges on a comparable basis. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser, or by such other person as provided by the Commission by rule, and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide.

(h) SEC notes issued to Treasury

To enable the Commission to make loans under subsection (g), the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed \$2,500,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(i) Consolidated group

Except as otherwise provided by SIPC bylaw, gross revenues from the securities business of a member of SIPC shall be computed on a consolidated basis for such member and all its subsidiaries (other than the foreign subsidiaries of such member), and the operations of a member of SIPC shall include those of any business to which such member has succeeded.

(Pub. L. 91-598, §4, Dec. 30, 1970, 84 Stat. 1639; Pub. L. 95-283, §6, May 21, 1978, 92 Stat. 253; Pub. L. 111-203, title IX, §§929C, 929V(a), July 21, 2010, 124 Stat. 1852, 1868.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (4), (c)(3), (g), and (i)(1), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (h), "chapter 31 of title 31" and "that chapter" substituted for "the Second Liberty Bond Act, as amended" and "that Act, as amended," respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Subsec. (d)(1)(C). Pub. L. 111-203, §929V(a), substituted "0.02 percent of the gross revenues from the securities business of such member of SIPC" for "\$150 per annum".

Subsec. (h). Pub. L. 111-203, §929C, substituted "\$2,500,000,000" for "\$1,000,000,000" in first sentence.

1978—Subsec. (a). Pub. L. 95-283, §6(a), in par. (2) substituted "Except as otherwise provided in this section, the" for "The", in par. (2)(C) inserted provisions for inapplicability to other lines of credit, and added par. (4).

Subsec. (c). Pub. L. 95-283, §6(b), in par. (2) struck out "or rule" after "bylaw", and in par. (3) struck out reference to section 78ccc(f) of this title in introductory text and "or rule" after "bylaw" in subpar. (B).

Subsec. (d)(1)(C). Pub. L. 95-283, §6(c), added subpar. (C).

Subsec. (e). Pub. L. 95-283, §6(d), in par. (2) substituted "be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw" for "not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC", and in par. (3) substituted provisions authorizing interest and penalty charges to be imposed by SIPC bylaw and amount of penalty charge, for provisions authorizing interest to be imposed by SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, §6(e), struck out "examining authority as" before "collection agent for SIPC, shall immediately be subject".

Subsec. (g). Pub. L. 95-283, §6(f), redesignated cls. (A) to (C) as (1) to (3), respectively, and, as so redesignated, in cl. (2) struck out applicability to a member of a national securities exchange and in cl. (3) substituted provisions relating to exemptions by rule of transactions in the over-the-counter market or on any national securities exchange, for provisions relating to exemptions by rules and regulations of transactions in the over-the-counter market, and inserted provisions authorizing the collection of fees by such other persons as designated by the Commission by rule for such purpose, and provisions relating to limits on manner of payment of fees.

Subsec. (i). Pub. L. 95-283, §6(g), substituted "Consolidated group" for "'Gross revenues' defined" in heading, redesignated par. (2) as entire section and, as so redesignated, substituted provisions relating to computations by a member, for provisions relating to computations by a broker or dealer. Pars. (1) and (3), which generally defined term "gross revenues" and authorized the SIPC to define all other terms used in this subsec., respectively, were struck out.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§78eee. Protection of customers

(a) Determination of need of protection

(1) Notice to SIPC

If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by self-regulatory organization

If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) with respect to a broker or dealer, and such broker or dealer undertakes to liquidate or reduce its business either pursuant to the direction of a self-regulatory organization or voluntarily, such

self-regulatory organization may render such assistance or oversight to such broker or dealer as it considers appropriate to protect the interests of customers of such broker or dealer. The assistance or oversight by a self-regulatory organization shall not be deemed the assumption or adoption by such self-regulatory organization of any obligation or liability to customers, other creditors, shareholders, or partners of the broker or dealer, and shall not prevent or act as a bar to any action by SIPC.

(3) Action by SIPC

(A) In general

SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff-3 of this title, if SIPC determines that—

(A) ¹ the member (including any person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers; and

(B) ² one or more of the conditions specified in subsection (b)(1) exist with respect to such member.

(B) Consent required

No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC, except as provided in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5381 et seq.].

(4) Effect of other pending actions

An application with respect to a member of SIPC filed with a court under paragraph (3)—

(A) may, with the consent of the Commission, be combined with any action brought by the Commission, including an action by the Commission for a temporary receiver pending an appointment of a trustee under subsection (b)(3); and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3), the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor—

(A) is insolvent within the meaning of section 101 of title 11, or is unable to meet its obligations as they mature;

(B) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(C) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(D) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court—

- (i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);
- (ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation proceeding; and
- (iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under title 11, together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed—

- (i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);
- (ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interferes with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);
- (iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and
- (iv) may appoint a temporary receiver.

(C) Exception from stay

(i) Notwithstanding section 362 of title 11, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

(iii) As used in this subparagraph, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act [7 U.S.C. 1 et seq.]), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or

in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than \$750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

(4) Removal to bankruptcy court

Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of the United States in the same judicial district having jurisdiction over cases under title 11. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this chapter upon the court to which application for the issuance of the protective decree was made.

(5) Compensation for services and reimbursement of expenses

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as "allowances") by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of title 11 governing applications for allowances under such title. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(C) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (B), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and

value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(D) Applicable restrictions

The restrictions on sharing of compensation set forth in section 504 of title 11 shall apply to allowances.

(E) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged against the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

(6) Disinterestedness

(A) Standards

For purposes of paragraph (3), a person shall not be deemed disinterested if—

- (i) such person is a creditor (including a customer), stockholder, or partner of the debtor;
- (ii) such person is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the filing date was the underwriter of any securities of the debtor;
- (iii) such person is, or was within two years prior to the filing date, a director, partner, officer, or employee of the debtor or such an underwriter, or an attorney for the debtor or such an underwriter; or
- (iv) it appears that such person has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such an underwriter, or for any other reason, an interest materially adverse to the interests of any class of creditors (including customers) or stockholders,

except that SIPC shall in all cases be deemed disinterested, and an employee of SIPC shall be deemed disinterested if such employee would, except for his association with SIPC, meet the standards set forth in this subparagraph.

(B) Hearing

The court shall fix a time for a hearing on disinterestedness, to be held promptly after the appointment of a trustee. Notice of such hearing shall be mailed at least ten days prior thereto to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor, and to the creditors and stockholders of the debtor, to SIPC, and to such other persons as the court may designate. The court may, in its discretion, also require that notice be given by publication in such newspaper or newspapers of general circulation as it may designate. At such hearing, at any adjournment thereof, or upon application, the court shall hear objections to the retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.

(c) SEC participation in proceedings

The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

(d) SIPC participation

SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.

(Pub. L. 91–598, §5, Dec. 30, 1970, 84 Stat. 1644; Pub. L. 95–283, §7, May 21, 1978, 92 Stat. 254; Pub. L. 95–598, title III, §308(a)–(f), Nov. 6, 1978, 92 Stat. 2674; Pub. L. 109–8, title IX, §911, Apr. 20, 2005, 119 Stat. 185; Pub. L. 109–390, §5(c), Dec. 12, 2006, 120 Stat. 2698; Pub. L. 111–203,

title IX, §929H(b), July 21, 2010, 124 Stat. 1857.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (a)(3)(B), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376. Title II of the Act is classified principally to subchapter II (§5381 et seq.) of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

The 1934 Act, referred to in subsec. (b)(1)(C), means act June 6, 1934, ch. 404, 48 Stat. 881, known as the Securities Exchange Act of 1934, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

This chapter, referred to in subsecs. (b)(2)(A)(iii), (5)(C), and (c), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Commodity Exchange Act, referred to in subsec. (b)(2)(C)(iii), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b)(2)(C)(iii), is Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111–203 designated existing provisions as subpar. (A) relating to general rule, inserted heading, substituted "SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff–3 of this title, if SIPC determines that—" for "If SIPC determines that—", in subpar. (A) relating to failure to meet obligations, substituted "the member" for "any member of SIPC", in subpar. (B) relating to conditions, substituted period for comma at end, added subpar. (B) relating to consent requirement, and struck out concluding provisions which read as follows: "SIPC may, upon notice to such member, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff–3 of this title."

2006—Subsec. (b)(2)(C)(iii). Pub. L. 109–390 inserted "a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991)," after "rule or bylaw of" and substituted "a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act)," for "or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market".

2005—Subsec. (b)(2)(C). Pub. L. 109–8 added subpar. (C).

1978—Subsec. (a). Pub. L. 95–283, §7(a), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, revised format of provisions by setting out cls. (A) and (B) and inserted provisions relating to any person who was a member within 180 days prior to such determination and provisions relating to claims filed under section 78fff–3 of this title, and redesignated former par. (3) as (4) and, as so redesignated, substituted "with respect to a member of SIPC filed with a court under paragraph (3)" for "under paragraph (2)" in introductory text and inserted "may," before "with the" in cl. (A).

Subsec. (b)(1)(A). Pub. L. 95–598, §308(a)(1), substituted "section 101 of title 11" for "the Bankruptcy Act".

Subsec. (b)(1)(B) to (E). Pub. L. 95–598, §308(a)(2), (3), redesignated subpars. (C) to (E) as subpars. (B) to (D), respectively. Former subpar. (B), which provided for issuance of protective decree where court found that debtor had committed act of bankruptcy within meaning of Bankruptcy Act, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 95–598, §308(b), substituted "the United States having jurisdiction over cases under title 11" for "bankruptcy by the Bankruptcy Act".

Subsec. (b)(2)(B)(iii). Pub. L. 95–598, §308(c), substituted "any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate" for "the right of setoff provided in section 68 of the Bankruptcy Act".

Subsec. (b)(3). Pub. L. 95–598, §308(d), substituted "section 322 of title 11" for "the applicable provisions of the Bankruptcy Act".

Subsec. (b)(4). Pub. L. 95–598, §308(e), substituted provisions relating to removal of proceeding to Bankruptcy Court for provisions relating to reference of proceeding to referee in bankruptcy.

Subsec. (b)(5)(B). Pub. L. 95–598, §308(f)(1), (2), (5), redesignated subpar. (C) as (B) and substituted "title 11 governing applications for allowances under such title" for "the Bankruptcy Act governing applications for allowances under such Act". Former subpar. (B), which covered allowances to a referee in bankruptcy or special master, was struck out.

Subsec. (b)(5)(C). Pub. L. 95–598, §308(f)(2), (3), (5), redesignated subpar. (D) as (C) and substituted "subparagraph (B)" for "subparagraph (C)". Former subpar. (C) redesignated (B).

Subsec. (b)(5)(D). Pub. L. 95–598, §308(f)(2), (4), (5), redesignated subpar. (E) as (D) and substituted "Section 504 of title 11" for "the Bankruptcy Act". Former subpar. (D) redesignated (C).

Subsec. (b)(5)(E), (F). Pub. L. 95–598, §308(f)(5), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (b). Pub. L. 95–283, §7(b), in par. (1) inserted "protective" after "of" in heading and substituted provisions relating to issuance of protective decrees, for provisions relating to specific findings necessary for issuance of a decree and uncontested, etc., applications, in par. (2) substituted "Jurisdiction and powers of court" for "Exclusive jurisdiction over debtor" in heading and substituted provisions setting forth jurisdiction and powers of court with respect to exclusivity of such jurisdiction, for provisions relating to exclusive jurisdiction over the debtor, in par. (3) inserted "and attorney" after "trustee" in heading and substituted provisions relating to appointment of trustee and attorney, for provisions relating to appointment of trustee, in par. (4) substituted "Reference to referee in bankruptcy" for "Debtor and filing date defined" in heading and substituted provisions relating to reference to referee in bankruptcy, for provisions defining terms "debtor" and "filing date", and added pars. (5) and (6).

Subsec. (d). Pub. L. 95–283, §7(c), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

¹ *So in original. Probably should be "(i)".*

² *So in original. Probably should be "(ii)".*

§78fff. General provisions of a liquidation proceeding

(a) Purposes

The purposes of a liquidation proceeding under this chapter shall be—

- (1) as promptly as possible after the appointment of a trustee in such liquidation proceeding,

and in accordance with the provisions of this chapter—

(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 78fff-2(c)(2) of this title; and

(B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;

(2) to sell or transfer offices and other productive units of the business of the debtor;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Application of title 11

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.

(c) Determination of customer status

In a liquidation proceeding under this chapter, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment

In a liquidation proceeding under this chapter, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 78lll(5)(A) of this title.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the general estate shall be as provided in section 726 of title 11. Costs and expenses of administration shall include payments pursuant to section 78fff-2(e) of this title and section 78fff-3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d)) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff-1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under section 507(a)(2) of title 11.

(Pub. L. 91-598, §6, Dec. 30, 1970, 84 Stat. 1646; Pub. L. 95-283, §8, May 21, 1978, 92 Stat. 259; Pub. L. 95-598, title III, §308(g), (h), Nov. 6, 1978, 92 Stat. 2675; Pub. L. 109-8, title XV, §1502(b), Apr. 20, 2005, 119 Stat. 217.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), and (d), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–8 substituted "507(a)(2)" for "507(a)(1)".

1978—Pub. L. 95–283 substituted "General provisions of a liquidation proceeding" for "Liquidation proceedings" in section catchline.

Subsec. (a). Pub. L. 95–283 in heading substituted "Purposes" for "General purposes of liquidation proceeding", in introductory text substituted provisions relating to purposes of liquidation proceedings under this chapter, for provisions relating to purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title, in par. (1) substituted provisions requiring execution of authorities to deliver customer name securities and distribute customer property in accordance with this chapter, for provisions requiring execution of authorities to return specifically identifiable property and distribute the single and separate fund in accordance with this section, and in par. (2) substituted provisions authorizing sale, etc., of productive units of the debtor, for provisions authorizing operation of the business of the debtor.

Subsec. (b). Pub. L. 95–598, §308(g), in heading substituted "title 11" for "Bankruptcy Act" and in text "under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter." for "under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this chapter, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this chapter."

Pub. L. 95–283 in heading substituted "Application of Bankruptcy Act" for "Powers and Duties of Trustee", and in text substituted provisions relating to applicability of Bankruptcy Act to liquidation proceedings, for provisions relating to the powers and duties of trustees. See section 78fff–1 of this title.

Subsec. (c). Pub. L. 95–283 in heading substituted "Determination of customer status" for "Application of Bankruptcy Act", and in text substituted provisions relating to determination of status of a customer with respect to cash or securities, for provisions setting forth general and special provisions of the Bankruptcy Act applicable to liquidation proceedings, and defining terms for purposes of such applicability and the provisions of this section. See subsec. (b) of this section and section 78fff–2(c) of this title.

Subsec. (d). Pub. L. 95–283 in heading substituted "Apportionment" for "Completion of open contractual commitments", and in text substituted provisions relating to apportionment of cash or securities remaining after the liquidation of a lien or pledge made by a debtor, for provisions relating to completion by the trustee of open contractual commitments, which were made in the ordinary course of the debtor's business and which were outstanding on the filing date. See section 78fff–2(e) of this title.

Subsec. (e). Pub. L. 95–598, §308(h), substituted in first sentence "section 726 of title 11" for "the Bankruptcy Act" and in last sentence "under section 507(a)(1) of title 11" for "as a first priority under the Bankruptcy Act".

Pub. L. 95–283 in heading substituted "Costs and expense of administration" for "Notice", and in text substituted provisions relating to costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, for provisions relating to notice requirements for the trustee subsequent to appointment as trustee. See section 78fff–2(a)(1) of this title.

Subsec. (f). Pub. L. 95–283 struck out subsec. (f) requiring advances by the SIPC to the trustee for customers' claims and completion of open contractual commitments, and authorizing discretionary advances to the trustee for compensation of personnel deemed necessary for the liquidation proceeding. See section 78fff–3 of this title.

Subsec. (g). Pub. L. 95–283 struck out subsec. (g) setting forth provisions relating to payments to customers by the trustee, and provisions respecting the quantum of proof of claim required for such payment. See section 78fff–2(a)(2) and (b) of this title.

Subsec. (h). Pub. L. 95–283 struck out subsec. (h) relating to nonapplicability of provisions to proof of claim by associates and others connected in some way with the debtor. See section 78fff–2(a)(2) of this title.

Subsec. (i). Pub. L. 95–283 struck out subsec. (i) setting forth provisions relating to reports by the trustee to the court. See section 78fff–1(c) of this title.

Subsec. (j). Pub. L. 95–283 struck out subsec. (j) which related to nonapplicability of provisions to rights of persons to establish by formal proof such claims as they may have to payment or delivery of specific securities. See section 78fff–2(a)(4) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see

section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78fff–1. Powers and duties of a trustee

(a) Trustee powers

A trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, including the same rights to avoid preferences, as a trustee in a case under title 11. In addition, a trustee may, with the approval of SIPC but without any need for court approval—

- (1) hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including accountants) that are deemed by the trustee necessary for all or any purposes of the liquidation proceeding;
- (2) utilize SIPC employees for all or any purposes of a liquidation proceeding; and
- (3) margin and maintain customer accounts of the debtor for the purposes of section 78fff–2(f) of this title.

(b) Trustee duties

To the extent consistent with the provisions of this chapter or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7, except that a trustee may, but shall have no duty to, reduce to money any securities constituting customer property or in the general estate of the debtor. In addition, the trustee shall—

- (1) deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer; and
- (2) subject to the prior approval of SIPC but without any need for court approval, pay or guarantee all or any part of the indebtedness of the debtor to a bank, lender, or other person if the trustee determines that the aggregate market value of securities to be made available to the trustee upon the payment or guarantee of such indebtedness does not appear to be less than the total amount of such payment or guarantee.

(c) Reports by trustee to court

The trustee shall make to the court and to SIPC such written reports as may be required of a trustee in a case under chapter 7 of title 11, and shall include in such reports information with respect to the progress made in distributing cash and securities to customers. Such reports shall be in such form and detail as the Commission determines by rule to present fairly the results of the liquidation proceeding as of the date of or for the period covered by such reports, having due regard for the requirements of section 78q of this title and the rules prescribed under such section and the magnitude of items and transactions involved in connection with the operations of a broker or dealer.

(d) Investigations

The trustee shall—

- (1) as soon as practicable, investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court;
- (2) examine, by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any of the matters referred to in paragraph (1);
- (3) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate; and
- (4) as soon as practicable, prepare and submit, to SIPC and such other persons as the court designates and in such form and manner as the court directs, a statement of his investigation of

matters referred to in paragraph (1).

(Pub. L. 91-598, §7, as added Pub. L. 95-283, §9, May 21, 1978, 92 Stat. 260; amended Pub. L. 95-598, title III, §308(i)-(k), Nov. 6, 1978, 92 Stat. 2675.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7 of Pub. L. 91-598 was renumbered section 11 and is classified to section 78ggg of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598, §308(i), substituted "trustee in a case under title 11" for "trustee in bankruptcy under the Bankruptcy Act has with respect to a bankrupt and the property of a bankrupt".

Subsec. (b). Pub. L. 95-598, §308(j), substituted "trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7," for "trustee in bankruptcy".

Subsec. (c). Pub. L. 95-598, §308(k), substituted "required of a trustee in a case under chapter 7 of title 11" for "required by the Bankruptcy Act".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78fff-2. Special provisions of a liquidation proceeding

(a) Notice and claims

(1) Notice of proceedings

Promptly after the appointment of the trustee, such trustee shall cause notice of the commencement of proceedings under this section to be published in one or more newspapers of general circulation in the form and manner determined by the court, and at the same time shall cause a copy of such notice to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor. Notice to creditors other than customers shall be given in the manner prescribed by title 11, except that such notice shall be given by the trustee.

(2) Statement of claim

A customer shall file with the trustee a written statement of claim but need not file a formal proof of claim, except that no obligation of the debtor to any person associated with the debtor within the meaning of section 78c(a)(18) of this title or section 78c(a)(21) of this title, any beneficial owner of 5 per centum or more of the voting stock of the debtor, or any member of the immediate family of any such person or owner may be satisfied without formal proof of claim.

(3) Time limitations

No claim of a customer or other creditor of the debtor which is received by the trustee after the expiration of the six-month period beginning on the date of publication of notice under paragraph (1) shall be allowed, except that the court may, upon application within such period and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian. Any claim of a customer for net equity which is received by the trustee after the expiration of such period of time as may be fixed by the court (not exceeding sixty days after the date of publication

of notice under paragraph (1)) need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from moneys advanced by SIPC, it shall be satisfied in cash or securities (or both) as the trustee determines is most economical to the estate.

(4) Effect on claims

Except as otherwise provided in this section, and without limiting the powers and duties of the trustee to discharge obligations promptly as specified in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise as the court may provide such claims as such person may have against the debtor, including claims for the payment of money and the delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

(b) Payments to customers

After receipt of a written statement of claim pursuant to subsection (a)(2), the trustee shall promptly discharge, in accordance with the provisions of this section, all obligations of the debtor to a customer relating to, or net equity claims based upon, securities or cash, by the delivery of securities or the making of payments to or for the account of such customer (subject to the provisions of subsection (d) and section 78fff-3(a) of this title) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the filing date. For purposes of this subsection, the court shall, among other things—

(1) with respect to net equity claims, authorize the trustee to satisfy claims out of moneys made available to the trustee by SIPC notwithstanding the fact that there has not been any showing or determination that there are sufficient funds of the debtor available to satisfy such claims; and

(2) with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute, in a form to be determined by the trustee, appropriate receipts, supporting affidavits, releases, and assignments, but shall be without prejudice to any right of a claimant to file formal proof of claim within the period specified in subsection (a)(3) for any balance of securities or cash to which such claimant considers himself entitled.

(c) Customer related property

(1) Allocation of customer property

The trustee shall allocate customer property of the debtor as follows:

(A) first, to SIPC in repayment of advances made by SIPC pursuant to section 78fff-3(c)(1) of this title, to the extent such advances recovered securities which were apportioned to customer property pursuant to section 78fff(d) of this title;

(B) second, to customers of such debtor, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(C) third, to SIPC as subrogee for the claims of customers;

(D) fourth, to SIPC in repayment of advances made by SIPC pursuant to section 78fff-3(c)(2) of this title.

Any customer property remaining after allocation in accordance with this paragraph shall become part of the general estate of the debtor. To the extent customer property and SIPC advances pursuant to section 78fff-3(a) of this title are not sufficient to pay or otherwise satisfy in full the net equity claims of customers, such customers shall be entitled, to the extent only of their respective unsatisfied net equities, to participate in the general estate as unsecured creditors. For

purposes of allocating customer property under this paragraph, securities to be delivered in payment of net equity claims for securities of the same class and series of an issuer shall be valued as of the close of business on the filing date.

(2) Delivery of customer name securities

The trustee shall deliver customer name securities to or on behalf of a customer of the debtor entitled thereto if the customer is not indebted to the debtor. If the customer is so indebted, such customer may, with the approval of the trustee, reclaim customer name securities upon payment to the trustee, within such period of time as the trustee determines, of all indebtedness of such customer to the debtor.

(3) Recovery of transfers

Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of title 11. Such recovered property shall be treated as customer property. For purposes of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

(d) Purchase of securities

The trustee shall, to the extent that securities can be purchased in a fair and orderly market, purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities under section 78fff-1(b)(1) of this title and for the transfer of customer accounts under subsection (f), in order to restore the accounts of such customers as of the filing date. To the extent consistent with subsection (c), customer property and moneys advanced by SIPC may be used by the trustee to pay for securities so purchased. Moneys advanced by SIPC for each account of a separate customer may not be used to purchase securities to the extent that the aggregate value of such securities on the filing date exceeded the amount permitted to be advanced by SIPC under the provisions of section 78fff-3(a) of this title.

(e) Closeouts

(1) In general

Any contract of the debtor for the purchase or sale of securities in the ordinary course of its business with other brokers or dealers which is wholly executory on the filing date shall not be completed by the trustee, except to the extent permitted by SIPC rule. Upon the adoption by SIPC of rules with respect to the closeout of such a contract but prior to the adoption of rules with respect to the completion of such a contract, the other broker or dealer shall close out such contract, without unnecessary delay, in the best available market and pursuant to such SIPC rules. Until such time as SIPC adopts rules with respect to the completion or closeout of such a contract, such a contract shall be closed out in accordance with Commission Rule S6(d)-1 as in effect on May 21, 1978, or any comparable rule of the Commission subsequently adopted, to the extent not inconsistent with the provisions of this subsection.

(2) Net profit or loss

A broker or dealer shall net all profits and losses on all contracts closed out under this subsection and—

(A) if such broker or dealer shows a net profit on such contracts, he shall pay such net profit to the trustee; and

(B) if such broker or dealer sustains a net loss on such contracts, he shall be entitled to file a claim against the debtor with the trustee in the amount of such net loss.

To the extent that a net loss sustained by a broker or dealer arises from contracts pursuant to which such broker or dealer was acting for its own customer, such broker or dealer shall be entitled to

receive funds advanced by SIPC to the trustee in the amount of such loss, except that such broker or dealer may not receive more than \$40,000 for each separate customer with respect to whom it sustained a loss. With respect to a net loss which is not payable under the preceding sentence from funds advanced by SIPC, the broker or dealer shall be entitled to participate in the general estate as an unsecured creditor.

(3) Registered clearing agencies

Neither a registered clearing agency which by its rules has an established procedure for the closeout of open contracts between an insolvent broker or dealer and its participants, nor its participants to the extent such participants' claims are or may be processed within the registered clearing agency, shall be entitled to receive SIPC funds in payment of any losses on such contracts, except as SIPC may otherwise provide by rule. If such registered clearing agency or its participants sustain a net loss on the closeout of such contracts with the debtor, they shall have the right to participate in the general estate as unsecured creditors to the extent of such loss. Any funds or other property owed to the debtor, after the closeout of such contracts, shall be promptly paid to the trustee. Rules adopted by SIPC under this paragraph shall provide that in no case may a registered clearing agency or its participants, to the extent such participants' claims are or may be processed within the registered clearing agency, be entitled to receive funds advanced by SIPC in an amount greater, in the aggregate, than could be received by the participants if such participants proceeded individually under paragraph (1) and (2).

(4) "Customer" defined

For purposes of this subsection, the term "customer" does not include any person who—

- (A) is a broker or dealer;
- (B) had a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, was part of the capital of the claiming broker or dealer or was subordinated to the claims of any or all creditors of such broker or dealer; or
- (C) had a relationship of the kind specified in section 78fff-3(a)(5) of this title with the debtor.

A claiming broker or dealer shall be deemed to have been acting on behalf of its customer if it acted as agent for such customer or if it held such customer's order which was to be executed as a part of its contract with the debtor.

(f) Transfer of customer accounts

In order to facilitate the prompt satisfaction of customer claims and the orderly liquidation of the debtor, the trustee may, pursuant to terms satisfactory to him and subject to the prior approval of SIPC, sell or otherwise transfer to another member of SIPC, without consent of any customer, all or any part of the account of a customer of the debtor. In connection with any such sale or transfer to another member of SIPC and subject to the prior approval of SIPC, the trustee may—

- (1) waive or modify the need to file a written statement of claim pursuant to subsection (a)(2); and
- (2) enter into such agreements as the trustee considers appropriate under the circumstances to indemnify any such member of SIPC against shortages of cash or securities in the customer accounts sold or transferred.

The funds of SIPC may be made available to guarantee or secure any indemnification under paragraph (2). The prior approval of SIPC to such indemnification shall be conditioned, among such other standards as SIPC may determine, upon a determination by SIPC that the probable cost of any such indemnification can reasonably be expected not to exceed the cost to SIPC of proceeding under section 78fff-3(a) of this title and section 78fff-3(b) of this title.

(Pub. L. 91-598, §8, as added Pub. L. 95-283, §9, May 21, 1978, 92 Stat. 261; amended Pub. L. 95-598, title III, §308(1), (m), Nov. 6, 1978, 92 Stat. 2675.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 8 of Pub. L. 91–598 was renumbered section 12 and is classified to section 78hhh of this title.

AMENDMENTS

1978—Subsecs. (a)(1), (c)(3). Pub. L. 95–598 substituted "title 11" for "the Bankruptcy Act".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78fff–3. SIPC advances

(a) Advances for customers' claims

In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed \$500,000 for each customer, as may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that—

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities or options on commodity futures contracts, the amount advanced to satisfy such claim for cash shall not exceed the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d);

(2) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(3) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is satisfied by the delivery of securities purchased by the trustee pursuant to section 78fff–2(d) of this title, the securities so purchased shall be valued as of the filing date for purposes of applying the dollar limitations of this subsection;

(4) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any net equity claim of a customer who is a general partner, officer, or director of the debtor, a beneficial owner of five per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights), a limited partner with a participation of five per centum or more in the net assets or net profits of the debtor, or a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the debtor; and

(5) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy any net equity claim of any customer who is a broker or dealer or bank, other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank, or otherwise, that the net equity claim of such broker or dealer or bank against the debtor arose out of transactions for customers of such broker or dealer or bank (which customers are not themselves a broker or dealer or bank or a person described in paragraph (4)), in which event each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent moneys are advanced by SIPC to the trustee to pay or otherwise satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this chapter, except that SIPC

as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 78fff-2(c) of this title.

(b) Other advances

SIPC shall advance to the trustee—

- (1) such moneys as may be required to carry out section 78fff-2(e) of this title; and
- (2) to the extent the general estate of the debtor is not sufficient to pay any and all costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, the amount of such costs and expenses.

(c) Discretionary advances

SIPC may advance to the trustee such moneys as may be required to—

- (1) pay or guarantee indebtedness of the debtor to a bank, lender, or other person under section 78fff-1(b)(2) of this title;
- (2) guarantee or secure any indemnity under section 78fff-2(f) of this title; and
- (3) purchase securities under section 78fff-2(d) of this title.

(d) Standard maximum cash advance amount defined

For purposes of this section, the term "standard maximum cash advance amount" means \$250,000, as such amount may be adjusted after December 31, 2010, as provided under subsection (e).

(e) Inflation adjustment

(1) In general

Not later than January 1, 2011, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 78ccc(e)(2) of this title, the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

- (A) \$250,000 multiplied by—
- (B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding 2010.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(2) Rounding

If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

(3) Publication and report to the Congress

Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

- (A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and
- (B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

(4) Implementation period

Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

(5) Inflation adjustment considerations

In making any determination under paragraph (1) to increase the standard maximum cash

advance amount, the Board of Directors of SIPC shall consider—

- (A) the overall state of the fund and the economic conditions affecting members of SIPC;
- (B) the potential problems affecting members of SIPC; and
- (C) such other factors as the Board of Directors of SIPC may determine appropriate.

(Pub. L. 91–598, §9, as added Pub. L. 95–283, §9, May 21, 1978, 92 Stat. 265; amended Pub. L. 96–433, §1, Oct. 10, 1980, 94 Stat. 1855; Pub. L. 111–203, title IX, §§929H(a), 983(a), July 21, 2010, 124 Stat. 1856, 1931.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 9 of Pub. L. 91–598 was renumbered section 13 and is classified to section 78iii of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §983(a), inserted "or options on commodity futures contracts" after "claim for securities".

Pub. L. 111–203, §929H(a)(1), substituted "the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)" for "\$100,000 for each such customer".

Subsecs. (d), (e). Pub. L. 111–203, §929H(a)(2), added subsecs. (d) and (e).

1980—Subsec. (a). Pub. L. 96–433, §1(1), substituted in opening par. "\$500,000" for "\$100,000".

Subsec. (a)(1). Pub. L. 96–433, §1(2), substituted "\$100,000" for "\$40,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–433 effective Oct. 10, 1980, see section 5(a) of Pub. L. 96–433, set out as a note under section 78u of this title.

§78fff–4. Direct payment procedure

(a) Determination regarding direct payments

If SIPC determines that—

(1) any member of SIPC (including a person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers;

(2) one or more of the conditions specified in section 78eee(b)(1) of this title exist with respect to such member;

(3) the claim of each customer of the member is within the limits of protection provided in section 78fff–3(a) of this title;

(4) the claims of all customers of the member aggregate less than \$250,000;

(5) the cost to SIPC of satisfying customer claims under this section will be less than the cost under a liquidation proceeding; and

(6) such member's registration as a broker-dealer under section 78o(b) of this title has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

(b) Notice

Promptly after a determination under subsection (a) that the direct payment procedure is to be used with respect to a member, SIPC shall cause notice of such direct payment procedure to be published in one or more newspapers of general circulation in a form and manner determined by SIPC, and at the same time shall cause to be mailed a copy of such notice to each person who appears, from the books and records of such member, to have been a customer of the member with an open account within the past twelve months, to the address of such person as it appears from the books and records of such member. Such notice shall state that SIPC will satisfy customer claims directly, without a liquidation proceeding, and shall set forth the form and manner in which claims may be presented. A direct payment procedure shall be deemed to commence on the date of first publication under this subsection and no claim by a customer shall be paid or otherwise satisfied by SIPC unless received within the six-month period beginning on such date, except that SIPC shall, upon application within such period, and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian.

(c) Payments to customers

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff-2(d) of this title and section 78fff-3(a) of this title insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b). Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.

(d) Effect on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise such claims as such person may have against the member, including claims for the payment of money and the delivery of specific securities, without resort to moneys of SIPC.

(e) Jurisdiction of Bankruptcy Courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The courts of the United States having jurisdiction over cases under title 11 shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) shall not prejudice any other right or remedy of the customer against the member.

(f) Discontinuance of direct payment procedures

If, at any time after the institution of a direct payment procedure with respect to a member, SIPC determines, in its discretion, that continuation of such direct payment procedure is not appropriate, SIPC may cease such direct payment procedure and, upon so doing, may seek a protective decree pursuant to section 78eee of this title. To the extent payments of cash, distributions of securities, or determinations with respect to the validity of a customer's claim are made under this section, such

payments, distributions, and determinations shall be recognized and given full effect in the event of any subsequent liquidation proceeding. Any action brought under subsection (e) and pending at the time of the appointment of a trustee under section 78eee(b)(3) of this title shall be permanently stayed by the court at the time of such appointment, and the court shall enter an order directing the transfer or removal to it of such suit. Upon such removal or transfer the complaint in such action shall constitute the plaintiff's claim in the liquidation proceeding, if appropriate, and shall be deemed received by the trustee on the date of his appointment regardless of the date of actual transfer or removal of such action.

(g) References

For purposes of this section, any reference to the trustee in sections 78fff-1(b)(1), 78fff-2(d), 78fff-2(f), 78fff-3(a), 78lll(5) and 78lll(12) of this title shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 78fff-2(a) of this title shall be deemed a reference to the publication of notice under this section.

(Pub. L. 91-598, §10, as added Pub. L. 95-283, §9, May 21, 1978, 92 Stat. 266; amended Pub. L. 95-598, title III, §308(n), Nov. 6, 1978, 92 Stat. 2675.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10 of Pub. L. 91-598 was renumbered section 14 and is classified to section 78jjj of this title.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-598, §308(n)(3), which directed striking out ", without regard to the citizenship of the parties or the amount in the controversy", was executed by striking out ", without regard to the citizenship of the parties or the amount in controversy" after "adjudication of such claim" to reflect the probable intent of Congress.

Pub. L. 95-598, §308(n)(1), (2), substituted "Bankruptcy Courts" for "District Courts" in heading and "courts of the United States having jurisdiction over cases under title 11" for "district courts of the United States" in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules pursuant to section 78ccc(e)(3) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rulemaking procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) Enforcement of actions

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

(c) Examinations and reports

(1) Examination of SIPC, etc.

The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this chapter.

(2) Reports from SIPC

As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this chapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(Pub. L. 91–598, §11, formerly §7, Dec. 30, 1970, 84 Stat. 1652, 1653; renumbered §11 and amended Pub. L. 95–283, §§9, 10, May 21, 1978, 92 Stat. 260, 268.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 11 of Pub. L. 91–598. Subsec. (d) of section 11 of Pub. L. 91–598 amended section 78o of this title.

PRIOR PROVISIONS

A prior section 11 of Pub. L. 91–598 was renumbered section 15 and is classified to section 78kkk of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283 substituted "pursuant to section 78ccc(e)(3) and section 78iii(f) of this title" for "or regulations pursuant to section 78ccc(e) and 78iii(f) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to submittal of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103–7.

§78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making

assessments under section 78ddd of this title. The examining authority or collection agent shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91–598, §12, formerly §8, Dec. 30, 1970, 84 Stat. 1653; renumbered §12 and amended Pub. L. 95–283, §§9, 11, May 21, 1978, 92 Stat. 260, 268.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 12 of Pub. L. 91–598 was renumbered section 16 and is classified to section 78lll of this title.

AMENDMENTS

1978—Pub. L. 95–283 inserted provisions relating to applicability to a collection agent.

§78iii. Functions of self-regulatory organizations

(a) Collection agent

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, unless SIPC designates a self-regulatory organization other than the examining authority to act as collection agent for any member of SIPC who is a member of or participant in more than one self-regulatory organization. If the only self-regulatory organization of which a member of SIPC is a member or in which it is a participant is a registered clearing agency that is not the examining authority for the member, SIPC may, nevertheless, designate such registered clearing agency as collection agent for the member or may require that payments be made directly to SIPC. The collection agent shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessment are received by such collection agent. Members of SIPC who are not members of or participants in a self-regulatory organization shall make payments directly to SIPC.

(b) Immunity

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) and section 78eee(a)(2) of this title.

(c) Inspections

The self-regulatory organization of which a member of SIPC is a member or in which it is a participant shall inspect or examine such member for compliance with applicable financial responsibility rules, except that—

(1) if the self-regulatory organization is a registered clearing agency, the Commission may designate itself as responsible for the examination of such member for compliance with applicable financial responsibility rules; and

(2) if a member of SIPC is a member of or participant in more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations or itself as responsible for the examination of such member for compliance with applicable financial responsibility rules.

(d) Reports

There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) Consultation

SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) Financial condition of members

The Commission may, by such rules as it determines necessary or appropriate in the public interest and to carry out the purposes of this chapter, require any self-regulatory organization to furnish SIPC with reports and records (or copies thereof) relating to the financial condition of members of or participants in such self-regulatory organization.

(Pub. L. 91-598, §13, formerly §9, Dec. 30, 1970, 84 Stat. 1654; amended Pub. L. 94-29, §26, June 4, 1975, 89 Stat. 163; renumbered §13 and amended Pub. L. 95-283, §§9, 12, May 21, 1978, 92 Stat. 260, 269.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283, §12(a), in heading substituted "Collection" for "Collecting", and in text inserted provisions relating to designation of a self-regulatory organization other than the examining authority to act as collection agent and provisions relating to designation of a registered clearing agency as collection agent, and substituted provisions relating to remittances by the collection agent to SIPC, for provisions relating to remittances by an examining authority to SIPC.

Subsec. (b). Pub. L. 95-283, §12(b), inserted reference to section 78eee(a)(2) of this title.

Subsec. (c). Pub. L. 95-283, §12(c), revised existing format and provisions into introductory text and cl. (2) and, as so revised, in introductory text inserted provisions respecting participation by a member of SIPC in a self-regulatory organization and in cl. (2) inserted provisions respecting such participation and authorization for the Commission to designate itself as responsible for the statutory examination, and added cl. (1).

Subsec. (f). Pub. L. 95-283, §12(d), substituted provisions authorizing the Commission to set out rules requiring self-regulatory organizations to furnish SIPC with reports and records of members or participants in such self-regulatory organizations, for provisions authorizing the Commission to set out rules, and regulations requiring self-regulatory organizations to adopt rules, practices, and procedures respecting inspections and examinations of members and examiners, to furnish SIPC and the Commission with reports and records of members, and to inspect or examine members.

1975—Subsec. (c). Pub. L. 94-29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

§78jjj. Prohibited acts

(a) Failure to pay assessment, etc.

If a member of SIPC shall fail to file any report or information required pursuant to this chapter, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this chapter, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest and penalty thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that it owes all or any part of the amount specified in such notice, it may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount it denies owing.

(b) Engaging in business after appointment of trustee or initiation of direct payment procedure

It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) Concealment of assets; false statements or claims

(1) Specific prohibited acts

Any person who, directly or indirectly, in connection with or in contemplation of any liquidation proceeding or direct payment procedure—

(A) employs any device, scheme, or artifice to defraud;

(B) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(C) fraudulently or with intent to defeat this chapter—

(i) conceals or transfers any property belonging to the estate of a debtor;

(ii) makes a false statement or account;

(iii) presents or uses any false claim for proof against the estate of a debtor;

(iv) receives any material amount of property from a debtor;

(v) gives, offers, receives, transfers, or obtains any money or property, remuneration, compensation, reward, advantage, other consideration, or promise thereof, for acting or forbearing to act;

(vi) conceals, destroys, mutilates, falsifies, makes a false entry in, or otherwise falsifies any document affecting or relating to the property or affairs of a debtor; or

(vii) withholds, from any person entitled to its possession, any document affecting or relating to the property or affairs of a debtor,

shall be fined not more than \$250,000 or imprisoned for not more than five years, or both.

(2) Fraudulent conversion

Any person who, directly or indirectly steals, embezzles, or fraudulently, or with intent to defeat this chapter, abstracts or converts to his own use or to the use of another any of the moneys, securities, or other assets of SIPC, or otherwise defrauds or attempts to defraud SIPC or a trustee by any means, shall be fined not more than \$250,000 or imprisoned not more than five years, or both.

(d) Misrepresentation of SIPC membership or protection

(1) In general

Any person who falsely represents by any means (including, without limitation, through the

Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this chapter or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than \$250,000 or imprisoned for not more than 5 years.

(2) Injunctions

Any court having jurisdiction of a civil action arising under this chapter may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk's office.

(Pub. L. 91-598, §14, formerly §10, Dec. 30, 1970, 84 Stat. 1655; renumbered §14 and amended Pub. L. 95-283, §§9, 13, May 21, 1978, 92 Stat. 260, 269; Pub. L. 111-203, title IX, §929V(b), (c), July 21, 2010, 124 Stat. 1868.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111-203, §929V(b)(1), substituted "\$250,000" for "\$50,000" in concluding provisions.

Subsec. (c)(2). Pub. L. 111-203, §929V(b)(2), substituted "\$250,000" for "\$50,000".

Subsec. (d). Pub. L. 111-203, §929V(c), added subsec. (d).

1978—Subsec. (a). Pub. L. 95-283, §13(a), inserted "and penalty" after "interest", and substituted "it" for "he" wherever appearing.

Subsec. (b). Pub. L. 95-283, §13(b), in heading inserted "or initiation of direct payment procedure" after "trustee", and in text inserted references to initiation of direct payment procedure in two places.

Subsec. (c). Pub. L. 95-283, §13(c), in heading substituted "Concealment of assets; false statements or claims" for "Embezzlement, etc., of assets of SIPC", added par. (1), and designated existing provisions as par. (2) and, as so designated, inserted references to direct or indirect acts, and provisions covering defrauding or attempts to defraud SIPC or a trustee, and substituted provisions covering activities constituting fraudulent, or with intent to defeat this chapter, abstracts or conversions, for provisions covering activities constituting unlawfully abstracting or unlawfully and willfully converting moneys, etc.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§78kkk. Miscellaneous provisions

(a) Public inspection of reports

Any notice, report, or other document filed with SIPC pursuant to this chapter shall be available for public inspection unless SIPC or the Commission shall determine that disclosure thereof is not in the public interest. Nothing herein shall act to deny documents or information to the Congress of the

United States or the committees of either House having jurisdiction over financial institutions, securities regulation, or related matters under the rules of each body. Nor shall the Commission be denied any document or information which the Commission, in its judgment, needs.

(b) Liability of members of SIPC

Except for such assessments as may be made upon such member pursuant to the provisions of section 78ddd of this title, no member of SIPC shall have any liability under this chapter as a member of SIPC for, or in connection with, any act or omission of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(c) Liability of SIPC and Directors, officers, or employees

Neither SIPC nor any of its Directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this chapter.

(d) Advertising

SIPC shall by bylaw prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this chapter. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws. SIPC may also by bylaw prescribe such minimal requirements as it considers necessary and appropriate to require a member of SIPC to provide public notice of its membership in SIPC.

(e) SIPC exempt from taxation

SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of title 26. The contribution and transfer to SIPC of funds or securities held by any trust established by a national securities exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of title 26, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this chapter, in any way affect the status, as ordinary and necessary expenses under section 162(a) of title 26, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(f) Section 78t(a) of this title not to apply

The provisions of subsection (a) of section 78t of this title shall not apply to any liability under or in connection with this chapter.

(g) SEC study of unsafe or unsound practices

Not later than twelve months after December 30, 1970, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

(Pub. L. 91-598, §15, formerly §11, Dec. 30, 1970, 84 Stat. 1655; renumbered §15 and amended Pub. L. 95-283, §§9, 14, May 21, 1978, 92 Stat. 260, 270; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (f), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (b). Pub. L. 95-283, §14(c), redesignated subsec. (c) as (b). Former subsec. (b), relating to application of securities investor protection provisions to foreign members, was struck out.

Subsec. (c). Pub. L. 95-283, §14(a), (c), redesignated subsec. (d) as (c) and inserted ", officers, or employees" after "Directors" in heading and text. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 95-283, §14(b), (c), redesignated subsec. (e) as (d), inserted provisions authorizing SIPC to prescribe necessary and proper minimal requirements for providing public notice of membership by a member of SIPC in SIPC, and struck out provisions authorizing rules by SIPC to implement advertising requirements. Former subsec. (d) redesignated (c).

Subsecs. (e) to (h). Pub. L. 95-283, §14(c), redesignated subsecs. (e) to (h) as (d) to (g), respectively.

§78III. Definitions

For purposes of this chapter, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) Commission

The term "Commission" means the Securities and Exchange Commission.

(2) Customer

(A) In general

The term "customer" of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

(B) Included persons

The term "customer" includes—

(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

(C) Excluded persons

The term "customer" does not include any person, to the extent that—

(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(3) Customer name securities

The term "customer name securities" means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(4) Customer property

The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term "customer property" includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 78o(c)(3) of this title and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 78fff(d) of this title;

(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and

(E) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(5) Debtor

The term "debtor" means a member of SIPC with respect to whom an application for a protective decree has been filed under section 78eee(a)(3) of this title or a direct payment procedure has been instituted under section 78fff-4(b) of this title.

(6) Examining authority

The term "examining authority" means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 78iii(c) of this title.

(7) Filing date

The term "filing date" means the date on which an application for a protective decree is filed under section 78eee(a)(3) of this title, except that—

(A) if a petition under title 11 concerning the debtor was filed before such date, the term "filing date" means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term "filing date" means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 78fff-4(f) of this title, the term "filing date" means the date on which notice of such direct payment procedure was published under section 78fff-4(b) of this title.

(8) Foreign subsidiary

The term "foreign subsidiary" means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(9) Gross revenues from the securities business

The term "gross revenues from the securities business" means the sum of (but without duplication)—

- (A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups with respect to purchases or sales of securities as principal;
- (B) charges for executing or clearing transactions in securities for other brokers and dealers;
- (C) the net realized gain, if any, from principal transactions in securities in trading accounts;
- (D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;
- (E) interest earned on customers' securities accounts;
- (F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;
- (G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;
- (H) income from service charges or other surcharges with respect to securities;
- (I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;
- (J) fees in connection with put, call, and other option transactions in securities;
- (K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and
- (L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(10) Liquidation proceeding

The term "liquidation proceeding" means any proceeding for the liquidation of a debtor under this chapter in which a trustee has been appointed under section 78eee(b)(3) of this title.

(11) Net equity

The term "net equity" means the dollar amount of the account or accounts of a customer, to be determined by—

- (A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—
 - (i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and
 - (ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the

extent that such property is not otherwise included herein; minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 78fff-2(a) of this title).

A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(12) Persons registered as brokers or dealers

The term "persons registered as brokers or dealers" includes any person who is a member of a national securities exchange other than a government securities broker or government securities dealer registered under section 78o-5(a)(1)(A) of this title.

(13) Protective decree

The term "protective decree" means a decree, issued by a court upon application of SIPC under section 78eee(a)(3) of this title, that the customers of a member of SIPC are in need of the protection provided under this chapter.

(14) Security

The term "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, or any security future as that term is defined in section 78c(a)(55)(A) of this title, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.]), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term "security" does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

(Pub. L. 91-598, §16, formerly §12, Dec. 30, 1970, 84 Stat. 1656; renumbered §16 and amended Pub. L. 95-283, §§9, 15, May 21, 1978, 92 Stat. 260, 271; Pub. L. 95-598, title III, §308(o), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 97-303, §7, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100-181, title VIII, §802, Dec. 4, 1987, 101 Stat. 1265; Pub. L. 106-554, §1(a)(5) [title II, §203(d)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-424; Pub. L. 111-203, title IX, §983(b), July 21, 2010, 124 Stat. 1931.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1), and in pars. (10) and (13), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in provision preceding par. (1), is act July 1, 1898, ch. 541, 30 Stat. 544, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title

11.

The Securities Act of 1933, referred to in par. (14), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2010—Par. (2). Pub. L. 111–203, §983(b)(1), added par. (2) and struck out former par. (2) which defined "customer".

Par. (4)(D), (E). Pub. L. 111–203, §983(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Par. (9). Pub. L. 111–203, §983(b)(3), in concluding provisions, inserted "includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term" before "does not include".

Par. (11). Pub. L. 111–203, §983(b)(4)(B), in concluding provisions, substituted "A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining" for "In determining".

Par. (11)(A). Pub. L. 111–203, §983(b)(4)(A), substituted "by sale or purchase on the filing date—" for "by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus" and added cls. (i) and (ii).

2000—Par. (14). Pub. L. 106–554 inserted "or any security future as that term is defined in section 78c(a)(55)(A) of this title," after "certificate of deposit for a security,".

1987—Par. (12). Pub. L. 100–181 inserted "other than a government securities broker or government securities dealer registered under section 78o–5(a)(1)(A) of this title".

1982—Par. (14). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "the Securities Act of 1933 [15 U.S.C.A. §77a et seq.]," and substituted "Except as specifically provided above, the term 'security' does not include" for "The term 'security' does not include".

1978—Par. (1). Pub. L. 95–598, §308(o)(1), (3), struck out par. (1) definition of "Bankruptcy Act" and redesignated par. (2) as (1).

Pars. (2) to (6). Pub. L. 95–598, §309(o)(3), redesignated pars. (3) to (7) as (2) to (6), respectively. Former par. (2) redesignated (1).

Par. (7). Pub. L. 95–598, §308(o)(2), (3), redesignated par. (8) as (7) and substituted in subpar. (A) "if a petition under title 11 concerning the debtor was filed before such date" for "if a petition was filed before such date by or against the debtor under the Bankruptcy Act, or under chapter X or XI of such Act, as now in effect or as amended from time to time". Former par. (7) redesignated (6).

Pars. (8) to (15). Pub. L. 95–598, §308(o)(3), redesignated pars. (9) to (15) as (8) to (14), respectively. Former par. (8) redesignated (7).

Pub. L. 95–283 in introductory text inserted requirement for applicability of terms to a liquidation proceeding involving the Bankruptcy Act, in par. (1) heading substituted "Bankruptcy Act" for "Self-regulatory organization", and in text substituted provisions defining such terms, in par. (2) heading substituted "Commission" for "Financial responsibility rules", and in text substituted provisions defining such terms, in par. (3) heading substituted "Customer" for "Examining authority", and in text substituted provisions defining such terms, and added pars. (4) to (15).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of section by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

§§79 to 79z—6. Repealed. Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974

Section 79, acts Aug. 26, 1935, ch. 687, title I, §36, formerly §33, 49 Stat. 838; renumbered §35, Pub. L. 102–486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905; renumbered §36, Pub. L. 104–104, title I, §103, Feb. 8, 1996, 110 Stat. 81, provided that this chapter could be cited as the "Public Utility Holding Company Act of 1935".

Section 79a, act Aug. 26, 1935, ch. 687, title I, §1, 49 Stat. 803, related to necessity for control of holding companies and set forth policy of chapter.

Section 79b, act Aug. 26, 1935, ch. 687, title I, §2, 49 Stat. 804, defined terms.

Section 79c, act Aug. 26, 1935, ch. 687, title I, §3, 49 Stat. 810, related to exemption of holding companies from provisions of chapter.

Section 79d, act Aug. 26, 1935, ch. 687, title I, §4, 49 Stat. 812, related to transactions by unregistered holding companies.

Section 79e, act Aug. 26, 1935, ch. 687, title I, §5, 49 Stat. 812, related to registration of holding companies.

Section 79f, act Aug. 26, 1935, ch. 687, title I, §6, 49 Stat. 814, related to unlawful transactions by registered companies.

Section 79g, act Aug. 26, 1935, ch. 687, title I, §7, 49 Stat. 815, related to declarations by registered companies in respect to security transactions.

Section 79h, acts Aug. 26, 1935, ch. 687, title I, §8, 49 Stat. 817; Pub. L. 100–181, title IV, §401, Dec. 4, 1987, 101 Stat. 1259, related to acquisition of interest in electric and gas companies serving the same territory.

Section 79i, act Aug. 26, 1935, ch. 687, title I, §9, 49 Stat. 817, prohibited acquisition of securities and utility assets and other interests prior to approval.

Section 79j, act Aug. 26, 1935, ch. 687, title I, §10, 49 Stat. 818, related to approval of acquisition of securities and utility assets and other interests.

Section 79k, acts Aug. 26, 1935, ch. 687, title I, §11, 49 Stat. 820; Pub. L. 95–598, title III, §309, Nov. 6, 1978, 92 Stat. 2676, related to simplification of holding company systems.

Section 79l, act Aug. 26, 1935, ch. 687, title I, §12, 49 Stat. 823, related to intercompany and other transactions relating to registered companies.

Section 79m, act Aug. 26, 1935, ch. 687, title I, §13, 49 Stat. 825, related to service, sales, and construction contracts.

Section 79n, act Aug. 26, 1935, ch. 687, title I, §14, 49 Stat. 827, related to periodic and other reports.

Section 79o, act Aug. 26, 1935, ch. 687, title I, §15, 49 Stat. 828, related to keeping of accounts and records.

Section 79p, act Aug. 26, 1935, ch. 687, title I, §16, 49 Stat. 829, related to penalty for misleading statements and rights and remedies in addition to those under other laws.

Section 79q, act Aug. 26, 1935, ch. 687, title I, §17, 49 Stat. 830, related to officers and directors of registered holding companies.

Section 79r, acts Aug. 26, 1935, ch. 687, title I, §18, 49 Stat. 831; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 91–452, title II, §214, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100–181, title IV, §402, Dec. 4, 1987, 101 Stat. 1259, related to investigations, injunctions, and enforcement of law.

Section 79s, act Aug. 26, 1935, ch. 687, title I, §19, 49 Stat. 832, related to hearings before Securities and Exchange Commission.

Section 79t, act Aug. 26, 1935, ch. 687, title I, §20, 49 Stat. 833, related to rules, regulations, and orders to carry out provisions of chapter.

Section 79u, act Aug. 26, 1935, ch. 687, title I, §21, 49 Stat. 834, related to effect of chapter on other laws.

Section 79v, act Aug. 26, 1935, ch. 687, title I, §22, 49 Stat. 834, related to public disclosure of information filed with Securities and Exchange Commission.

Section 79w, act Aug. 26, 1935, ch. 687, title I, §23, 49 Stat. 834, related to annual report to Congress by Securities and Exchange Commission.

Section 79x, acts Aug. 26, 1935, ch. 687, title I, §24, 49 Stat. 834; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §15, Aug. 28, 1958, 72 Stat. 946; Pub. L. 100–181, title IV, §403, Dec. 4, 1987, 101 Stat. 1259, related to judicial review of orders.

Section 79y, acts Aug. 26, 1935, ch. 687, title I, §25, 49 Stat. 835; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 100–181, title IV, §404, Dec. 4, 1987, 101 Stat. 1260, related to court jurisdiction of violations of chapter.

Section 79z, act Aug. 26, 1935, ch. 687, title I, §26, 49 Stat. 835, related to validity of contracts.

Section 79z–1, act Aug. 26, 1935, ch. 687, title I, §27, 49 Stat. 836, related to liability of controlling persons for unlawful acts or prevention of compliance.

Section 79z–2, act Aug. 26, 1935, ch. 687, title I, §28, 49 Stat. 836, related to representation of guaranty or recommendation by United States.

Section 79z–3, acts Aug. 26, 1935, ch. 687, title I, §29, 49 Stat. 836; Pub. L. 94–29, §27(c), June 4, 1975, 89 Stat. 163, related to penalties for violations of provisions, false statements, or destruction of records.

Section 79z–4, acts Aug. 26, 1935, ch. 687, title I, §30, 49 Stat. 837; Pub. L. 100–181, title IV, §405, Dec. 4, 1987, 101 Stat. 1260, related to studies and investigations of public utility companies.

Section 79z–5, acts Aug. 26, 1935, ch. 687, title I, §31, 49 Stat. 837; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 101–550, title I, §104(a), Nov. 15, 1990, 104 Stat. 2713, related to hiring and leasing authority of Securities and Exchange Commission.

Section 79z–5a, act Aug. 26, 1935, ch. 687, title I, §32, as added Pub. L. 102–486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905, related to exempt wholesale generators of electrical energy.

Section 79z–5b, act Aug. 26, 1935, ch. 687, title I, §33, as added Pub. L. 102–486, title VII, §715, Oct. 24, 1992, 106 Stat. 2912, related to treatment of foreign utilities.

Section 79z–5c, act Aug. 26, 1935, ch. 687, title I, §34, as added Pub. L. 104–104, title I, §103, Feb. 8, 1996, 110 Stat. 81, related to exempt telecommunications companies.

Section 79z–6, acts Aug. 26, 1935, ch. 687, title I, §35, formerly §32, 49 Stat. 837; renumbered §34, Pub. L. 102–486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905; renumbered §35, Pub. L. 104–104, title I, §103, Feb. 8, 1996, 110 Stat. 81, set forth separability clause.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 6 months after Aug. 8, 2005, with provisions relating to effect of compliance with certain regulations approved and made effective prior to such date, see section 1274 of Pub. L. 109–58, set out as an Effective Date note under section 16451 of Title 42, The Public Health and Welfare.

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

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SUBCHAPTER I—INVESTMENT COMPANIES

§80a-1. Findings and declaration of policy

(a) Findings

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 ¹ of this title, and facts otherwise disclosed and ascertained, it is found that investment companies are affected with a national public interest in that, among other things—

(1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the

instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Policy

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 ¹ of this title, and facts otherwise disclosed and ascertained, it is declared that the national public interest and the interest of investors are adversely affected—

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

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

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

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

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

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

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

(8) when investment companies operate without adequate assets or reserves.

It is declared that the policy and purposes of this subchapter, in accordance with which the provisions of this subchapter shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

(Aug. 22, 1940, ch. 686, title I, §1, 54 Stat. 789.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 79z-4 of this title, referred to in text, was repealed by Pub. L. 109-58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [See References in Text note below.](#)

§80a–2. Definitions; applicability; rulemaking considerations

(a) Definitions

When used in this subchapter, unless the context otherwise requires—

(1) "Advisory board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, 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" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) "Affiliated company" means a company which is an affiliated person.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) "Assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) "Bank" means (A) a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(6) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "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 per centum of the voting securities of a company shall be presumed to

control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this subchapter. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term "dealer" has the same meaning as given in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], but does not include an insurance company or investment company.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) "Employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.

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

(15) "Face-amount certificate" means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the "installment type"); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a "fully paid" face-amount certificate).

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

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

- (i) any affiliated person of such company,
- (ii) any member of the immediate family of any natural person who is an affiliated person of such company,
- (iii) any interested person of any investment adviser of or principal underwriter for such company,
- (iv) 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,
- (v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-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 shares 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; or
 - (III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-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; or
- (III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission 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 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 principal underwriter 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 (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

- (i) any affiliated person of such investment adviser or principal underwriter,
- (ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,
- (iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person or such investment adviser or principal underwriter,
- (iv) 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 investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-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 shares 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; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-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; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission 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.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this subchapter or for any other purpose for any period prior to the effective date of such order.

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

services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

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

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

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

(24) "Majority-owned subsidiary" of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(26) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(27) "Periodic payment plan certificate" means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic payments for which such securities provide.

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

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

(30) "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.

(31) "Prospectus", as used in section 80a-22 of this title, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)] and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933 [15 U.S.C. 77a et seq.].

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

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities

issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or 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, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) 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 or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

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

(36) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

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

(39) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

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

distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 80a-28 of this title, means—

(A) as used in sections 80a-3, 80a-5, and 80a-12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this subchapter, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this subchapter, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 80a-5(b)(1) of this title, the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this subchapter. For purposes of sections 80a-5 and 80a-12 of this title in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections 80a-8, 80a-29, and 80a-30 of this title.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.] mean those acts, respectively, as heretofore or hereafter amended.

(45) "Savings and loan association" means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised

and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) "Eligible portfolio company" means any issuer which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 80a-3 of this title (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 80a-3(c) of this title; and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934 [15 U.S.C. 78g];

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

(iii) it has total assets of not more than \$4,000,000, and capital and surplus (shareholders' equity less retained earnings) of not less than \$2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this subchapter.

(47) "Making available significant managerial assistance" by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) "Business development company" means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs

(1) through (3) of section 80a-54(a) of this title, and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of the value of its total assets condition of section 80a-54 of this title; and provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and

(C) has elected pursuant to section 80a-53(a) of this title to be subject to the provisions of sections 80a-54 through 80a-64 of this title.

(49) "Foreign securities authority" means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) "Qualified purchaser" means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a-3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term "qualified purchaser" does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 80a-3(c) of this title, would be an investment company (hereafter in this paragraph referred to as an "excepted investment company"), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 80a-3(c)(1)(A) of this title, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as "pre-amendment beneficial owners"), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser.

Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].

(53) The term "credit rating agency" has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(54) The terms "commodity pool", "commodity pool operator", "commodity trading advisor", "major swap participant", "swap", "swap dealer", and "swap execution facility" have the same meanings as in section 1a of title 7.

(b) Applicability to government

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

(c) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(Aug. 22, 1940, ch. 686, title I, §2, 54 Stat. 790; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Aug. 10, 1954, ch. 667, title IV, §401, 68 Stat. 688; Pub. L. 86–70, §12(d), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(c), July 12, 1960, 74 Stat. 412; Pub. L. 91–547, §2(a), Dec. 14, 1970, 84 Stat. 1413; Pub. L. 95–598, title III, §310(a), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96–477, title I, §101, Oct. 21, 1980, 94 Stat. 2275; Pub. L. 97–303, §5, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title VI, §§601–603, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 101–550, title II, §206(a), Nov. 15, 1990, 104 Stat. 2720; Pub. L. 104–290, title I, §106(c), title II, §209(b), title V, §§503, 504, Oct. 11, 1996, 110 Stat. 3425, 3434, 3445; Pub. L. 105–353, title III, §301(c)(1), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §§213(a), (b), 215, 216, 223, Nov. 12, 1999, 113 Stat. 1397, 1399, 1401; Pub. L. 106–554, §1(a)(5) [title II, §209(a)(1), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435, 2763A–436; Pub. L. 109–291, §4(b)(2)(A), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title VII, §769, title IX, §§985(d)(1), 986(c)(1), July 21, 2010, 124 Stat. 1801, 1934, 1936.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(11), (44), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Securities Act of 1933, referred to in subsec. (a)(31), (44), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(44), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (a)(46)(B), (47)(C), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "State" under authority of Proc. No. 2695, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2010—Subsec. (a)(19). Pub. L. 111–203, §985(d)(1)(A), substituted "clause (vii)" for "clause (vi)" in two places in concluding provisions.

Subsec. (a)(19)(A)(vi)(III), (B)(vi)(III). Pub. L. 111–203, §985(d)(1)(B), inserted "and" at end.

Subsec. (a)(44). Pub. L. 111–203, §986(c)(1), struck out " 'Public Utility Holding Company Act of 1935'," after " 'Securities Exchange Act of 1934',".

Subsec. (a)(54). Pub. L. 111–203, §769, added par. (54).

2006—Subsec. (a)(53). Pub. L. 109–291 added par. (53).

2000—Subsec. (a)(36). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(1)], inserted "security future," after "treasury stock,".

Subsec. (a)(52). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(3)], added par. (52).

1999—Subsec. (a)(5)(A). Pub. L. 106–102, §223, substituted "a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12)" for "a banking institution organized under the laws of the United States".

Subsec. (a)(6). Pub. L. 106–102, §215, amended par. (6) generally. Prior to amendment, par. (6) read as follows: " 'Broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies."

Subsec. (a)(11). Pub. L. 106–102, §216, amended par. (11) generally. Prior to amendment, par. (11) read as follows: " 'Dealer' means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(19)(A)(v). Pub. L. 106–102, §213(a)(1), added cl. (v) and struck out former cl. (v) which read as follows: "any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and".

Subsec. (a)(19)(A)(vi), (vii). Pub. L. 106–102, §213(a)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (a)(19)(B)(v). Pub. L. 106–102, §213(b)(1), added cl. (v) and struck out former cl. (v) which read as follows: "any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and".

Subsec. (a)(19)(B)(vi), (vii). Pub. L. 106–102, §213(b)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

1998—Subsec. (a)(8). Pub. L. 105–353 made a technical amendment to reference in original act which appears in text as reference to title 11.

1996—Subsec. (a)(46)(C)(iii), (iv). Pub. L. 104–290, §503, added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(48)(B). Pub. L. 104–290, §504, inserted at end "provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and".

Subsec. (a)(51). Pub. L. 104–290, §209(b), added par. (51).

Subsec. (c). Pub. L. 104–290, §106(c), added subsec. (c).

1990—Subsec. (a)(49), (50). Pub. L. 101–550 added pars. (49) and (50).

1987—Subsec. (a)(19). Pub. L. 100–181, §601, inserted "completed" before "fiscal years" wherever appearing in subpars. (A)(iv), (vi) and (B)(iv), (vi).

Subsec. (a)(39). Pub. L. 100–181, §602, struck out reference to Canal Zone.

Subsec. (a)(48)(B). Pub. L. 100–181, §603, substituted "paragraphs (1) through (3) of section 80a–54(a) of this title" for "sections 80a–54(a)(1) through (3) of this title".

1982—Subsec. (a)(36). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities

exchange relating to foreign currency," after "mineral rights,".

1980—Subsec. (a)(46) to (48). Pub. L. 96–477 added pars. (46) to (48).

1978—Subsec. (a)(8). Pub. L. 95–598 substituted "a case under title 11" for "bankruptcy".

1970—Subsec. (a)(5). Pub. L. 91–547, §2(a)(1), substituted "under the authority of the Comptroller of the Currency" for "under section 248(k) of title 12,".

Subsec. (a)(19). Pub. L. 91–547, §2(a)(3), added par. (19). Former par. (19) redesignated (20).

Subsecs. (a)(20) to (36). Pub. L. 91–547, §2(a)(2), redesignated former pars. (19) to (35) as (20) to (36), respectively.

Subsec. (a)(37). Pub. L. 91–547, §2(a)(4), added par. (37). Former par. (37) redesignated (39).

Subsecs. (a)(38) to (44). Pub. L. 91–547, §2(a)(2), redesignated former pars. (36) to (42) as (38) to (44).

Subsec. (a)(45). Pub. L. 91–547, §2(a)(5), added par. (45).

1960—Subsec. (a)(37). Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(37). Pub. L. 86–70 struck out reference to Alaska.

1954—Subsec. (a)(30). Act Aug. 10, 1954, substituted "section 10(a) of the Securities Act of 1933" for "section 5(b) of the Securities Act of 1933".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 985(d)(1) and 986(c)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 769 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–290, title II, §209(e), Oct. 11, 1996, 110 Stat. 3436, provided that: "The amendments made by this section [amending this section and section 80a–3 of this title] shall take effect on the earlier of—

"(1) 180 days after the date of enactment of this Act [Oct. 11, 1996]; or

"(2) the date on which the rulemaking required under subsection (d)(2) [set out below] is completed."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note set out under section 77b of this title.

REGULATIONS

Pub. L. 104–290, title II, §209(d)(2), Oct. 11, 1996, 110 Stat. 3435, provided that: "Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term, or otherwise identifying, 'investments' for purposes of section 2(a)(51) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(51)], as added by this Act."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-3. Definition of investment company

(a) Definitions

(1) When used in this subchapter, "investment company" means any issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(2) As used in this section, "investment securities" includes all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c).

(b) Exemption from provisions

Notwithstanding paragraph (1)(C) of subsection (a), none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

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

(3) Any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by paragraph (1) or (2) of this subsection.

(c) Further exemptions

Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons (or, in the case of a qualifying venture capital fund, 250 persons) and which is not making and does not presently propose to make a public offering of its securities. Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a-12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered

investment company and the sale of any security issued by any registered open-end investment company to any such issuer. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper).

(B) Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, where the transfer was caused by legal separation, divorce, death, or other involuntary event.

(C)(i) The term "qualifying venture capital fund" means a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital, with such dollar amount to be indexed for inflation once every 5 years by the Commission, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest \$1,000,000.

(ii) The term "venture capital fund" has the meaning given the term in section 275.203(l)-1 of title 17, Code of Federal Regulations, or any successor regulation.

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

(B) For purposes of this paragraph—

(i) the term "market intermediary" means any person that regularly holds itself out as being willing contemporaneously to engage in, and that is regularly engaged in, the business of entering into transactions on both sides of the market for a financial contract or one or more such financial contracts; and

(ii) the term "financial contract" means any arrangement that—

(I) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets;

(II) is in respect of securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function to any of the foregoing; and

(III) is entered into in response to a request from a counter party for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counter party to such arrangement.

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

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

(i) advertised; or

(ii) offered for sale to the general public; and

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

(4) Any person substantially all of whose business is confined to making small loans, industrial banking, or similar businesses.

(5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

(6) Any company primarily engaged, directly or through majority-owned subsidiaries, in one or more of the businesses described in paragraphs (3), (4), and (5) of this subsection, or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding, or trading in securities.

(7)(A) Any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Securities that are owned by persons who received the securities from a qualified purchaser as a gift or bequest, or in a case in which the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a qualified purchaser, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Notwithstanding subparagraph (A), an issuer is within the exception provided by this paragraph if—

(i) in addition to qualified purchasers, outstanding securities of that issuer are beneficially owned by not more than 100 persons who are not qualified purchasers, if—

(I) such persons acquired any portion of the securities of such issuer on or before September 1, 1996; and

(II) at the time at which such persons initially acquired the securities of such issuer, the issuer was excepted by paragraph (1); and

(ii) prior to availing itself of the exception provided by this paragraph—

(I) such issuer has disclosed to each beneficial owner, as determined under paragraph (1), that future investors will be limited to qualified purchasers, and that ownership in such issuer is no longer limited to not more than 100 persons; and

(II) concurrently with or after such disclosure, such issuer has provided each beneficial owner, as determined under paragraph (1), with a reasonable opportunity to redeem any part or all of their interests in the issuer, notwithstanding any agreement to the contrary between the issuer and such persons, for that person's proportionate share of the issuer's net assets.

(C) Each person that elects to redeem under subparagraph (B)(ii)(II) shall receive an amount in cash equal to that person's proportionate share of the issuer's net assets, unless the issuer elects to provide such person with the option of receiving, and such person agrees to receive, all or a portion of such person's share in assets of the issuer. If the issuer elects to provide such persons with such an opportunity, disclosure concerning such opportunity shall be made in the disclosure required by subparagraph (B)(ii)(I).

(D) An issuer that is excepted under this paragraph shall nonetheless be deemed to be an

investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a-12(d)(1) of this title relating to the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.

(E) For purposes of determining compliance with this paragraph and paragraph (1), an issuer that is otherwise excepted under this paragraph and an issuer that is otherwise excepted under paragraph (1) shall not be treated by the Commission as being a single issuer for purposes of determining whether the outstanding securities of the issuer excepted under paragraph (1) are beneficially owned by not more than 100 persons or whether the outstanding securities of the issuer excepted under this paragraph are owned by persons that are not qualified purchasers. Nothing in this subparagraph shall be construed to establish that a person is a bona fide qualified purchaser for purposes of this paragraph or a bona fide beneficial owner for purposes of paragraph (1).

(8) [Repealed] Pub. L. 111-203, title IX, §986(c)(2), July 21, 2010, 124 Stat. 1936.

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

(10)(A) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes—

- (i) no part of the net earnings of which inures to the benefit of any private shareholder or individual; or
- (ii) which is or maintains a fund described in subparagraph (B).

(B) For the purposes of subparagraph (A)(ii), a fund is described in this subparagraph if such fund is a pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by a charitable organization exclusively for the collective investment and reinvestment of one or more of the following:

- (i) assets of the general endowment fund or other funds of one or more charitable organizations;
- (ii) assets of a pooled income fund;
- (iii) assets contributed to a charitable organization in exchange for the issuance of charitable gift annuities;
- (iv) assets of a charitable remainder trust or of any other trust, the remainder interests of which are irrevocably dedicated to any charitable organization;
- (v) assets of a charitable lead trust;
- (vi) assets of a trust, the remainder interests of which are revocably dedicated to or for the benefit of 1 or more charitable organizations, if the ability to revoke the dedication is limited to circumstances involving—

(I) an adverse change in the financial circumstances of a settlor or an income beneficiary of the trust;

(II) a change in the identity of the charitable organization or organizations having the remainder interest, provided that the new beneficiary is also a charitable organization; or

(III) both the changes described in subclauses (I) and (II);

(vii) assets of a trust not described in clauses (i) through (v), the remainder interests of which are revocably dedicated to a charitable organization, subject to subparagraph (C); or

(viii) such assets as the Commission may prescribe by rule, regulation, or order in accordance with section 80a-6(c) of this title.

(C) A fund that contains assets described in clause (vii) of subparagraph (B) shall be excluded from the definition of an investment company for a period of 3 years after December 8, 1995, but only if—

- (i) such assets were contributed before the date which is 60 days after December 8, 1995; and

(ii) such assets are commingled in the fund with assets described in one or more of clauses (i) through (vi) and (viii) of subparagraph (B).

(D) For purposes of this paragraph—

(i) a trust or fund is "maintained" by a charitable organization if the organization serves as a trustee or administrator of the trust or fund or has the power to remove the trustees or administrators of the trust or fund and to designate new trustees or administrators;

(ii) the term "pooled income fund" has the same meaning as in section 642(c)(5) of title 26;

(iii) the term "charitable organization" means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;

(iv) the term "charitable lead trust" means a trust described in section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of title 26;

(v) the term "charitable remainder trust" means a charitable remainder annuity trust or a charitable remainder unitrust, as those terms are defined in section 664(d) of title 26; and

(vi) the term "charitable gift annuity" means an annuity issued by a charitable organization that is described in section 501(m)(5) of title 26.

(11) Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of title 26; or any governmental plan described in section 77c(a)(2)(C) of this title; or any collective trust fund maintained by a bank consisting solely of assets of one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of title 26 or the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 77e of this title by section 77c(a)(2)(C) of this title, and (C) advances made by an insurance company in connection with the operation of such separate account.

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

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

(14) Any church plan described in section 414(e) of title 26, if, under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries, or any company or account that is—

(A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of title 26; and

(B) substantially all of the activities of which consist of—

(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under title 26; or

(ii) administering or providing benefits pursuant to church plans.

(Aug. 22, 1940, ch. 686, title I, §3, 54 Stat. 797; Oct. 21, 1942, ch. 619, title I, §162(e), 56 Stat. 867; Pub. L. 89–485, §13(i), July 1, 1966, 80 Stat. 243; Pub. L. 91–547, §3(a), (b), Dec. 14, 1970, 84 Stat. 1414; Pub. L. 94–210, title III, §308(c), Feb. 5, 1976, 90 Stat. 57; Pub. L. 96–477, title I, §102, title VII, §703, Oct. 21, 1980, 94 Stat. 2276, 2295; Pub. L. 100–181, title VI, §§604–606, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 104–62, §2(a), Dec. 8, 1995, 109 Stat. 682; Pub. L. 104–290, title II, §209(a), (c), title V, §508(a), Oct. 11, 1996, 110 Stat. 3432, 3435, 3447; Pub. L. 105–353, title III, §301(c)(2), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106–102, title II, §221(c), Nov. 12, 1999, 113 Stat. 1401; Pub. L. 108–359, §1(a), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111–203, title IX, §986(c)(2), July 21, 2010, 124 Stat. 1936; Pub. L. 115–174, title V, §504, May 24, 2018, 132 Stat. 1362.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115–174, §504(1), inserted "(or, in the case of a qualifying venture capital fund, 250 persons)" after "one hundred persons" in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 115–174, §504(2), added subpar. (C).

2010—Subsec. (c)(8). Pub. L. 111–203 substituted "[Repealed]" for text of par. (8) which read as follows: "Any company subject to regulation under the Public Utility Holding Company Act of 1935."

2004—Subsec. (c)(11). Pub. L. 108–359, which directed the substitution of "one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection" for "such trusts or government plans, or both", was executed by making the substitution for "such trusts or governmental plans, or both", to reflect the probable intent of Congress.

1999—Subsec. (c)(3). Pub. L. 106–102 inserted ", if—" and subpars. (A) to (C) before period at end.

1998—Subsec. (b). Pub. L. 105–353 substituted "paragraph (1)(C)" for "paragraph (3)" in introductory provisions.

1996—Subsec. (a). Pub. L. 104–290, §209(c)(1)–(5), designated existing introductory provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and designated existing concluding provisions as par. (2).

Subsec. (a)(2)(C). Pub. L. 104–290, §209(c)(6), substituted "which (i) are" for "which are" and added cl. (ii).

Subsec. (c)(1). Pub. L. 104–290, §209(a)(1), inserted after first sentence "Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a–12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer."

Subsec. (c)(1)(A). Pub. L. 104–290, §209(a)(2), inserted "and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company," after "voting securities of the issuer," and struck out "unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 80a–12(d)(1) of this title" after "(other than short-term paper)".

Subsec. (c)(2). Pub. L. 104–290, §209(a)(3), designated existing provisions as subpar. (A), substituted "acting as broker, and acting as market intermediary," for "and acting as broker," and added subpar. (B).

Subsec. (c)(7). Pub. L. 104–290, §209(a)(4), added par. (7) and struck out former par. (7) "Reserved."

Subsec. (c)(14). Pub. L. 104–290, §508(a), added par. (14).

1995—Subsec. (c)(10). Pub. L. 104–62 amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

1987—Subsec. (c)(3). Pub. L. 100–181, §604, inserted "or" after "therefor;" and struck out "; or any common trust fund or similar fund, established before June 22, 1936, by a corporation which is supervised or examined by State or Federal authority having supervision over banks, if a majority of the units of beneficial interest in such fund, other than units owned by charitable or educational institutions, are held under instruments providing for payment of income to one or more persons and of principal to another or others" after "guardian".

Subsec. (c)(7). Pub. L. 100–181, §605, substituted "Reserved." for "Any company (A) which is subject to regulation under section 314 of title 49, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 314 of title 49."

Subsec. (c)(11). Pub. L. 100–181, §606(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 100–181, §606(2), (3), substituted "; or any governmental plan" for "or which holds only assets of governmental plans" and "trusts or governmental plans, or both" for "trusts".

1980—Subsec. (c)(1). Pub. L. 96–477, §102, designated existing provisions as subpar. (A), provided that beneficial ownership was to be deemed to be that of the holders of ten per cent of company's outstanding securities, other than short term paper, unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which were or would, but for the exception set forth in subpar. (A), be excluded from the definition of investment company solely by par. (1), did not exceed ten per cent of the value of the company's total assets, that such issuer nonetheless was deemed to be an investment company for purposes of section 80a–12(d)(1) of this title, and added subpar. (B).

Subsec. (c)(11). Pub. L. 96–477, §703, excluded from consideration as an investment company for purposes of this subchapter any employee's stock bonus, pension, or profit-sharing trust which holds only assets of governmental plans described in section 77c(a)(2)(C) of this title, redesignated former cl. (B) as (C), and added cl. (B).

1976—Subsec. (c)(7). Pub. L. 94–210 designated existing provisions as cls. (A) and (B) and, as so designated, in cl. (A) provided for applicability to section 314 of title 49 and inserted exception to exception, in cl. (B) inserted provisions relating to companies regulated under section 314 of title 49 and made changes in phraseology to conform cl. to cl. (A), and struck out proviso relating to assets of controlled company.

1970—Subsec. (b)(2). Pub. L. 91–547, §3(a), inserted "in good faith" after "paragraph" in second sentence.

Subsec. (c). Pub. L. 91–547, §3(b)(1), struck out reference to subsec. (b) in introductory text.

Subsec. (c)(4). Pub. L. 91–547, §3(b)(2), redesignated par. (5) as (4). See 1966 Amendment note with respect to repeal of former par. (4).

Subsec. (c)(5). Pub. L. 91–547, §3(b)(2), (3), redesignated par. (6) as (5) and inserted "redeemable securities," before "face-amount certificates". Former par. (5) redesignated (4).

Subsec. (c)(6). Pub. L. 91–547, §3(b)(2), redesignated par. (7) as (6), inserted reference to par. (4), and struck out reference to par. (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 91–547, §3(b)(2), redesignated par. (9) as (7). Former par. (7) redesignated (6).

Subsec. (c)(8). Pub. L. 91–547, §3(b)(2), (4), redesignated par. (10) as (8), substituted "subject to regulation" for "with a registration in effect as a holding company", and struck out former par. (8) provision excluding as an investment company any company 90 per centum or more of the value of whose investment securities are represented by securities of a single issuer included within a class of persons enumerated in pars. (5), (6), or (7) of this subsection.

Subsecs. (c)(9), (10). Pub. L. 91–547, §3(b)(2), redesignated pars. (11) and (12) as (9) and (10), respectively. Former pars. (9) and (10) redesignated (7) and (8).

Subsec. (c)(11). Pub. L. 91–547, §3(b)(2), (5), redesignated par. (13) as (11), substituted "requirements for qualification under section 401 of title 26 [I.R.C. 1954]" for "conditions of section 165 of title 26, as amended [I.R. 1939]", and inserted provisions for exclusion as an investment company any collective trust fund maintained by a bank consisting solely of assets of such trusts or any separate account the assets of which are derived from certain sources. Former par. (11) redesignated (9).

Subsecs. (c)(12) to (15). Pub. L. 91–547, §3(b)(2), redesignated pars. (14) and (15) as (12) and (13), respectively. Former pars. (12) and (13) redesignated (10) and (11).

1966—Subsec. (c)(4). Pub. L. 89–485 repealed provisions which exempt holding company affiliates granted a general voting permit by the Board of Governors of the Federal Reserve System before 1940 and any such affiliates with a later voting permit concerning which determinations were made of being primarily engaged, directly or indirectly, in the business of holding the stock of, and managing or controlling, banks, banking associations, savings banks, or trust companies.

1942—Subsec. (c)(13). Act Oct. 31, 1942, inserted "as amended".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 209 of Pub. L. 104–290 effective on earlier of 180 days after Oct. 11, 1996, or date on which required rulemaking is completed, see section 209(e) of Pub. L. 104–290 set out as a note under section 80a–2 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–210, title III, §308(d)(2), (3), Feb. 5, 1976, 90 Stat. 57, as amended by Pub. L. 94–555, title II, §220(c), Oct. 19, 1976, 90 Stat. 2629, provided that:

"(2) The amendment made by subsection (b) of this section [amending section 78m of this title] shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act [Feb. 5, 1976].

"(3) The amendment made by subsection (c) of this section [amending this section] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976]".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EFFECTIVE DATE OF 1942 AMENDMENT

Act Oct. 21, 1942, ch. 619, title I, §162(d), 56 Stat. 866 (Revenue Act of 1942), as amended by act Dec. 17, 1943, ch. 346, §3, 57 Stat. 602, provided: "TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section [to this section and sections 22, 23, and 165 of Title 26, I.R.C. 1939] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] until the beginning of the first taxable year beginning after December 31, 1942.

"(B) such a plan shall be considered as satisfying the requirements of section 165(a), (3), (4), and (5) and (6) [of Title 26, I.R.C. 1939] for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than January 1, 1944.

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p)(1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

"(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p)(1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

"(2) In the case of a stock bonus, pension, profit sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later."

REGULATIONS

Pub. L. 104–290, title II, §209(d)(1), Oct. 11, 1996, 110 Stat. 3435, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules to implement the

requirements of section 3(c)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)(B)), as amended by this section."

Pub. L. 104-290, title II, §209(d)(3), Oct. 11, 1996, 110 Stat. 3436, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules pursuant to its authority under section 6 of the Investment Company Act of 1940 [15 U.S.C. 80a-6] to permit the ownership of securities by knowledgeable employees of the issuer of the securities or an affiliated person without loss of the exception of the issuer under paragraph (1) or (7) of section 3(c) of that Act [15 U.S.C. 80a-3(c)] from treatment as an investment company under that Act [15 U.S.C. 80a-1 et seq.]."

Pub. L. 104-290, title II, §209(d)(4), Oct. 11, 1996, 110 Stat. 3436, provided that: "Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term 'beneficial owner' for purposes of section 3(c)(7)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(7)(B)], as amended by this Act."

PROTECTION OF CHURCH EMPLOYEE BENEFIT PLANS UNDER STATE LAW

Pub. L. 104-290, title V, §508(f), Oct. 11, 1996, 110 Stat. 3448, provided that:

"(1) REGISTRATION REQUIREMENTS.—Any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], as added by subsection (a) of this section, and any offer, sale, or purchase thereof, shall be exempt from any law of a State that requires registration or qualification of securities.

"(2) TREATMENT OF CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986 [26 U.S.C. 414(e)], no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], as added by subsection (a) of this section, and no trustee, director, officer, or employee of or volunteer for any such plan, person, entity, company, or account shall be required to qualify, register, or be subject to regulation as an investment company or as a broker, dealer, investment adviser, or agent under the laws of any State solely because such plan, person, entity, company, or account buys, holds, sells, or trades in securities for its own account or in its capacity as a trustee or administrator of or otherwise on behalf of, or for the account of, or provides investment advice to, for, or on behalf of, any such plan, person, or entity or any company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-3a. Protection of philanthropy under State law

(a) Registration requirements

A security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title, and the offer or sale thereof, shall be exempt from any statute or regulation of a State that requires registration or qualification of securities.

(b) Treatment of charitable organizations

No charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person's employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of one or more of the following:

- (1) a charitable organization;
- (2) a fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title; or
- (3) a trust or other donative instrument described in section 80a-3(c)(10)(B) of this title, or the settlors (or potential settlors) or beneficiaries of any such trusts or other instruments.

(c) State action

Notwithstanding subsections (a) and (b), during the 3-year period beginning on December 8, 1995, a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State referred to in this section.

(d) Definitions

For purposes of this section—

- (1) the term "charitable organization" means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;
- (2) the term "security" has the same meaning as in section 78c of this title; and
- (3) the term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 104-62, §6, Dec. 8, 1995, 109 Stat. 685.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Philanthropy Protection Act of 1995, and not as part of the Investment Company Act of 1940 which comprises this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104-62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in this section, except as specifically provided in such statutes, see section 7 of Pub. L. 104-62, set out as an Effective Date of 1995 Amendment note under section 77c of this title.

§80a-4. Classification of investment companies

For the purposes of this subchapter, investment companies are divided into three principal classes, defined as follows:

- (1) "Face-amount certificate company" means an investment company which is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such business and has any such certificate outstanding.
- (2) "Unit investment trust" means an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.
- (3) "Management company" means any investment company other than a face-amount certificate company or a unit investment trust.

(Aug. 22, 1940, ch. 686, title I, §4, 54 Stat. 799.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–5. Subclassification of management companies

(a) Open-end and closed-end companies

For the purposes of this subchapter, management companies are divided into open-end and closed-end companies, defined as follows:

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

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

(b) Diversified and non-diversified companies

Management companies are further divided into diversified companies and non-diversified companies, defined as follows:

(1) "Diversified company" means a management company which meets the following requirements: At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

(2) "Non-diversified company" means any management company other than a diversified company.

(c) Loss of status as diversified company

A registered diversified company which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) shall not lose its status as a diversified company because of any subsequent discrepancy between the value of its various investments and the requirements of said paragraph, so long as any such discrepancy existing immediately after its acquisition of any security or other property is neither wholly nor partly the result of such acquisition.

(Aug. 22, 1940, ch. 686, title I, §5, 54 Stat. 800; Pub. L. 100–181, title VI, §607, Dec. 4, 1987, 101 Stat. 1261.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–181 substituted "Closed-end" for "Close-end".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–6. Exemptions

(a) Exemption of specified investment companies

The following investment companies are exempt from the provisions of this subchapter:

(1) Any company which since the effective date of this subchapter or within five years prior to such date has been reorganized under the supervision of a court of competent jurisdiction, if (A) such company was not an investment company at the commencement of such reorganization proceedings, (B) at the conclusion of such proceedings all outstanding securities of such company were owned by creditors of such company or by persons to whom such securities were issued on account of creditors' claims, and (C) more than 50 per centum of the voting securities of such company, and securities representing more than 50 per centum of the net asset value of such company, are currently owned beneficially by not more than twenty-five persons; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold to the public after the conclusion of such proceedings by the issuer or by or through any underwriter. For the purposes of this paragraph, any new company organized as part of the reorganization shall be deemed the same company as its predecessor; and beneficial ownership shall be determined in the manner provided in section 80a-3(c)(1) of this title.

(2) Any issuer as to which there is outstanding a writing filed with the Commission by the Federal Savings and Loan Insurance Corporation stating that exemption of such issuer from the provisions of this subchapter is consistent with the public interest and the protection of investors and is necessary or appropriate by reason of the fact that such issuer holds or proposes to acquire any assets or any product of any assets which have been segregated (A) from assets of any company which at the filing of such writing is an insured institution within the meaning of section 1724(a) ¹ of title 12, or (B) as a part of or in connection with any plan for or condition to the insurance of accounts of any company by said corporation or the conversion of any company into a Federal savings and loan association. Any such writing shall expire when canceled by a writing similarly filed or at the expiration of two years after the date of its filing, whichever first occurs; but said corporation may, nevertheless, before, at, or after the expiration of any such writing file another writing or writings with respect to such issuer.

(3) Any company which prior to March 15, 1940, was and now is a wholly-owned subsidiary of a registered face-amount certificate company and was prior to said date and now is organized and operating under the insurance laws of any State and subject to supervision and examination by the insurance commissioner thereof, and which prior to March 15, 1940, was and now is engaged, subject to such laws, in business substantially all of which consists of issuing and selling only to residents of such State and investing the proceeds from, securities providing for or representing participations or interests in intangible assets consisting of mortgages or other liens on real estate or notes or bonds secured thereby or in a fund or deposit of mortgages or other liens on real estate or notes or bonds secured thereby or having outstanding such securities so issued and sold.

(4)(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State if—

(i) the organizational documents of the company state that the activities of the company are limited to the promotion of economic, business, or industrial development in the State through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose;

(ii) immediately following each sale of the securities of the company by the company or any underwriter for the company, not less than 80 percent of the securities of the company being offered in such sale, on a class-by-class basis, are held by persons who reside or who have a substantial business presence in that State;

(iii) the securities of the company are sold, or proposed to be sold, by the company or by any underwriter for the company, solely to accredited investors, as that term is defined in section 77b(a)(15) of this title, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

(iv) the company does not purchase any security issued by an investment company or by any

company that would be an investment company except for the exclusions from the definition of the term "investment company" under paragraph (1) or (7) of section 80a-3(c) of this title, other than—

(I) any debt security that meets such standards of credit-worthiness as the Commission shall adopt; or

(II) any security issued by a registered open-end investment company that is required by its investment policies to invest not less than 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

(B) Notwithstanding the exemption provided by this paragraph, section 80a-9 of this title (and, to the extent necessary to enforce section 80a-9 of this title, sections 80a-37 through 80a-50 of this title) shall apply to a company described in this paragraph as if the company were an investment company registered under this subchapter.

(C) Any company proposing to rely on the exemption provided by this paragraph shall file with the Commission a notification stating that the company intends to do so, in such form and manner as the Commission may prescribe by rule.

(D) Any company meeting the requirements of this paragraph may rely on the exemption provided by this paragraph upon filing with the Commission the notification required by subparagraph (C), until such time as the Commission determines by order that such reliance is not in the public interest or is not consistent with the protection of investors.

(E) The exemption provided by this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.

(b) Exemption of employees' security company upon application; matters considered

Upon application by any employees' security company, the Commission shall by order exempt such company from the provisions of this subchapter and of the rules and regulations hereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order of exemption shall apply, the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security.

(c) Exemption of persons, securities or any class or classes of persons as necessary and appropriate in public interest

The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) Exemption of closed-end investment companies

The Commission, by rules and regulations or order, shall exempt a closed-end investment company from any or all provisions of this subchapter, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if—

(1) the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is the issuer and which it proposes to offer for sale, do not exceed \$10,000,000, or such other amount as the Commission may set by rule, regulation, or order;

(2) no security of which such company is the issuer has been or is proposed to be sold by such company or any underwriter therefor, in connection with a public offering, to any person who is not a resident of the State under the laws of which such company is organized or otherwise created; and

(3) such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(e) Application of certain specified provisions of subchapter to otherwise exempt companies

If, in connection with any rule, regulation, or order under this section exempting any investment company from any provision of section 80a-7 of this title, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of this subchapter pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

(f) Exemption of closed-end company treated as business development company

Any closed-end company which—

(1) elects to be treated as a business development company pursuant to section 80a-53 of this title; or

(2) would be excluded from the definition of an investment company by section 80a-3(c)(1) of this title, except that it presently proposes to make a public offering of its securities as a business development company, and has notified the Commission, in a form and manner which the Commission may, by rule, prescribe, that it intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 80a-54 through 80a-64 of this title,

shall be exempt from sections 80a-1 through 80a-52 of this title, except to the extent provided in sections 80a-58 through 80a-64 of this title.

(Aug. 22, 1940, ch. 686, title I, §6, 54 Stat. 800; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86-70, §12(e), June 25, 1959, 73 Stat. 143; Pub. L. 86-624, §7(c), July 12, 1960, 74 Stat. 412; Pub. L. 95-598, title III, §310(b), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96-477, title I, §103, Oct. 21, 1980, 94 Stat. 2277; Pub. L. 100-181, title VI, §608, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 104-290, title V, §§501, 502, Oct. 11, 1996, 110 Stat. 3444, 3445; Pub. L. 111-203, title IX, §939(c), July 21, 2010, 124 Stat. 1886; Pub. L. 115-174, title V, §506(a), May 24, 2018, 132 Stat. 1363.)

EDITORIAL NOTES

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (a)(1), see section 80a-52 of this title.

Section 1724 of title 12, referred to in subsec. (a)(2), was repealed by Pub. L. 101-73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-174 redesignated pars. (2) to (5) as (1) to (4), respectively, and struck out former par. (1) which read as follows: "Any company organized or otherwise created under the laws of and having its principal office and place of business in Puerto Rico, the Virgin Islands, or any other possession of the United States; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold after the effective date of this subchapter, by such company or an underwriter therefor, to a resident of any State other than the State in which such company is organized."

2010—Subsec. (a)(5)(A)(iv)(I). Pub. L. 111-203 substituted "meets such standards of credit-worthiness as the Commission shall adopt" for "is rated investment grade by not less than 1 nationally recognized statistical rating organization".

1996—Subsec. (a)(5). Pub. L. 104-290, §501, added par. (5).

Subsec. (d)(1). Pub. L. 104–290, §502, substituted "\$10,000,000, or such other amount as the Commission may set by rule, regulation, or order" for "\$100,000".

1987—Subsec. (a)(1). Pub. L. 100–181, §608(1), struck out reference to Canal Zone.

Subsec. (a)(2) to (5). Pub. L. 100–181, §608(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: "Any company for which, in a proceeding in any court of the United States or of a State, a receiver, trustee in a case under title 11, or similar officer had been appointed or elected prior to the effective date of this subchapter, and every such officer so appointed or elected prior to the effective date of this subchapter; but such exemption shall continue only so long as (A) the conduct of such company's business remains subject to the supervision of such court or officer thereof, and (B) such company does not sell exclusively for cash any security of which it is the issuer, except short-term paper and ordinary receiver's or trustee's certificates."

1980—Subsec. (f). Pub. L. 96–477 added subsec. (f).

1978—Subsec. (a)(2). Pub. L. 95–598 substituted "a case under title 11" for "bankruptcy".

1960—Subsec. (a)(1). Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(1). Pub. L. 86–70 struck out reference to Alaska.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT; SAFE HARBOR

Pub. L. 115–174, title V, §506(b), May 24, 2018, 132 Stat. 1363, provided that:

"(1) **EFFECTIVE DATE.**—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [May 24, 2018].

"(2) **SAFE HARBOR.**—With respect to a company that is exempt under section 6(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(1)) on the day before the date of enactment of this Act, the amendment made by subsection (a) shall take effect on the date that is 3 years after the date of enactment of this Act.

"(3) **EXTENSION OF SAFE HARBOR.**—The Securities and Exchange Commission, by rule or regulation upon its own motion, or by order upon application, may conditionally or unconditionally, under section 6(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(c)), further delay the effective date for a company described in paragraph (2) for a maximum of 3 years following the initial 3-year period if, before the end of the initial 3-year period, the Commission determines that such a rule, regulation, motion, or order is necessary or appropriate in the public interest and for the protection of investors."

[For definition of "company" as used in section 506(b) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note under section 5365 of Title 12, Banks and Banking.]

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959

Subchapter inapplicable to certain life insurance benefits issued prior to Mar. 23, 1959, under certain conditions, see section 29 of Pub. L. 91–547, Dec. 14, 1970, 84 Stat. 1436, set out as a note under section 77c of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set

out under section 78d of this title.

¹ [See References in Text note below.](#)

§80a–7. Transactions by unregistered investment companies

(a) Prohibition of transactions in interstate commerce by companies

No investment company organized or otherwise created under the laws of the United States or of a State and having a board of directors, unless registered under section 80a–8 of this title, shall directly or indirectly—

- (1) offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;
- (2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person;
- (3) control any investment company which does any of the acts enumerated in paragraphs (1) and (2) of this subsection;
- (4) engage in any business in interstate commerce; or
- (5) control any company which is engaged in any business in interstate commerce.

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

(b) Prohibition of transactions in interstate commerce by depositors or trustees of companies

No depositor or trustee of or underwriter for any investment company, organized or otherwise created under the laws of the United States or of a State and not having a board of directors, unless such company is registered under section 80a–8 of this title or exempt under section 80a–6 of this title, shall directly or indirectly—

- (1) offer for sale, sell, or deliver after sale, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security of which such company is the issuer; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;
- (2) purchase, redeem, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security of which such company is the issuer; or
- (3) sell or purchase for the account of such company, by use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

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

(c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies

No promoter of a proposed investment company, and no underwriter for such a promoter, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any preorganization certificate or subscription for such a company.

(d) Prohibition of transactions in interstate commerce by companies not organized under laws of the United States or a State; exceptions

No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer. Notwithstanding the provisions of this subsection and of section 80a-8(a) of this title, the Commission is authorized, upon application by an investment company organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under this subchapter, and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce, if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of this subchapter against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

(e) Disclosure by exempt charitable organizations

Each fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title shall provide, to each donor to such fund, at the time of the donation or within 90 days after December 8, 1995, whichever is later, written information describing the material terms of the operation of such fund.

(Aug. 22, 1940, ch. 686, title I, §7, 54 Stat. 802; Pub. L. 104-62, §2(b), Dec. 8, 1995, 109 Stat. 683.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (e). Pub. L. 104-62 added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104-62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a-3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104-62, set out as a note under section 77c of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-8. Registration of investment companies

(a) Notification of registration; effective date of registration

Any investment company organized or otherwise created under the laws of the United States or of a State may register for the purposes of this subchapter by filing with the Commission a notification

of registration, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Registration statement; contents

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

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein: (A) the classification and subclassifications, as defined in sections 80a-4 and 80a-5 of this title, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance of senior securities; (D) engaging in the business of underwriting securities issued by other persons; (E) concentrating investments in a particular industry or group of industries; (F) the purchase and sale of real estate and commodities, or either of them; (G) making loans to other persons; and (H) portfolio turn-over (including a statement showing the aggregate dollar amount of purchases and sales of portfolio securities, other than Government securities, in each of the last three full fiscal years preceding the filing of such registration statement);

(2) a recital of all investment policies of the registrant, not enumerated in paragraph (1), which are changeable only if authorized by shareholder vote;

(3) a recital of all policies of the registrant, not enumerated in paragraphs (1) and (2), in respect of matters which the registrant deems matters of fundamental policy;

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

(5) the information and documents which would be required to be filed in order to register under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], all securities (other than short-term paper) which the registrant has outstanding or proposes to issue.

(c) Alternative information

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

(1) copies of the most recent registration statement filed by the registrant under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and currently effective under such Act, or if the registrant has not filed such a statement, copies of a registration statement filed by the registrant under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and currently effective under such Act;

(2) copies of any reports filed by the registrant pursuant to section 78m or 78o(d) of this title; and

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

(d) Registration of unit investment trusts

If the registrant is a unit investment trust substantially all of the assets of which are securities issued by another registered investment company, the Commission is authorized to prescribe for the registrant, by rules and regulations or order, a registration statement which eliminates inappropriate

duplication of information contained in the registration statement filed under this section by such other investment company.

(e) Failure to file registration statement or omissions of material fact

If it appears to the Commission that a registered investment company has failed to file the registration statement required by this section or a report required pursuant to section 80a–29 (a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a–33(b) of this title, the Commission shall notify such company by registered mail or by certified mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be materially incomplete or misleading, as the case may be, and shall fix a date (in no event earlier than thirty days after the mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes—

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section 80a–29(a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a–33(b) of this title; and

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

(f) Cessation of existence as investment company

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

(g) Data standards for registration statements

(1) Requirement

The Commission shall, by rule, adopt data standards for all registration statements required to be filed with the Commission under this section, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(Aug. 22, 1940, ch. 686, title I, §8, 54 Stat. 803; Pub. L. 86–507, §1(14), June 11, 1960, 74 Stat. 201; Pub. L. 91–547, §3(c), Dec. 14, 1970, 84 Stat. 1415; Pub. L. 117–263, div. E, title LVIII, §5821(b)(1), Dec. 23, 2022, 136 Stat. 3424.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (b)(5) and (c)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(5) and (c)(1), is act June 6, 1934, ch. 404,

48 Stat. 881, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

Words "such Act", referred to in subsec. (c)(1), mean the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively.

AMENDMENTS

2022—Subsec. (g). Pub. L. 117–263 added subsec. (g).

1970—Subsec. (b)(2). Pub. L. 91–547, §3(c)(1), substituted "all investment policies of the registrant" and "which are changeable only if authorized by shareholder vote" for "the policy of the registrant in respect of matters" and "which the registrant deems matters of fundamental policy and elects to treat as such", respectively. Former provisions are covered in par. (3).

Subsec. (b)(3) to (5). Pub. L. 91–547, §3(c)(2), (3), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

1960—Subsec. (e). Pub. L. 86–507 inserted "or by certified mail" after "registered mail".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–9. Ineligibility of certain affiliated persons and underwriters

(a) Persons deemed ineligible for service with investment companies, etc.; investment adviser

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, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or

entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

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

For the purposes of paragraphs (1) to (3) of this subsection, the term "investment adviser" shall include an investment adviser as defined in subchapter II of this chapter.

(b) Certain persons serving investment companies; administrative action of Commission

The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall 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 affiliated person of such investment adviser, depositor, or principal underwriter, if such person—

(1) has willfully made or caused to be made in any registration statement, application or report filed with the Commission under this subchapter any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein;

(2) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], or of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of the Commodity Exchange Act [7 U.S.C. 1 et seq.], or of any rule or regulation under any of such statutes;

(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933 [15 U.S.C. 77a et seq.], or of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of the Commodity Exchange Act [7 U.S.C. 1 et seq.], or of any rule or regulation under any of such statutes;

(4) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, 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) Application of ineligible person for exemption

Any person who is ineligible, by reason of subsection (a), to serve or act in the capacities enumerated in such subsection, may file with the Commission an application for an exemption from the provisions of such subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of such subsection (a) as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

(d) Money penalties in administrative proceedings

(1) Authority of Commission

(A) In general

In any proceeding instituted pursuant to subsection (b) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest, and that such person—

(i) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter II of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person; or

(iii) has willfully made or caused to be made in any registration statement, application, or report required to be filed with the Commission under this subchapter, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein; ¹

(B) Cease-and-desist proceedings

In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

(2) Maximum amount of penalty

(A) First tier

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for a natural person or \$50,000 for any other person.

(B) Second tier

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(3) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 80b-3(e)(2) of this title;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(e) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Cease-and-desist proceedings

(1) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) Temporary order

(A) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceeding, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 80a-39(a) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) Applicability

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(4) Review of temporary orders

(A) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

- (i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or
- (ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) Exclusive review

Section 80a-42 of this title shall not apply to a temporary order entered pursuant to this section.

(5) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under subsection (f)(1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(g) Corporate or other trustees performing functions of investment advisers

For the purposes of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, §9, 54 Stat. 805; Pub. L. 91-547, §4, Dec. 14, 1970, 84 Stat. 1415; Pub. L. 94-29, §28(6), June 4, 1975, 89 Stat. 166; Pub. L. 99-571, title I, §102(l), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100-181, title VI, §609, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 101-429, title III, §301, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101-550, title II, §205(a), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 106-102, title II, §222, Nov. 12, 1999, 113 Stat. 1401; Pub. L. 109-291, §4(b)(2)(B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111-203, title IX, §§929P(a)(3), 985(d)(2), July 21, 2010, 124 Stat. 1863, 1934.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a)(1), (2) and (b)(2), (3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(2), (3) and (d)(1)(A)(i), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(2), (3) and (d)(1)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(4)(B). Pub. L. 111-203, §985(d)(2), inserted "or" at end.

Subsec. (d)(1). Pub. L. 111-203, §929P(a)(3), designated existing provisions as subpar. (A) and inserted heading, inserted "that such penalty is in the public interest, and" after "opportunity for hearing," in introductory provisions, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added subpar. (B).

2006—Subsec. (a). Pub. L. 109-291 inserted "credit rating agency," after "transfer agent," in pars. (1) and (2).

1999—Subsec. (a)(1), (2). Pub. L. 106-102 substituted "securities dealer, bank, transfer agent," for "securities dealer, transfer agent,".

1990—Subsec. (b)(4) to (6). Pub. L. 101-550 added pars. (4) to (6).

Subsecs. (d) to (f). Pub. L. 101-429, §301(1), (2), added subsecs. (d) to (f) and redesignated former subsec. (d) as (g).

Subsec. (g). Pub. L. 101-429, §301(3), which directed the striking out of "subsections (a) through (c) of" after "the purposes of", was executed by striking out "subsection (a) through (c) of" as the probable intent of Congress.

Pub. L. 101-429, §301(1), redesignated subsec. (d) as (g).

1987—Subsec. (a)(1), (2). Pub. L. 100-181 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

"(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer,

investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or".

1986—Subsec. (a)(1), (2). Pub. L. 99–571, §102(l)(1), inserted pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

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

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or".

Subsec. (b)(2), (3). Pub. L. 99–571, §102(l)(2), (3), inserted reference to Commodity Exchange Act.

1975—Subsec. (d). Pub. L. 94–29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–547, §4(a), inserted "employee," before "officer" in introductory text.

Subsecs. (b), (c). Pub. L. 91–547, §4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ So in original. The semicolon probably should be a period.

§80a–10. Affiliations or interest of directors, officers, and employees

(a) Interested persons of company who may serve on board of directors

No registered investment company shall have a board of directors more than 60 per centum of the members of which are persons who are interested persons of such registered company.

(b) Employment and use of directors, officers, etc., as regular broker, principal underwriter, or investment banker

No registered investment company shall—

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

(2) use as a principal 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 interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters; or

(3) 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 investment banker. For the purposes of this paragraph, a person shall not be deemed an affiliated person of an investment banker solely by reason of the fact that he is an affiliated person of a company of the character described in section 80a–12(d)(3)(A) and (B) of this title.

(c) Officers, directors, or employees of one bank or bank holding company as majority of board of directors of company; exceptions

No registered investment company shall 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 (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12) or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12),¹ except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

(d) Exception to limitation of number of interested persons who may serve on board of directors

Notwithstanding subsections (a) and (b)(2) of this section, a registered investment company may have a board of directors all the members of which, except one, are interested persons of the investment adviser of such company, or are officers or employees of such company, if—

(1) such investment company is an open-end company;

(2) such investment adviser is registered under subchapter II of this chapter and is engaged principally in the business of rendering investment supervisory services as defined in subchapter II;

(3) no sales load is charged on securities issued by such investment company;

(4) any premium over net asset value charged 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 2 per centum;

(5) no sales or promotion expenses are incurred by such registered company; but expenses incurred in complying with laws regulating the issue or sale of securities shall not be deemed sales or promotion expenses;

(6) such investment adviser is the only investment adviser to such investment company, and such investment adviser does not receive a management fee exceeding 1 per centum per annum of the value of such company's net assets averaged over the year or taken as of a definite date or dates within the year;

(7) all executive salaries and executive expenses and office rent of such investment company are paid by such investment adviser; and

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

(e) Death, disqualification, or resignation of directors as suspension of limitation provisions

If by reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section or of section 80a-15(f)(1) of this title in respect of directors shall not be met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(f) Officer, director, etc., of company acting as principal underwriter of security acquired by company

No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 80a-12(d)(3)(A) and (B) of this title) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in acquiring such security such registered company is itself acting as a principal underwriter for the issuer. The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

(g) Advisory boards; restrictions on membership

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

(h) Application of section to unincorporated registered management companies

In the case of a registered management company which is an unincorporated company not having a board of directors, the provisions of this section shall apply as follows:

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

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

(3) the provisions of subsection (f) shall apply to purchases and other acquisitions for the account of such company of securities a principal underwriter of which is the depositor or an

investment adviser of such company, or an affiliated person of such depositor or investment adviser.

(Aug. 22, 1940, ch. 686, title I, §10, 54 Stat. 806; Pub. L. 91-547, §5, Dec. 14, 1970, 84 Stat. 1416; Pub. L. 94-29, §28(5), June 4, 1975, 89 Stat. 165; Pub. L. 106-102, title II, §213(c), Nov. 12, 1999, 113 Stat. 1398; Pub. L. 109-351, title IV, §401(c), Oct. 13, 2006, 120 Stat. 1973.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-351 inserted "or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12)," after "1841 of title 12)".

1999—Subsec. (c). Pub. L. 106-102 substituted "bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12), except" for "bank, except".

1975—Subsec. (e). Pub. L. 94-29 inserted reference to provisions of section 80a-15(f)(1) of this title.

1970—Subsec. (a). Pub. L. 91-547, §5(a), struck out introductory text "After one year from the effective date of this subchapter" and substituted "interested persons of such registered company" for "investment advisers of, affiliated persons of an investment adviser of, or officers or employees of, such registered company".

Subsec. (b). Pub. L. 91-547, §5(b)(1), struck out introductory text "After one year from the effective date of this subchapter," and substituted "No" for "no".

Subsec. (b)(2). Pub. L. 91-547, §5(b)(2), substituted "interested" for "affiliated" in two places.

Subsec. (c). Pub. L. 91-547, §5(c), struck out introductory text "After the effective date of this subchapter", substituted "No", ", except that", "had a majority", and "such company" for "no", ": *Provided, That*", "shall have had a majority", and "such company", respectively, and inserted reference to employees where first appearing.

Subsec. (d). Pub. L. 91-547, §5(d), reenacted provisions except for substitution of "interested persons" for "affiliated persons" in introductory text, deletion of "such investment adviser" before "is engaged" in item (2), and substitution of "class of securities" for "class of stock" and "unit" for "share" in two places in item (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106-102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30 (introductory text and pars. (1) and (2)) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ *So in original.*

§80a-11. Offers to exchange securities

(a) Approval by Commission for exchanges of securities on basis other than relative net asset value

It shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later times as is specified in the offer.

(b) Application of section to offers pursuant to plan of reorganization

The provisions of this section shall not apply to any offer made pursuant to any plan of reorganization, which is submitted to and requires the approval of the holders of at least a majority of the outstanding shares of the class or series to which the security owned by the offeree belongs.

(c) Application of section to specific exchange offers

The provisions of subsection (a) shall be applicable, irrespective of the basis of exchange, (1) to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust or registered face-amount certificate company; and (2) to any type of offer of exchange of the securities of registered unit investment trusts or registered face-amount certificate companies for the securities of any other investment company.

(Aug. 22, 1940, ch. 686, title I, §11, 54 Stat. 808; Pub. L. 91-547, §6, Dec. 14, 1970, 84 Stat. 1417.)

EDITORIAL NOTES

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-547 struck out item (1) designation of existing provisions and item (2) provision for nonapplication of this section to any offer made pursuant to the right of conversion, at the option of the holder, from one class or series into another class or series of securities issued by the same company upon such terms as are specified in the charter, certificate of incorporation, articles of association, by-laws, or trust indenture subject to which the securities to be converted were issued or are to be issued.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-12. Functions and activities of investment companies

(a) Purchase of securities on margin; joint trading accounts; short sales of securities; exceptions

It shall be unlawful for any registered investment company, in contravention of such rules and regulations or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

- (1) to purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;
- (2) to participate on a joint or a joint and several basis in any trading account in securities, except in connection with an underwriting in which such registered company is a participant; or
- (3) to effect a short sale of any security, except in connection with an underwriting in which such registered company is a participant.

(b) Distribution by investment company of securities of which it is issuer

It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 80a-10(d) of this title) to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c) Limitations on commitments as underwriter

It shall be unlawful for any registered diversified company to make any commitment as underwriter, if immediately thereafter the amount of its outstanding underwriting commitments, plus the value of its investments in securities of issuers (other than investment companies) of which it owns more than 10 per centum of the outstanding voting securities, exceeds 25 per centum of the value of its total assets.

(d) Limitations on acquisition by investment companies of securities of other specific businesses

(1)(A) It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

- (i) more than 3 per centum of the total outstanding voting stock of the acquired company;
- (ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or
- (iii) securities issued by the acquired company and all other investment companies (other than treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

(B) It shall be unlawful for any registered open-end investment company (the "acquired company"), any principal underwriter therefor, or any broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the "acquiring company") or any company or companies controlled by the acquiring company, if immediately after such sale or disposition—

- (i) more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it; or
- (ii) more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.

(C) It shall be unlawful for any investment company (the "acquiring company") and any company or companies controlled by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment adviser, and companies controlled by such investment companies, own more than 10 per centum of the total outstanding voting stock of such closed-end company.

(D) The provisions of this paragraph shall not apply to a security received as a dividend or as a result of an offer of exchange approved pursuant to section 80a-11 of this title or of a plan of reorganization of any company (other than a plan devised for the purpose of evading the foregoing provisions).

(E) The provisions of this paragraph shall not apply to a security (or securities) purchased or acquired by an investment company if—

(i) the depositor of, or principal underwriter for, such investment company is a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or a person controlled by such a broker or dealer;

(ii) such security is the only investment security held by such investment company (or such securities are the only investment securities held by such investment company, if such investment company is a registered unit investment trust that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different investment company); and

(iii) the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for the issuer of, the security whereby such investment company is obligated—

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

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

(F) The provisions of this paragraph shall not apply to securities purchased or otherwise acquired by a registered investment company if—

(i) immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and

(ii) such registered investment company has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price which includes a sales load of more than 1½ per centum.

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

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

(I) the acquired company and the acquiring company are part of the same group of investment companies;

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

(III) with respect to—

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

(bb) securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired company, are not excessive under rules adopted pursuant to section 80a-22(b) of this title or section 80a-22(c) of this title by a securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3], or the Commission;

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

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

(ii) For purposes of this subparagraph, the term "group of investment companies" means any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.

(H) For the purposes of this paragraph, the value of an investment company's total assets shall be computed as of the time of a purchase or acquisition or as closely thereto as is reasonably possible.

(I) In any action brought to enforce the provisions of this paragraph, the Commission may join as a party the issuer of any security purchased or otherwise acquired in violation of this paragraph, and the court may issue any order with respect to such issuer as may be necessary or appropriate for the enforcement of the provisions of this paragraph.

(J) The Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of this paragraph, if and to the extent that such exemption is consistent with the public interest and the protection of investors.

(2) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.

(3) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under subchapter II of this chapter, unless (A) such person is a corporation all the outstanding securities of which (other than short-term paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (B) such person is primarily engaged in the

business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities.

(e) Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc.

Notwithstanding any provisions of this subchapter, any registered investment company may hereafter purchase or otherwise acquire any security issued by any one corporation engaged or proposing to engage in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which no ready market is in existence, and reorganizing companies or similar activities; provided—

(1) That the securities issued by such corporation (other than short-term paper and securities representing bank loans) shall consist solely of one class of common stock and shall have been originally issued or sold for investment to registered investment companies only;

(2) That the aggregate cost of the securities of such corporation purchased by such registered investment company does not exceed 5 per centum of the value of the total assets of such registered company at the time of any purchase or acquisition of such securities; and

(3) That the aggregate paid-in capital and surplus of such corporation does not exceed \$100,000,000.

For the purpose of paragraph (1) of section 80a-5(b) of this title any investment in any such corporation shall be deemed to be an investment in an investment company.

(f) Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations

Notwithstanding any provisions of this chapter, any registered face-amount certificate company may organize not more than two face-amount certificate companies and acquire and own all or any part of the capital stock thereof only if such stock is acquired and held for investment: *Provided*, That the aggregate cost to such registered company of all such stock so acquired shall not exceed six times the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 80a-28 of this title for a face-amount company organized on or after March 15, 1940: *And provided further*, That the aggregate cost to such registered company of all such capital stock issued by face-amount certificate companies organized or otherwise created under laws other than the laws of the United States or any State thereof shall not exceed twice the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of said section 80a-28 for a company organized on or after March 15, 1940. Nothing contained in this subsection shall be deemed to prevent the sale of any such stock to any other person if the original purchase was made by such registered face-amount certificate company in good faith for investment and not for resale.

(g) Exceptions to limitation on ownership by investment company of securities of insurance company

Notwithstanding the provisions of this section any registered investment company and any company or companies controlled by such registered company may purchase or otherwise acquire from another investment company or any company or companies controlled by such registered company more than 10 per centum of the total outstanding voting stock of any insurance company owned by any such company or companies, or may acquire the securities of any insurance company if the Commission by order determines that such acquisition is in the public interest because the financial condition of such insurance company will be improved as a result of such acquisition or any plan contemplated as a result thereof. This section shall not be deemed to prohibit the promotion of a new insurance company or the acquisition of the securities of any newly created insurance company by a registered investment company, alone or with other persons. Nothing contained in this section shall in any way affect or derogate from the powers of any insurance commissioner or similar

official or agency of the United States or any State, or to affect the right under State law of any insurance company to acquire securities of any other insurance company or insurance companies.

(Aug. 22, 1940, ch. 686, title I, §12, 54 Stat. 808; Pub. L. 91-547, §7, Dec. 14, 1970, 84 Stat. 1417; Pub. L. 100-181, title VI, §610, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 104-290, title II, §202, Oct. 11, 1996, 110 Stat. 3426; Pub. L. 105-353, title III, §301(c)(3), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 111-203, title IX, §985(d)(3), July 21, 2010, 124 Stat. 1934.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (d)(1)(B), (E)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (d)(1)(J). Pub. L. 111-203 substituted "any provision of this paragraph" for "any provision of this subsection".

1998—Subsec. (d)(1)(G)(i)(III)(bb). Pub. L. 105-353 substituted "the acquired company" for "the acquired fund".

1996—Subsec. (d)(1)(D), (E). Pub. L. 104-290, §202(3), substituted "this paragraph" for "this paragraph (1)".

Subsec. (d)(1)(E)(iii). Pub. L. 104-290, §202(1)(A), struck out "in the event such investment company is not a registered investment company," after "(iii)".

Subsec. (d)(1)(E)(iii)(bb). Pub. L. 104-290, §202(1)(B), inserted "in the event that such investment company is not a registered investment company," after "(bb)".

Subsec. (d)(1)(F). Pub. L. 104-290, §202(3), substituted "this paragraph" for "this paragraph (1)".

Subsec. (d)(1)(G). Pub. L. 104-290, §202(2), (4), added subpar. (G). Former subpar. (G) redesignated (H).

Subsec. (d)(1)(H). Pub. L. 104-290, §202(3), substituted "this paragraph" for "this paragraph (1)".

Pub. L. 104-290, §202(2), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 104-290, §202(3), substituted "this paragraph" for "this paragraph (1)" wherever appearing.

Pub. L. 104-290, §202(2), redesignated subpar. (H) as (I).

Subsec. (d)(1)(J). Pub. L. 104-290, §202(5), added subpar. (J).

1987—Subsec. (d)(1)(A)(iii). Pub. L. 100-181, §610(1), substituted "treasury" for "Treasury".

Subsec. (d)(1)(G). Pub. L. 100-181, §610(2), substituted "is reasonably possible" for "it reasonably possible".

Subsec. (f). Pub. L. 100-181, §610(3), substituted "thereof only" for "only thereof".

1970—Subsec. (d)(1). Pub. L. 91-547 substituted provisions designated as subpars. (A) to (C) and (E) to (H) for former introductory provisions reading "It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire after August 22, 1940, any security issued by or any other interest in the business of—" and subpar. (1) reading "any other investment company of which such registered investment company and company or companies controlled by such registered company shall not at the time of such purchase or acquisition own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered investment company and any company or companies controlled by it own in the aggregate or as a result of such purchase or acquisition will own in the aggregate more than 5 per centum of the total outstanding voting stock of such other investment company if the policy of such other investment company is the concentration of investments in a particular industry or group of industries, or more than 3 per centum of the total outstanding voting stock of such other investment company if the policy of such other investment company is not the concentration of investments in a particular industry or group of industries, except and cl. (B) exception reading "a security purchased with the proceeds of payments on periodic payment plan certificates, pursuant to the terms of the trust indenture under which such certificates are issued", cl. (A) of such subpar. (1) being incorporated in subpar. (D) of this par. (1).

Subsec. (d)(2). Pub. L. 91-547 incorporated existing introductory text and subpar. (2) provisions in provisions redesignated as par. (2) and struck out "after August 22, 1940," after "purchase or otherwise acquire".

Subsec. (d)(3). Pub. L. 91-547 incorporated existing introductory text and subpar. (3) provisions in

provisions redesignated as par. (3) and struck out "after August 22, 1940," after "purchase or otherwise acquire".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–13. Changes in investment policy

(a) Prohibited actions for registered investment companies

No registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities—

(1) change its subclassification as defined in section 80a–5(a)(1) and (2) of this title or its subclassification from a diversified to a nondiversified company;

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

(3) deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 80a–8(b)(3) of this title; or

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

(b) Majority equivalent for common-law trusts

In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of subsection (a) be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (42) of section 80a–2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

(c) Limitation on actions

(1) In general

Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information available to the public—

(A) conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007 (50 U.S.C. 1701 note); or

(B) engage in investment activities in Iran described in section 8532(c) of title 22.

(2) Applicability

(A) Rule of construction

Nothing in paragraph (1) shall be construed to create, imply, diminish, change, or affect in any way whether or not a private right of action exists under subsection (a) or any other provision of this chapter.

(B) Disclosures

Paragraph (1) shall not apply to a registered investment company, or any employee, officer, director, or investment adviser thereof, unless the investment company makes disclosures in accordance with regulations prescribed by the Commission.

(3) Person defined

For purposes of this subsection the term "person" includes the Federal Government and any State or political subdivision of a State.

(Aug. 22, 1940, ch. 686, title I, §13, 54 Stat. 811; Pub. L. 91-547, §§2(b), 3(d), Dec. 14, 1970, 84 Stat. 1414, 1415; Pub. L. 94-29, §28(4), June 4, 1975, 89 Stat. 165; Pub. L. 110-174, §4(a), Dec. 31, 2007, 121 Stat. 2519; Pub. L. 111-195, title II, §§203(a), 205(b)(1), July 1, 2010, 124 Stat. 1343, 1345.)

AMENDMENT OF SECTION

For termination of subsection (c)(1)(B) of this section, see section 8551(a) of Title 22, Foreign Relations and Intercourse.

For termination of amendment by section 12 of Pub. L. 110-174, see Termination Date of 2007 Amendment note below.

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3(d) of the Sudan Accountability and Divestment Act of 2007, referred to in subsec. (c)(1)(A), is section 3(d) of Pub. L. 110-174, which is set out in a note under section 1701 of Title 50, War and National Defense.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111-195, §203(a), amended par. (1) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007."

Subsec. (c)(2)(A). Pub. L. 111-195, §205(b)(1), amended subpar. (A) generally. Prior to amendment, text read as follows: "Paragraph (1) does not prevent a person from bringing an action based on a breach of a fiduciary duty owed to that person with respect to a divestment or non-investment decision, other than as described in paragraph (1)."

2007—Subsec. (c). Pub. L. 110-174, §§4(a), 12, temporarily added subsec. (c). See Termination Date of 2007 Amendment note below.

1975—Subsec. (b). Pub. L. 94-29 substituted "section 80a-16(c) of this title" for "subsection (b) of section 80a-16 of this title".

1970—Subsec. (a)(3). Pub. L. 91-547, §3(d), prohibited deviation from any investment policy which is changeable only if authorized by shareholder vote, substituted "section 8(b)(3)" for "section 8(b)(2)", and in the latter deviation provision struck out "fundamental" before "policy".

Subsec. (b). Pub. L. 91-547, §2(b), substituted reference to "paragraph (42)" for "paragraph (40)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–195, title II, §205(b)(2), July 1, 2010, 124 Stat. 1345, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the Sudan Accountability and Divestment Act of 2007 (Public Law 110–174; 50 U.S.C. 1701 note)."

TERMINATION DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–174 to terminate 30 days after the date on which the President has certified to Congress that the Government of Sudan has honored certain commitments, see section 12 of Pub. L. 110–174, set out in a note under section 1701 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

SEC REGULATIONS

Pub. L. 111–195, title II, §203(b), July 1, 2010, 124 Stat. 1344, provided that: "Not later than 120 days after the date of the enactment of this Act [July 1, 2010], the Securities and Exchange Commission shall issue any revisions the Commission determines to be necessary to the regulations requiring disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–13(c)] to include divestments of securities in accordance with paragraph (1)(B) of such section, as added by subsection (a) of this section."

§80a–14. Size of investment companies

(a) Public offerings

No registered investment company organized after August 22, 1940, and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless—

- (1) such company has a net worth of at least \$100,000;
- (2) 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 \$100,000; or
- (3) provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] which in the opinion of the Commission adequately insures (A) that after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least \$100,000; (B) that said aggregate net amount will be paid in to such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least \$100,000 within ninety days after such registration statement becomes effective.

At any time after the occurrence of the event specified in clause (C) of paragraph (3) of this subsection the Commission may issue a stop order suspending the effectiveness of the registration statement of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and may suspend or revoke the registration of such company under this subchapter.

(b) Study on effects of size

The Commission is authorized, at such times as it deems that any substantial further increase in size of investment companies creates any problem involving the protection of investors or the public interest, to make a study and investigation of the effects of size on the investment policy of investment companies and on security markets, on concentration of control of wealth and industry, and on companies in which investment companies are interested, and from time to time to report the results of its studies and investigations and its recommendations to the Congress.

(Aug. 22, 1940, ch. 686, title I, §14, 54 Stat. 811.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-15. Contracts of advisers and underwriters

(a) Written contract to serve or act as investment adviser; contents

It shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company, and—

(1) precisely describes all compensation to be paid thereunder;

(2) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

(3) provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such registered company or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to the investment adviser; and

(4) provides, in substance, for its automatic termination in the event of its assignment.

(b) Written contract with company for sale by principal underwriter of security of which company is issuer; contents

It shall be unlawful for any principal underwriter for a registered open-end company to offer for sale, sell, or deliver after sale any security of which such company is the issuer, except pursuant to a written contract with such company, which contract—

(1) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company; and

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

(c) Approval of contract to undertake service as investment adviser or principal underwriter by majority of noninterested directors

In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for

any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company. It shall be unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f).

(d) Equivalent of vote of majority of outstanding voting securities in case of common-law trust

In the case of a common-law trust of the character described in section 80a-16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (42) of section 80a-2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

(e) Exemption of advisory boards or members from provisions of this section

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

(f) Receipt of benefits by investment adviser from sale of securities or other interest in such investment adviser resulting in assignment of investment advisory contract

(1) An investment adviser, or a corporate trustee performing the functions of an investment adviser, of a registered investment company or an affiliated person of such investment adviser or corporate trustee may receive any amount or benefit in connection with a sale of securities of, or a sale of any other interest in, such investment adviser or corporate trustee which results in an assignment of an investment advisory contract with such company or the change in control of or identity of such corporate trustee, if—

(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of directors of such registered company or such corporate trustee (or successor thereto, by reorganization or otherwise) are not (i) interested persons of the investment adviser of such company or such corporate trustee, or (ii) interested persons of the predecessor investment adviser or such corporate trustee; and

(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

(2)(A) For the purpose of paragraph (1)(A) of this subsection, interested persons of a corporate trustee shall be determined in accordance with section 80a-2(a)(19)(B) of this title: *Provided*, That no person shall be deemed to be an interested person of a corporate trustee solely by reason of (i) his being a member of its board of directors or advisory board or (ii) his membership in the immediate family of any person specified in clause (i) of this subparagraph.

(B) For the purpose of paragraph (1)(B) of this subsection, an unfair burden on a registered investment company includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the investment adviser or corporate trustee or predecessor or successor investment advisers or corporate trustee or any interested person of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any person in connection with the purchase or sale of securities or other property to, from, or

on behalf of such company, other than bona fide ordinary compensation as principal underwriter for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

(3) If—

(A) an assignment of an investment advisory contract with a registered investment company results in a successor investment adviser to such company, or if there is a change in control of or identity of a corporate trustee of a registered investment company, and such adviser or trustee is then an investment adviser or corporate trustee with respect to other assets substantially greater in amount than the amount of assets of such company, or

(B) as a result of a merger of, or a sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, a transaction occurs which would be subject to paragraph (1)(A) of this subsection,

such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 80a-6(c) of this title for exemption from the provisions of paragraph (1)(A) of this subsection should be granted.

(4) Paragraph (1)(A) of this subsection shall not apply to a transaction in which a controlling block of outstanding voting securities of an investment adviser to a registered investment company or of a corporate trustee performing the functions of an investment adviser to a registered investment company is—

(A) distributed to the public and in which there is, in fact, no change in the identity of the persons who control such investment adviser or corporate trustee, or

(B) transferred to the investment adviser or the corporate trustee, or an affiliated person or persons of such investment adviser or corporate trustee, or is transferred from the investment adviser or corporate trustee to an affiliated person or persons of the investment adviser or corporate trustee: *Provided*, That (i) each transferee (other than such adviser or trustee) is a natural person and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such voting securities for a period of at least six months prior to such transfer.

(Aug. 22, 1940, ch. 686, title I, §15, 54 Stat. 812; Pub. L. 91-547, §8, Dec. 14, 1970, 84 Stat. 1419; Pub. L. 94-29, §28(1), (2), (4), June 4, 1975, 89 Stat. 164, 165; Pub. L. 100-181, title VI, §611, Dec. 4, 1987, 101 Stat. 1261.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (d). Pub. L. 100-181, §611(1), substituted "paragraph (42)" for "paragraph (40)".

Subsec. (f)(3)(B). Pub. L. 100-181, §611(2), substituted a comma for the period at end.

1975—Subsec. (c). Pub. L. 94-29, §28(2), inserted provisions making it unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsec. (f).

Subsec. (d). Pub. L. 94-29, §28(4), substituted "section 80a-16(c) of this title" for "subsection (b) of section 80a-16 of this title".

Subsec. (f). Pub. L. 94-29, §28(1), added subsec. (f).

1970—Subsec. (a). Pub. L. 91-547, §8(a), struck out introductory phrase "After one year from the effective date of this subchapter" and "unless in effect prior to March 15, 1940," before "has been approved", and "by the investment adviser" after "assignment" in item (4), and substituted "It" for "it".

Subsec. (b). Pub. L. 91-547, §8(b), struck out introductory phrase "After one year from the effective date of this subchapter," and concluding phrase ", unless in effect prior to March 15, 1940" after "which contract" before item (1), struck out "by such underwriter" after "assignment" in item (2), and substituted "It" for "it".

Subsec. (c). Pub. L. 91-547, §8(c), made it the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as

may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, substituted "interested persons" for "affiliated persons", and struck out "except a written agreement which was in effect prior to March 15, 1940," after "written or oral," item (1) designation following "have been approved" and item "or (2) by the vote of a majority of the outstanding voting securities of such company" after "any such party," and inserted "the vote" in phrase "by the vote of a majority", and provision respecting voting "cast in person at a meeting called for the purpose of voting on such approval".

Subsecs. (d) to (f). Pub. L. 91-547, §8(d), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which prohibited any person after March 15, 1945, from acting as investment adviser to, or principal underwriter for, any registered investment company pursuant to a written contract in effect prior to March 15, 1940, unless such contract was renewed prior to March 15, 1945, in such form as to make it comply with subsecs. (a) or (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

§80a-16. Board of directors

(a) Election of directors

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

Nothing herein shall, however, preclude a registered investment company from dividing its directors into classes if its charter, certificate of incorporation, articles of association, by-laws, trust indenture, or other instrument or the law under which it is organized, so provides and prescribes the tenure of office of the several classes: *Provided*, That no class shall be elected for a shorter period than one year or for a longer period than five years and the term of office of at least one class shall expire each year.

(b) Term vacancies

Any vacancy on the board of directors of a registered investment company which occurs in connection with compliance with section 80a-15(f)(1)(A) of this title and which must be filled by a person who is not an interested person of either party to a transaction subject to section 80a-15(f)(1)(A) of this title shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such company who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except

that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a).

(c) Trustees of common-law trusts

The foregoing provisions of this section shall not apply to a common-law trust existing on August 22, 1940, under an indenture of trust which does not provide for the election of trustees by the shareholders. No natural person shall serve as trustee of such a trust, which is registered as an investment company, after the holders of record of not less than two-thirds of the outstanding shares of beneficial interests in such trust have declared that he be removed from that office either by declaration in writing filed with the custodian of the securities of the trust or by votes cast in person or by proxy at a meeting called for the purpose. Solicitation of such a declaration shall be deemed a solicitation of a proxy within the meaning of section 80a-20(a) of this title.

The trustees of such a trust shall promptly call a meeting of shareholders for the purpose of voting upon the question of removal of any such trustee or trustees when requested in writing so to do by the record holders of not less than 10 per centum of the outstanding shares.

Whenever ten or more shareholders of record who have been such for at least six months preceding the date of application, and who hold in the aggregate either shares having a net asset value of at least \$25,000 or at least 1 per centum of the outstanding shares, whichever is less, shall apply to the trustees in writing, stating that they wish to communicate with other shareholders with a view to obtaining signatures to a request for a meeting pursuant to this subsection and accompanied by a form of communication and request which they wish to transmit, the trustees shall within five business days after receipt of such application either—

(1) afford to such applicants access to a list of the names and addresses of all shareholders as recorded on the books of the trust; or

(2) inform such applicants as to the approximate number of shareholders of record, and the approximate cost of mailing to them the proposed communication and form of request.

If the trustees elect to follow the course specified in paragraph (2) of this subsection the trustees, upon the written request of such applicants, accompanied by a tender of the material to be mailed and of the reasonable expenses of mailing, shall, with reasonable promptness, mail such material to all shareholders of record at their addresses as recorded on the books, unless within five business days after such tender the trustees shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement signed by at least a majority of the trustees to the effect that in their opinion either such material contains untrue statements of fact or omits to state facts necessary to make the statements contained therein not misleading, or would be in violation of applicable law, and specifying the basis of such opinion.

After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by the trustees or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, the trustees shall mail copies of such material to all shareholders with reasonable promptness after the entry of such order and the renewal of such tender.

(Aug. 22, 1940, ch. 686, title I, §16, 54 Stat. 813; Pub. L. 94-29, §28(3), June 4, 1975, 89 Stat. 165.)

EDITORIAL NOTES

AMENDMENTS

1975—Subsecs. (b), (c). Pub. L. 94-29 added subsec. (b), redesignated former subsec. (b) as (c), and substituted "The foregoing provisions of this section" for "The provisions of subsection (a) of this section" in first sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–17. Transactions of certain affiliated persons and underwriters

(a) Prohibited transactions

It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 80a–12(d)(3)(A) and (B) of this title), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (A) securities of which the buyer is the issuer, (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or (C) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof;

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer);

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 80a–21(b) of this title; or

(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), prescribe or issue consistent with the protection of investors.

(b) Application for exemption of proposed transaction from certain restrictions

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

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

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

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

(c) Sale or purchase of merchandise from any company or furnishing of services incident to lessor-lessee relationship

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

person and furnish the services incident thereto.

(d) Joint or joint and several participation with company in transactions

It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company (other than a company of the character described in section 80a-12(d)(3) (A) and (B) of this title), or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant. Nothing contained in this subsection shall be deemed to preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(e) Acceptance of compensation, commissions, fees, etc.

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

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

(2) acting as broker, in connection with the sale of securities to or by such registered company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds (A) the usual and customary broker's commission if the sale is effected on a securities exchange, or (B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

(f) Custody of securities

(1) Every registered management company shall place and maintain its securities and similar investments in the custody of (A) a bank or banks having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts; or (B) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and

hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No member of a national securities exchange which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to subsection (g) covering the officers or employees authorized to draw on such account or accounts.

(6) The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company, may serve as custodian of that registered management company.

(g) Bonding of officers and employees having access to securities or funds

The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or employee of a registered management investment company who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank) be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.

(h) Provisions in charter, by-laws, etc., protecting against liability for willful misfeasance, etc.

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

(i) Provisions in contracts protecting against willful misfeasance, etc.

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

(j) Rules and regulations prohibiting fraudulent, deceptive or manipulative courses of conduct

It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company in contravention of such rules and regulations as the Commission

may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business.

(Aug. 22, 1940, ch. 686, title I, §17, 54 Stat. 815; Pub. L. 91-547, §9, Dec. 14, 1970, 84 Stat. 1420; Pub. L. 100-181, title VI, §612, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 106-102, title II, §§211(a), 212, Nov. 12, 1999, 113 Stat. 1396; Pub. L. 111-203, title IX, §985(d)(4), July 21, 2010, 124 Stat. 1934.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (f)(1)(B), (2), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

For the effective date of this subchapter, referred to in subssecs. (h) and (i), see section 80a-52 of this title.

AMENDMENTS

2010—Subsec. (f)(4). Pub. L. 111-203, §985(d)(4)(A), substituted "No member of a national securities exchange" for "No such member".

Subsec. (f)(6). Pub. L. 111-203, §985(d)(4)(B), substituted "company, may serve" for "company may serve".

1999—Subsec. (a)(4). Pub. L. 106-102, §212, added par. (4).

Subsec. (f). Pub. L. 106-102, §211(a), inserted heading, designated first sentence as par. (1) and cls. (1) to (3) as (A) to (C), respectively, designated second through fifth sentences as pars. (2) to (5), respectively, and realigned margins, and added par. (6).

1987—Subsec. (h). Pub. L. 100-181 struck out second sentence which read as follows: "In the event that any such instrument does not at the effective date of this chapter comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, such company may nevertheless continue to be a registered investment company and shall not be deemed to violate this subsection if prior to said expiration date each such director or officer shall have filed with the Commission a waiver in writing of any protective provision of the instrument to the extent that it does not comply with this subsection, and each such person subsequently elected or appointed shall before assuming office file a similar waiver."

Subsec. (i). Pub. L. 100-181 struck out second sentence which read as follows: "In the event that any such contract or agreement does not at the effective date of this chapter comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, this subsection shall not be deemed to have been violated if prior to said expiration date each such investment adviser or principal underwriter shall have filed with the Commission a waiver in writing of any protective provision of the contract or agreement to the extent that it does not comply with this subsection."

1970—Subsec. (f). Pub. L. 91-547, §9(a), provided in cl. (1) for a registered investment company which is a collective fund maintained by a bank authority to keep its securities and similar investments in the custody of the sponsoring bank, authorized a registered management company or its custodian (with the consent of the management company), subject to the rulemaking power of the Commission, to deposit the securities of the management company in a central certificate depository established by a national securities exchange or a registered national securities association, and provided that if an investment company employs a bank as a custodian for securities and similar investments, then all of its cash assets, shall likewise be held by a bank, subject to direction as to expenditure and disposition by proper company officials, and provided for maintenance of a checking account or accounts in one or more banks in amounts not to exceed the amount of the fidelity bond covering persons authorized to draw on the accounts.

Subsec. (g). Pub. L. 91-547, §9(b), substituted "officer or employee" for "officer and employee" and inserted "(unless the officer or employee has such access solely through his position as an officer or employee of a bank)" before "be bonded".

Subsec. (j). Pub. L. 91-547, §9(c), added subsec. (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that amendment by section 9(a) of Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30 (introductory text and par. (1)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–18. Capital structure of investment companies

(a) Qualifications on issuance of senior securities

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

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

(A) immediately after such issuance or sale, it will have an asset coverage of at least 300 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the issuer), or the declaration of any other distribution, upon any class of the capital stock of such investment company, or the purchase of any such capital stock, unless, in every such case, such class of senior securities has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 300 per centum after deducting the amount of such dividend, distribution, or purchase price, as the case may be, except that dividends may be declared upon any preferred stock if such senior security representing indebtedness has an asset coverage of at least 200 per centum at the time of declaration thereof after deducting the amount of such dividend; and

(C) provision is made either—

(i) that, if on the last business day of each of twelve consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, the holders of such securities voting as a class shall be entitled to elect at least a majority of the members of the board of directors of such registered company, such voting right to continue until such class of senior security shall have an asset coverage of 110 per centum or more on the last business day of each of three consecutive calendar months, or

(ii) that, if on the last business day of each of twenty-four consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, an event of default shall be deemed to have occurred;

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

(A) immediately after such issuance or sale it will have an asset coverage of at least 200 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the issuer), or the declaration of any other distribution, upon the common stock of such investment company, or the purchase of any such common stock, unless in every such case such class of senior security has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 200 per centum after deducting the amount of such dividend, distribution or purchase price, as the case may be;

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

(D) provision is made requiring approval by the vote of a majority of such securities, voting as a class, of any plan of reorganization adversely affecting such securities or of any action requiring a vote of security holders as in section 80a-13(a) of this title provided; and

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

(b) Asset coverage in respect of senior securities

The asset coverage in respect of a senior security provided for in subsection (a) may be determined on the basis of values calculated as of a time within forty-eight hours (not including Sundays or holidays) next preceding the time of such determination. The time of issue or sale shall, in the case of an offering of such securities to existing stockholders of the issuer, be deemed to be the first date on which such offering is made, and in all other cases shall be deemed to be the time as of which a firm commitment to issue or sell and to take or purchase such securities shall be made.

(c) Prohibitions relating to issuance of senior securities

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

(d) Warrants and rights to subscription

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

(e) Application of section to specific senior securities

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

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

(2) pursuant to any plan of reorganization (other than for refunding as referred to in paragraph (1) of this subsection), provided—

(A) that such senior securities are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities, and if such senior securities represent indebtedness they are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities representing indebtedness, of any registered investment company which is a party to such plan of reorganization; or

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

(f) Senior securities securing loans from bank; securities not included in "senior security"

(1) It shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer, except that any such registered company shall be permitted to borrow from any bank: *Provided*, That immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of such registered company: *And provided further*, That in the event that such asset coverage shall at any time fall below 300 per centum such registered company shall, within three days thereafter (not including Sundays and holidays) or such longer period as the Commission may prescribe by rules and regulations, reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least 300 per centum.

(2) "Senior security" shall not, in the case of a registered open-end company, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: *Provided*, That (A) such company has outstanding no class or series of stock which is not so preferred over all other classes or series, or (B) the only other outstanding class of the issuer's stock consists of a common stock upon which no dividend (other than a liquidating dividend) is permitted to be paid and which in the aggregate represents not more than one-half of 1 per centum of the issuer's outstanding voting securities. For the purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

(g) "Senior security" defined

Unless otherwise provided: "Senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends; and "senior security representing indebtedness" means any senior security other than stock.

The term "senior security", when used in subparagraphs (B) and (C) of paragraph (1) of subsection (a), shall not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed; nor shall such term, when used in this section, include any such promissory note or other evidence of indebtedness in any case where such a loan is for temporary purposes only and in an amount not exceeding 5 per centum of the value of the total assets of the issuer at the time when the loan is made. A loan shall be presumed to be for temporary

purposes if it is repaid within sixty days and is not extended or renewed; otherwise it shall be presumed not to be for temporary purposes. Any such presumption may be rebutted by evidence.

(h) "Asset coverage" defined

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

(i) Future issuance of stock as voting stock; exceptions

Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered management company (except a common-law trust of the character described in section 80a-16(c) of this title) shall be a voting stock and have equal voting rights with every other outstanding voting stock: *Provided*, That this subsection shall not apply to shares issued pursuant to the terms of any warrant or subscription right outstanding on March 15, 1940, or any firm contract entered into before March 15, 1940, to purchase such securities from such company nor to shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

(j) Securities issued by registered face-amount certificate company

Notwithstanding any provision of this subchapter, it shall be unlawful, after August 22, 1940, for any registered face-amount certificate company—

(1) to issue, except in accordance with such rules, regulations, or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors, any security other than (A) a face-amount certificate; (B) a common stock having a par value and being without preference as to dividends or distributions and having at least equal voting rights with any outstanding security of such company; or (C) short-term payment or promissory notes or other indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged and not intended to be publicly offered;

(2) if such company has outstanding any security, other than such face-amount certificates, common stock, promissory notes, or other evidence of indebtedness, to make any distribution or declare or pay any dividend on any capital security in contravention of such rules and regulations or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors or to insure the financial integrity of such company, to prevent the impairment of the company's ability to meet its obligations upon its face-amount certificates; or

(3) to issue any of its securities except for cash or securities including securities of which such company is the issuer.

(k) Application of section to companies operating under Small Business Investment Act provisions

The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

(Aug. 22, 1940, ch. 686, title I, §18, 54 Stat. 817; Pub. L. 85-699, title III, §307(c), Aug. 21, 1958, 72 Stat. 694; Pub. L. 91-547, §10, Dec. 14, 1970, 84 Stat. 1421; Pub. L. 85-699, title III, §317, formerly §319, Aug. 21, 1958, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316,

renumbered §317, Pub. L. 104–208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 94–29, §28(4), June 4, 1975, 89 Stat. 165; Pub. L. 100–181, title VI, §613, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 105–353, title III, §301(c)(4), Nov. 3, 1998, 112 Stat. 3236.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (k), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–353 substituted "paragraph (1) of this subsection" for "subsection (e)(2) of this section" in introductory provisions.

1987—Subsec. (e). Pub. L. 100–181 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: "pursuant to any firm contract to purchase or sell entered into prior to March 15, 1940;"

1975—Subsec. (i). Pub. L. 94–29 substituted "section 80a–16(c) of this title" for "section 80a–16(b) of this title".

1972—Subsec. (k). Section 319 of Pub. L. 85–699, as added by Pub. L. 92–595, inserted provision that subsec. (a)(2) shall not apply to companies operating under the Small Business Investment Act of 1958, so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

1970—Subsec. (f)(2). Pub. L. 91–547 substituted "That (A)" and "or (B) the" for "(A) That" and "or (B) that the" and inserted provision for purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, that the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

1958—Subsec. (k). Pub. L. 85–699 added subsec. (k).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–19. Payments or distributions

(a) Dividends; restriction; exception

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

(1) such company's accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized upon the sale of securities or other

properties; or

(2) such company's net income so determined for the current or preceding fiscal year;

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

(b) Long-term capital gains; limitation

It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in title 26, more often than once every twelve months.

(Aug. 22, 1940, ch. 686, title I, §19, 54 Stat. 821; Pub. L. 91-547, §11, Dec. 14, 1970, 84 Stat. 1422; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1970—Pub. L. 91-547 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-20. Proxies; voting trusts; circular ownership

(a) Prohibition on use of means of interstate commerce for solicitation of proxies

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce or otherwise, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security of which a registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Prohibition on use of means of interstate commerce for sale of voting-trust certificates

It shall be unlawful for any registered investment company or affiliated person thereof, any issuer of a voting-trust certificate relating to any security of a registered investment company, or any underwriter of such a certificate, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to offer for sale, sell, or deliver after sale, in connection with a public offering, any such voting-trust certificate.

(c) Prohibition on purchase of securities knowingly resulting in cross-ownership or circular ownership

No registered investment company shall 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. Cross-ownership shall be deemed to exist between two companies when each of such companies beneficially owns more than 3 per centum of the outstanding 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 3 per centum of the outstanding voting securities of one or more other companies of the group; and

(2) has more than 3 per centum of its own outstanding voting securities beneficially owned by another company, or by each of two or more other companies, of the group.

(d) Duty to eliminate existing cross-ownership or circular ownership

If cross-ownership or circular ownership between a registered investment company and any other company or companies comes into existence upon the purchase by a registered investment company of the securities of another company, it shall be the duty of such registered company, within one year after it first knows of the existence of such cross-ownership or circular ownership, to eliminate the same.

(Aug. 22, 1940, ch. 686, title I, §20, 54 Stat. 822; Pub. L. 100–181, title VI, §614, Dec. 4, 1987, 101 Stat. 1262.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–181, §614(1), struck out at end "The prohibitions of this subsection shall not apply to a class of voting-trust certificates, if any certificate of such class was made the subject of a public offering by the issuer or by or through an underwriter prior to March 15, 1940."

Subsec. (d). Pub. L. 100–181, §614(2), (3), struck out first sentence "If on the effective date of this subchapter cross-ownership or circular ownership exists between a registered investment company and any other company or companies, it shall be the duty of such registered company, within five years after such effective date, to eliminate such cross-ownership or circular ownership." and "at any time after the effective date of this subchapter" after "If" in second sentence.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–21. Loans by management companies

It shall be unlawful for any registered management company to lend money or property to any person, directly or indirectly, if—

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

(b) such person controls or is under common control with such registered company; except that the provisions of this paragraph 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 shares.

(Aug. 22, 1940, ch. 686, title I, §21, 54 Stat. 822; Pub. L. 100–181, title VI, §615, Dec. 4, 1987, 101 Stat. 1262.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-181 struck out "to the extension or renewal of any such loan made prior to March 15, 1940, or" after "shall not apply".

§80a-22. Distribution, redemption, and repurchase of securities; regulations by securities associations

(a) Rules relating to minimum and maximum prices for purchase and sale of securities from investment company; time for resale and redemption

A securities association registered under section 78o-3 of this title may prescribe, by rules adopted and in effect in accordance with said section and subject to all provisions of said section applicable to the rules of such an association—

(1) a method or methods for computing the minimum price at which a member thereof may purchase from any investment company any redeemable security issued by such company and the maximum price at which a member may sell to such company any redeemable security issued by it or which he may receive for such security upon redemption, so that the price in each case will bear such relation to the current net asset value of such security computed as of such time as the rules may prescribe; and

(2) a minimum period of time which must elapse after the sale or issue of such security before any resale to such company by a member or its redemption upon surrender by a member;

in each case for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption, or sale which is unfair to holders of such other outstanding securities; and said rules may prohibit the members of the association from purchasing, selling, or surrendering for redemption any such redeemable securities in contravention of said rules.

(b) Rules relating to purchase of securities by members from issuer investment company

(1) Such a securities association may also, by rules adopted and in effect in accordance with section 78o-3 of this title, and notwithstanding the provisions of subsection (b)(6) thereof but subject to all other provisions of said section applicable to the rules of such an association, prohibit its members from purchasing, in connection with a primary distribution of redeemable securities of which any registered investment company is the issuer, any such security from the issuer or from any principal underwriter except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering price, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive sales load but shall allow for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors. The Commission shall on application or otherwise, if it appears that smaller companies are subject to relatively higher operating costs, make due allowance therefor by granting any such company or class of companies appropriate qualified exemptions from the provisions of this section.

(2) At any time after the expiration of eighteen months from December 14, 1970 (or, if earlier, after a securities association has adopted for purposes of paragraph (1) any rule respecting excessive sales loads), the Commission may alter or supplement the rules of any securities association as may be necessary to effectuate the purposes of this subsection in the manner provided by section 78s(c) of this title.

(3) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on December 14, 1970, the provisions of this subsection shall prevail.

(c) Conflicting rules of Commission and associations

The Commission may make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in subsection (a) of this section in respect of the rules which may be made by a registered securities association governing its members. Any rules and regulations so made by the Commission, to the extent that they may be inconsistent with the rules of any such association, shall so long as they remain in force supersede the rules of the association and be binding upon its members as well as all other underwriters and dealers to whom they may be applicable.

(d) Sale of securities except to or through principal underwriter; price of securities

No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 80a-11 of this title including any offer made pursuant to section 80a-11(b) of this title; (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 80a-12 of this title.

(e) Suspension of right of redemption or postponement of date of payment

No registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption, except—

(1) for any period (A) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (B) during which trading on the New York Stock Exchange is restricted;

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

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

The Commission shall by rules and regulations determine the conditions under which (i) trading shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection.

(f) Restrictions on transferability or negotiability of securities

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

(g) Issuance of securities for services or property other than cash

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

(Aug. 22, 1940, ch. 686, title I, §22, 54 Stat. 823; Pub. L. 91-547, §12, Dec. 14, 1970, 84 Stat. 1422; Pub. L. 100-181, title VI, §616, Dec. 4, 1987, 101 Stat. 1262.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-181, §616(1), substituted "subsection (b)(6)" for "subsection (b)(8)" in par. (1).

Pub. L. 100-181, §616(2), (3), redesignated par. (3) as (2) and substituted "section 78s(c)" for "section 78o-3(k)(2)", redesignated par. (4) as (3), and struck out former par. (2) which read as follows: "At any time after the expiration of eighteen months from December 14, 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 78o(b)(10) of this title as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 78o(b)(8) of this title: *Provided*, That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales."

Subsec. (e). Pub. L. 100-181, §616(4), (5), in introductory provisions, substituted "redemption, or postpone" for "redemption or postpone" and "redemption, except" for "redemption except", and, in closing provisions, struck out "Any company which, as of March 15, 1940, was required by provision of its charter, certificate of incorporation, articles of association, or trust indenture, or of a bylaw or regulation duly adopted thereunder, to postpone the date of payment or satisfaction upon redemption of redeemable securities issued by it, shall be exempt from the requirements of this subsection; but such exemption shall terminate upon the expiration of one year from the effective date of this subchapter, or upon the repeal or amendment of such provision, or upon the sale by such company after March 15, 1940, of any security (other than short-term paper) of which it is the issuer, whichever first occurs."

1970—Subsec. (b). Pub. L. 91-547, §12(a), designated existing provisions as par. (1), inserted "notwithstanding the provisions of subsection (b)(8) thereof but", and "other" in phrase "all other provisions", substituted exclusion of "excessive sales load" for "unconscionable or grossly excessive sales load", provided for allowance for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors, and for grant by Commission of appropriate qualified exemptions from provisions of this section where on application or otherwise it appears that smaller companies are subject to relatively higher operating costs, and added pars. (2) to (4).

Subsec. (c). Pub. L. 91-547, §12(b), provided for application of rules and regulations to registered investment companies, struck out introductory phrase "After one year from the effective date of this chapter", "registered" before "securities association" where first appearing, and substituted "prescribed in subsection (a) of this section" for "prescribed in subsections (a) and (b) of this section" and ". Any rules and regulations" for "; and any rules and regulations".

Subsec. (d). Pub. L. 91-547, §12(c), substituted "public offering price described in the prospectus. Nothing in this subsection" for "public offering price described in the prospectus: *Provided, however*, That nothing in this subsection" and struck out "clause (1) or (2) of" before "section 80a-11(b) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–23. Closed-end companies

(a) Issuance of securities

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

(b) Sale of common stock at price below current net asset value

No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on August 22, 1940, or issued in accordance with the provisions of section 80a–18(d) of this title; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

(c) Purchase of securities of which it is issuer; exceptions

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

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

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

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

(Aug. 22, 1940, ch. 686, title I, §23, 54 Stat. 825.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

PARITY FOR CLOSED-END COMPANIES REGARDING OFFERING AND PROXY RULES

Pub. L. 115–174, title V, §509, May 24, 2018, 132 Stat. 1364, provided that:

"(a) REVISION TO RULES.—Not later than the end of the 1-year period beginning on the date of enactment of this Act [May 24, 2018], the Securities and Exchange Commission shall propose and, not later than 2 years after the date of enactment of this Act, the Securities and Exchange Commission shall finalize any rules, as appropriate, to allow any closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–5), that is registered as an investment company under such Act [15 U.S.C. 80a–1 et seq.], and is listed on a national securities exchange or that makes periodic repurchase offers pursuant to section 270.23c–3 of title 17, Code of Federal Regulations, to use the securities offering and proxy rules, subject to conditions the Commission determines appropriate, that are available to other issuers that are required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the Commission takes pursuant to this subsection shall consider the availability of information to investors, including what disclosures constitute adequate information to be designated as a 'well-known seasoned issuer'.

"(b) TREATMENT IF REVISIONS NOT COMPLETED IN A TIMELY MANNER.—If the Commission fails to complete the revisions required by subsection (a) by the time required by such subsection, any registered closed-end company that is listed on a national securities exchange or that makes periodic repurchase offers pursuant to section 270.23c–3 of title 17, Code of Federal Regulations, shall be deemed to

be an eligible issuer under the final rule of the Commission titled 'Securities Offering Reform' (70 Fed. Reg. 44722; published August 3, 2005).

"(c) RULES OF CONSTRUCTION.—

"(1) NO EFFECT ON RULE 482.—Nothing in this section or the amendments made by this section shall be construed to impair or limit in any way a registered closed-end company from using section 230.482 of title 17, Code of Federal Regulations, to distribute sales material.

"(2) REFERENCES.—Any reference in this section to a section of title 17, Code of Federal Regulations, or to any form or schedule means such rule, section, form, or schedule, or any successor to any such rule, section, form, or schedule."

[For definition of "company" as used in section 509 of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note under section 5365 of Title 12, Banks and Banking.]

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–24. Registration of securities under Securities Act of 1933

(a) Registration statement; contents

In registering under the Securities Act of 1933 [15 U.S.C. 77a et seq.], any security of which it is the issuer, a registered investment company, in lieu of furnishing a registration statement containing the information and documents specified in schedule A of said Act [15 U.S.C. 77aa], may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this subchapter, and of such reports filed by such company pursuant to section 80a–29 of this title or such copies of portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

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

(b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing

It shall be unlawful for any of the following companies, or for any underwriter for such a company, in connection with a public offering of any security of which such company is the issuer, to make use of the mails or any means or instrumentalities of interstate commerce, to transmit any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter:

- (1) any registered open-end company;
- (2) any registered unit investment trust; or
- (3) any registered face-amount certificate company.

(c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate

In addition to the powers relative to prospectuses granted the Commission by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], the Commission is authorized to require, by rules and regulations or order, that the information contained in any prospectus relating to any periodic payment plan certificate or face-amount certificate registered under the Securities Act of 1933 [15

U.S.C. 77a et seq.], on or after the effective date of this subchapter be presented in such form and order of items, and such prospectus contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust

The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)] shall not apply to any security of which an investment company is the issuer. The exemption provided by paragraph (11) of said section 3(a) [15 U.S.C. 77c(a)(11)] shall not apply to any security of which a registered investment company is the issuer. The exemption provided by section 4(3) ¹ of the Securities Act of 1933 [15 U.S.C. 77d(a)(3)] shall not apply to any transaction in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act [15 U.S.C. 77e], except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

(e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts

For the purposes of section 11 of the Securities Act of 1933, as amended [15 U.S.C. 77k] the effective date of the latest amendment filed shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of section 13 of the Securities Act of 1933, as amended [15 U.S.C. 77m], no such security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection. Except to the extent the Commission otherwise provides by rules or regulations as appropriate in the public interest or for the protection of investors, no prospectus relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust which varies for the purposes of subsection (a)(3) of section 10 of the Securities Act of 1933 [15 U.S.C. 77j(a)(3)] from the latest prospectus filed as a part of the registration statement shall be deemed to meet the requirements of said section 10 [15 U.S.C. 77j] unless filed as part of an amendment to the registration statement under said Act [15 U.S.C. 77a et seq.] and such amendment has become effective.

(f) Registration of indefinite amount of securities

(1) Registration of securities

Upon the effective date of its registration statement, as provided by section 8 of the Securities Act of 1933 [15 U.S.C. 77h], a face-amount certificate company, open-end management company, or unit investment trust, shall be deemed to have registered an indefinite amount of securities.

(2) Payment of registration fees

Not later than 90 days after the end of the fiscal year of a company or trust referred to in paragraph (1), the company or trust, as applicable, shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], based on the aggregate sales price for which its securities (including, for purposes of this paragraph, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite amount of securities under this subsection during the previous fiscal year of the company or trust, reduced by—

(A) the aggregate redemption or repurchase price of the securities of the company or trust during that year; and

(B) the aggregate redemption or repurchase price of the securities of the company or trust during any prior fiscal year ending not more than 1 year before October 11, 1996, that were not

used previously by the company or trust to reduce fees payable under this section.

(3) Interest due on late payment

A company or trust paying the fee required by this subsection or any portion thereof more than 90 days after the end of the fiscal year of the company or trust shall pay to the Commission interest on unpaid amounts, at the average investment rate for Treasury tax and loan accounts published by the Secretary of the Treasury pursuant to section 3717(a) of title 31. The payment of interest pursuant to this paragraph shall not preclude the Commission from bringing an action to enforce the requirements of paragraph (2).

(4) Rulemaking authority

The Commission may adopt rules and regulations to implement this subsection.

(g) Additional prospectuses

In addition to any prospectus permitted or required by section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)], the Commission shall permit, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, the use of a prospectus for purposes of section 5(b)(1) of that Act [15 U.S.C. 77e(b)(1)] with respect to securities issued by a registered investment company. Such a prospectus, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by section 10(b) of that Act [15 U.S.C. 77j(b)].

(Aug. 22, 1940, ch. 686, title I, §24, 54 Stat. 825; Aug. 10, 1954, ch. 667, title IV, §§402, 403, 68 Stat. 689; Pub. L. 91–547, §13, Dec. 14, 1970, 84 Stat. 1423; Pub. L. 100–181, title VI, §617, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 104–290, title II, §§203(a), (b), 204, Oct. 11, 1996, 110 Stat. 3427, 3428.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a), (c), and (e), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

For the effective date of this subchapter, referred to in subsec. (c), see section 80a–52 of this title.

Section 4(3) of the Securities Act of 1933, referred to in subsec. (d), was redesignated section 4(a)(3) of that Act by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314, and is classified to section 77d(a)(3) of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–290, §203(a), substituted "For" for "(3) For", struck out "pursuant to this subsection or otherwise" before "shall be deemed the effective date of the registration statement", and struck out pars. (1) and (2) which read as follows:

"(1) A registration statement under the Securities Act of 1933 relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. At the time of filing such amendment there shall be paid to the Commission a fee, calculated in the manner specified in section 6(b) of said Act, with respect to the additional securities therein proposed to be offered.

"(2) The filing of such an amendment to a registration statement under the Securities Act of 1933 shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under paragraph (1) of this subsection."

Subsec. (f). Pub. L. 104–290, §203(b), inserted heading and amended text generally. Prior to amendment, text read as follows: "In the case of securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust, which are sold in an amount in excess of the number of securities included in an effective registration statement of any such company, such company may, in accordance with such rules and regulations as the Commission shall adopt as it deems necessary or appropriate in the public interest or for the protection of investors, elect to have the registration of such securities deemed effective as of the time of their sale, upon payment to the Commission, within six

months after any such sale, of a registration fee of three times the amount of the fee which would have otherwise been applicable to such securities. Upon any such election and payment, the registration statement of such company shall be considered to have been in effect with respect to such shares. The Commission may also adopt rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors to permit the registration of an indefinite number of the securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust."

Subsec. (g). Pub. L. 104-290, §204, added subsec. (g).

1987—Subsec. (d). Pub. L. 100-181 struck out ", except a security sold or disposed of by the issuer or bona fide offered to the public prior to the effective date of this subchapter and with respect to a security so sold, disposed of, or offered, shall not apply to any new offering thereof on or after the effective date of this subchapter" at end of second sentence.

1970—Subsec. (d). Pub. L. 91-547, §13(a), substituted "section 4(3) of the Securities Act of 1933" for "the third clause of section 4(1) of the Securities Act of 1933" and struck out the comma before "if any".

Subsec. (f). Pub. L. 91-547, §13(b), added subsec. (f).

1954—Subsec. (d). Act Aug. 10, 1954, §402, inserted provision making dealer's exemption contained in third clause of section 77d(1) of this title inapplicable to transactions in the securities of investment companies that are offered to the public on a continuous basis, subject to certain exceptions.

Subsec. (e). Act Aug. 10, 1954, §403, added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-290, title II, §203(c), Oct. 11, 1996, 110 Stat. 3428, provided that: "The amendments made by this section [amending this section] shall become effective on the earlier of—

"(1) 1 year after the date of enactment of this Act [Oct. 11, 1996]; or

"(2) the effective date of final rules or regulations issued in accordance with section 24(f) of the Investment Company Act of 1940 [subsec. (f) of this section], as amended by this section."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective sixty days after Aug. 10, 1954, see note under section 77b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [*See References in Text note below.*](#)

§80a-25. Reorganization plans; reports by Commission

(a) Filing of reorganization plan and other information with Commission

Any person who, by use of the mails or any means or instrumentality of interstate commerce or otherwise, solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit, or dissent in respect of any plan of reorganization of any registered investment company shall file with, or mail to, the Commission for its information, within twenty-four hours after the commencement of any such solicitation, a copy of such plan and any deposit agreement relating thereto and of any proxy, consent, authorization, power of attorney,

ratification, instrument of deposit, or instrument of dissent in respect thereto, if or to the extent that such documents shall not already have been filed with the Commission.

(b) Advisory report by Commission at request of shareholders

The Commission is authorized, if so requested, prior to any solicitation of security holders with respect to any plan of reorganization, by any registered investment company which is, or any of the securities of which are, the subject of or is a participant in any such plan, or if so requested by the holders of 25 per centum of any class of its outstanding securities, 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. In such event any registered investment company, in respect of which the Commission shall have rendered any such advisory report, shall mail promptly a copy of such advisory report to all its security holders affected by any such plan: *Provided*, That such advisory report shall have been received by it at least forty-eight hours (not including Sundays and holidays) before final action is taken in relation to such plan at any meeting of security holders called to act in relation thereto, or any adjournment of any such meeting, or if no meeting be called, then prior to the final date of acceptance of such plan by security holders. In respect of securities not registered as to ownership, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its principal place of business and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such investment company or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) Enjoinder of plan of reorganization

Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) Application of section to reorganizations under title 11

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in title 11.

(Aug. 22, 1940, ch. 686, title I, §25, 54 Stat. 826; Pub. L. 91-547, §14, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 95-598, title III, §310(c), Nov. 6, 1978, 92 Stat. 2676.)

EDITORIAL NOTES

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-598 substituted "title 11" for "the Bankruptcy Act of 1898, as amended".

1970—Subsec. (c). Pub. L. 91-547 substituted "that any such plan is not fair and equitable to all security holders" for "any such plan to be grossly unfair or to constitute gross misconduct or gross abuse of trust on the part of the officers, directors, or investment advisers of such registered company or other sponsors of such plan".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note

under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-26. Unit investment trusts

(a) Custody and sale of securities

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than \$500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published);

(2) provides, in substance, (A) that during the life of the trust the trustee or custodian, if not otherwise remunerated, may charge against and collect from the income of the trust, and from the corpus thereof if no income is available, such fees for its services and such reimbursement for its expenses as are provided for in such instrument; (B) that no such charge or collection shall be made except for services theretofore performed or expenses theretofore incurred; (C) that no payment to the depositor or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); and (D) that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested, all funds held for such investment, all equalization, redemption, and other special funds of the trust, and all income upon, accretions to, and proceeds of such property and funds, and shall segregate and hold the same in trust (subject only to the charges and collections allowed under clauses (A), (B), and (C) of this paragraph) until distribution thereof to the security holders of the trust;

(3) provides, in substance, that the trustee or custodian shall not resign until either (A) the trust has been completely liquidated and the proceeds of the liquidation distributed to the security holders of the trust, or (B) a successor trustee or custodian, having the qualifications prescribed in paragraph (1) of this subsection, has been designated and has accepted such trusteeship or custodianship; and

(4) provides, in substance, (A) that a record will be kept by the depositor or an agent of the depositor of the name and address of, and the shares issued by the trust and held by, every holder of any security issued pursuant to such instrument, insofar as such information is known to the depositor or agent; and (B) that whenever a security is deposited with the trustee in substitution for any security in which such security holder has an undivided interest, the depositor or the agent of the depositor will, within five days after such substitution, either deliver or mail to such security holder a notice of substitution, including an identification of the securities eliminated and the

securities substituted, and a specification of the shares of such security holder affected by the substitution.

(b) Bank or affiliated person of bank as trustee or custodian

The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).

(c) Substitution of securities

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) Binding contract or agreement embodying applicable provisions deemed to qualify non-complying instrument by which securities were issued

In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a), such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission.

(e) Liquidation of unit investment trust

Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

(f) Exemption

(1) In general

Subsection (a) does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account.

(2) Limitation on sales

It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract—

(A) unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company, and, beginning on the earlier of August 1, 1997, or the earliest effective date of any registration statement or amendment thereto for such contract following October 11, 1996, the insurance company so represents in the registration statement for the contract; and

(B) unless the insurance company—

(i) complies with all other applicable provisions of this section, as if it were a trustee or

custodian of the registered separate account;

(ii) files with the insurance regulatory authority of the State which is the domiciliary State of the insurance company, an annual statement of its financial condition, which most recent statement indicates that the insurance company has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000, or such other amount as the Commission may from time to time prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors; and

(iii) together with its registered separate accounts, is supervised and examined periodically by the insurance authority of such State.

(3) Fees and charges

For purposes of paragraph (2), the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.

(4) Regulatory authority

The Commission may issue such rules and regulations to carry out paragraph (2)(A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §26, 54 Stat. 827; Pub. L. 91-547, §15, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 100-181, title VI, §§618, 619, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 104-290, title II, §205(a), Oct. 11, 1996, 110 Stat. 3429; Pub. L. 106-102, title II, §211(b), Nov. 12, 1999, 113 Stat. 1396.)

EDITORIAL NOTES

AMENDMENTS

1999—Subsecs. (b) to (f). Pub. L. 106-102 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

1996—Subsec. (e). Pub. L. 104-290 added subsec. (e).

1987—Subsec. (b). Pub. L. 100-181, §618, substituted "intended" for "intend".

Subsec. (c). Pub. L. 100-181, §619, substituted "contract or agreement" for "contract of agreement".

1970—Subsecs. (b) to (d). Pub. L. 91-547 added subsec. (b), redesignated former subsec. (b) as (c), struck out "at the effective date of this subchapter" before "comply", substituted "contract of agreement" for "contract or agreement", and redesignated former subsec. (c) as (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106-102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-27. Periodic payment plans

(a) Sale of certificates; restrictions

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

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

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

(4) the first payment on such certificate is less than \$20, or any subsequent payment is less than \$10;

(5) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C), paragraph (2), of section 80a-26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(6) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(b) Exemptions

If it appears to the Commission, upon application or otherwise, that smaller companies are subjected to relatively higher operating costs and that in order to make due allowance therefor it is necessary or appropriate in the public interest and consistent with the protection of investors that a provision or provisions of paragraph (1), (2), or (3) of subsection (a) relative to sales load be relaxed in the case of certain registered investment companies issuing periodic payment plan certificates, or certain specified classes of such companies, the Commission is authorized by rules and regulations or order to grant any such company or class of companies appropriate qualified exemptions from the provisions of said paragraphs.

(c) Sale of certificates; requirements

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, unless—

(1) such certificate is a redeemable security; and

(2) the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts, and are held by such trustee or custodian under an indenture or agreement containing, in substance, the provisions required by paragraphs (2) and (3) of section 80a-26(a) of this title for the trust indentures of unit investment trusts.

(d) Surrender of certificates; regulations

Notwithstanding subsection (a) of this section, it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provide that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder. The Commission may make rules and regulations applicable to such underwriters and depositors specifying such

reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(e) Refund privileges; notice; rules

With respect to any periodic payment plan certificate sold subject to the provisions of subsection (d) of this section, the registered investment company issuing such periodic payment plan certificate, or any depositor of or underwriter for such company, shall in writing (1) inform each certificate holder who has missed three payments or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one payment or more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen-month period, of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the value of the holder's account as of the time the written notice was given to such holder, and (B) the amount to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

(f) Charges, statement; rules; surrender of certificates; regulations

With respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificate specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(g) Governing provisions; election

Notwithstanding the provisions of subsections (a) and (d), a registered investment company issuing periodic payment plan certificates may elect, by written notice to the Commission, to be governed by the provisions of subsection (h) rather than the provisions of subsections (a) and (d) of this section.

(h) Sale of certificates; restrictions

Upon making the election specified in subsection (g), it shall be unlawful for any such electing registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than 20 per centum of any payment thereon is deducted for sales load, or an average of more than 16 per centum is deducted for sales load from the first forty-eight monthly payments thereon, or their equivalent;

(3) the amount of sales load deducted from any one of the first twelve monthly payments, the thirteenth through twenty-fourth monthly payments, the twenty-fifth through thirty-sixth monthly payments, or the thirty-seventh through forty-eighth monthly payments, or their equivalents, respectively, exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

(4) the deduction for sales load on the excess of the payment or payments in any month over the minimum monthly payment, or its equivalent, to be made on the certificate exceeds the sales load

applicable to payments subsequent to the first forty-eight monthly payments or their equivalent;

(5) the first payment on such certificate is less than \$20, or any subsequent payment is less than \$10;

(6) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C) of paragraph (2) of section 80a-26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(7) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(i) Applicability to registered separate account funding variable insurance contracts

(1) This section does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2).

(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless—

(A) such contract is a redeemable security; and

(B) the insurance company complies with section 80a-26(f) of this title and any rules or regulations issued by the Commission under section 80a-26(f) of this title.

(j) Termination of sales

(1) Termination

Effective 30 days after September 29, 2006, it shall be unlawful, subject to subsection (i)—

(A) for any registered investment company to issue any periodic payment plan certificate; or

(B) for such company, or any depositor of or underwriter for any such company, or any other person, to sell such a certificate.

(2) No invalidation of existing certificates

Paragraph (1) shall not be construed to alter, invalidate, or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after September 29, 2006.

(Aug. 22, 1940, ch. 686, title I, §27, 54 Stat. 829; Pub. L. 91-547, §16, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 92-165, Nov. 23, 1971, 85 Stat. 487; Pub. L. 104-290, title II, §205(b), Oct. 11, 1996, 110 Stat. 3429; Pub. L. 109-290, §4(a), (b), Sept. 29, 2006, 120 Stat. 1318, 1319.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (i)(2)(B). Pub. L. 109-290, §4(b), substituted "section 80a-26(f)" for "section 80a-26(e)" in two places.

Subsec. (j). Pub. L. 109-290, §4(a), added subsec. (j).

1996—Subsec. (i). Pub. L. 104-290 added subsec. (i).

1971—Subsec. (f). Pub. L. 92-165 inserted "(other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment)".

1970—Subsecs. (d) to (h). Pub. L. 91-547 added subsecs. (d) to (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective on expiration of six months after Dec. 14, 1970, see section 30(3)

of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-28. Face-amount certificate companies

(a) Issuance or sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless—

(1) such company, if organized before March 15, 1940, was actively and continuously engaged in selling face-amount certificates on and before that date, and has outstanding capital stock worth upon a fair valuation of assets not less than \$50,000; or if organized on or after March 15, 1940, has capital stock in an amount not less than \$250,000 which has been bona fide subscribed and paid for in cash; and

(2) such company maintains at all times minimum certificate reserves on all its outstanding face-amount certificates in an aggregate amount calculated and adjusted as follows:

(A) the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first certificate year shall amount to at least 50 per centum of the required gross annual payment for such year and the reserve payment or payments for each of the second to fifth certificate years inclusive shall amount to at least 93 per centum of each such year's required gross annual payment and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided*, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken;

(B) if the foregoing minimum percentages of the gross annual payments required under the provisions of such certificate should produce reserve payments larger than are necessary at 3½ per centum per annum compounded annually to provide the minimum maturity or face amount of the certificate when due, the reserve shall be based upon reserve payments accumulated as provided under preceding subparagraph (A) of this paragraph except that in lieu of the 3½ per centum rate specified therein, such rate shall be lowered to the minimum rate, expressed in multiples of one-eighth of 1 per centum, which will accumulate such reserve payments to the maturity value when due;

(C) if the actual annual gross payment to be made by the certificate holder on any certificate issued prior to or after the effective date of this chapter is less than the amount of any assumed reserve payment or payments for a certificate year, such company shall maintain as a part of such minimum certificate reserves a deficiency reserve equal to the total present value of future deficiencies in the gross payments, calculated at a rate not to exceed $3\frac{1}{2}$ per centum per annum compounded annually;

(D) for each certificate of the installment type the amount of the reserve shall at any time be at least equal to (1) the then amount of the reserve payments set up under subparagraphs (A) or (B) of this paragraph; (2) the accumulations on such reserve payments as computed under subparagraphs (A) or (B) of this paragraph; (3) the amount of any deficiency reserve required under subparagraph (C) of this paragraph; and (4) such amount as shall have been credited to the account of each certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in such certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding $3\frac{1}{2}$ per centum per annum compounded annually;

(E) for each certificate which is fully paid, including any fully paid obligations resulting from or effected upon the maturity of the previously issued certificate, and for each paid-up certificate issued as provided in subsection (f) of this section prior to maturity, the amount of the reserve shall at any time be at least equal to (1) such amount as and when accumulated at a rate not to exceed $3\frac{1}{2}$ per centum per annum compounded annually, will provide the amount or amounts payable when due and (2) such amount as shall have been credited to the account of each such certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in the certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding $3\frac{1}{2}$ per centum per annum compounded annually;

(F) for each certificate of the installment type under which gross payments have been made by or credited to the holder thereof covering a payment period or periods or any part thereof beyond the then current payment period as defined by the terms of such certificate, and for which period or periods no reserve has been set up under subparagraph (A) or (B) of this paragraph, an advance payment reserve shall be set up and maintained in the amount of the present value of any such unapplied advance gross payments, computed at a rate not to exceed $3\frac{1}{2}$ per centum per annum compounded annually;

(G) such appropriate contingency reserves for death and disability benefits and for reinstatement rights on any such certificate providing for such benefits or rights as the Commission shall prescribe by rule, regulation, or order based upon the experience of face-amount companies in relation to such contingencies.

At no time shall the aggregate certificate reserves herein required by subparagraphs (A) to (F) of this paragraph, be less than the aggregate surrender values and other amounts to which all certificate holders may be then entitled.

For the purpose of this subsection, no certificate of the installment type shall be deemed to be outstanding if before a surrender value has been attained the holder thereof has been in continuous default in making his payments thereon for a period of one year.

(b) Asset requirements prior to sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such company has, in cash or qualified investments, assets having a value not less than the aggregate amount of the capital stock requirement and certificate reserves as computed under the provisions of subsection (a) hereof. As used in this subsection, "qualified investments" means investments of a kind which life-insurance companies are permitted to invest in or hold under the provisions of the Code of the District of Columbia as heretofore or hereafter amended, and such other investments as the Commission shall by rule, regulation, or order authorize as qualified investments. Such investments shall be valued in

accordance with the provisions of said Code where such provisions are applicable. Investments to which such provisions do not apply shall be valued in accordance with such rules, regulations, or orders as the Commission shall prescribe for the protection of investors.

(c) Certificate reserve requirements

The Commission shall by rule, regulation, or order, in the public interest or for the protection of investors, require a registered face-amount certificate company to deposit and maintain, upon such terms and conditions as the Commission shall prescribe and as are appropriate for the protection of investors, with one or more institutions having the qualifications required by paragraph (1) of section 80a-26(a) of this title for a trustee of a unit investment trust, all or any part of the investments maintained by such company as certificate reserve requirements under the provisions of subsection (b) hereof: *Provided, however,* That where qualified investments are maintained on deposit by such company in respect of its liabilities under certificates issued to or held by residents of any State as required by the statute of such State or by any order, regulation, or requirement of such State or any official or agency thereof, the amount so on deposit, but not to exceed the amount of reserves required by subsection (a) hereof for the certificates so issued or held, shall be deducted from the amount of qualified investments that may be required to be deposited hereunder.

Assets which are qualified investments under subsection (b) and which are deposited under or as permitted by this subsection, may be used and shall be considered as a part of the assets required to be maintained under the provisions of said subsection (b).

(d) Provisions required in certificate

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such certificate contains a provision or provisions to the effect—

(1) that, in respect of any certificate of the installment type, during the first certificate year the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the reserve payments as specified in subparagraph (A) or (B) of paragraph (2) of subsection (a) and at the end of such certificate year, a value payable in cash at least equal to 50 per centum of the amount of the gross annual payment required thereby for such year;

(2) that, in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by numbered items (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) hereof, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 50 per centum of the amount of such reserve. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(3) that, in respect of any certificate of the installment type, the holder of the certificate, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) hereof, shall be entitled to a value payable in cash equal to the then amount of any advance payment reserve under such certificate required by subparagraph (F) of paragraph (2) of subsection (a) hereof in addition to any other amounts due the holder hereunder;

(4) that at any time prior to maturity, in respect of any certificate which is fully paid, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by item (1) of subparagraph (E) of paragraph (2) of subsection (a) hereof, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser: *Provided, however,* That such surrender charge shall not apply as to any obligations of a fully paid type resulting from the maturity of a previously issued certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(5) that in respect of any certificate, the holder of the certificate, upon maturity, upon surrender

thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) hereof, shall be entitled to a value payable in cash equal to the then amount of the reserve, if any, for such certificate required by item (4) of subparagraph (D) of paragraph (2) of subsection (a) hereof or item (2) of subparagraph (E) of paragraph (2) of said subsection (a) in addition to any other amounts due the holder hereunder.

The term "certificate year" as used in this section in respect of any certificate of the installment type means a period or periods for which one year's payment or payments as provided by the certificate have been made thereon by the holder and the certificate maintained in force by such payments for the time for which the same have been made, and in respect of any certificate which is fully paid or paid-up means any year ending on the anniversary of the date of issuance of the certificate.

Any certificate may provide for loans or advances by the company to the certificate holder on the security of such certificate upon terms prescribed therein but at an interest rate not exceeding 6 per centum per annum. The amount of the required reserves, deposits, and the surrender values thereof available to the holder may be adjusted to take into account any unpaid balance on such loans or advances and interest thereon, for the purposes of this subsection and subsections (b) and (c) hereof.

Any certificate may provide that the company at its option may, prior to the maturity thereof, defer any payment or payments to the certificate holder to which he may be entitled under this subsection, for a period of not more than thirty days: *Provided*, That in the event such option is exercised by the company, interest shall accrue on any payment or payments due to the holder, for the period of such deferment at a rate equal to that used in accumulating the reserves for such certificate: *And provided further*, That the Commission may, by rules and regulations or orders in the public interest or for the protection of investors, make provision for any other deferment upon such terms and conditions as it shall prescribe.

(e) Liability of holder to legal action for unpaid amount of certificate

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, which certificate makes the holder liable to any legal action or proceeding for any unpaid amount on such certificate.

(f) Optional right to paid up certificate in lieu of cash surrender value

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, (1) unless such face-amount certificate contains a provision or provisions to the effect that the holder shall have an optional right to receive a paid-up certificate in lieu of the then attained cash surrender value provided therein and in the amount of such value plus accumulations thereon at a rate to be specified in the paid-up certificate equal to that used in computing the reserve on the original certificate under subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section, such paid-up certificate to become due and payable at the end of a period equal to the balance of the term of such original certificate before maturity; and during the period prior to maturity such paid-up certificate shall have a cash value upon surrender thereof equal to the then amount of the reserve therefor; and (2) unless such face-amount certificate contains a further provision or provisions to the effect that if the holder be in continuous default in his payments on such certificate for a period of six months without having exercised his option to receive a paid-up certificate, as herein provided, the company at the expiration of such six months shall pay the surrender value in cash if such value is less than \$100 or if such value is \$100 or more shall issue such paid-up certificate to such holder and such payment or issuance, plus the payment of all other amounts to which he may be then entitled under the original certificate, shall operate to cancel his original certificate: *Provided*, That in lieu of the issuance of a new paid-up certificate the original certificate may be converted into a paid-up certificate with the same effect; and (3) unless, where such certificate provides, in the event of default, for the deferment of payments thereon by the holder or of the due dates of such payments or of the maturity date of the certificate, it shall also

provide in effect for the right of reinstatement by the holder of the certificate after default and for an option in the holder, at the time of reinstatement, to make up the payment or payments for the default period next preceding such reinstatement with interest thereon not exceeding 6 per centum per annum, with the same effect as if no such default in making such payments had occurred.

The term "default" as used in this subsection shall, without restricting its usual meaning, include a failure to make a payment or payments as and when provided by the certificate.

(g) Application of section to company issuing certificates only to holders of previously issued certificates

The foregoing provisions of this section shall not apply to a face-amount certificate company which on or before the effective date of this chapter has discontinued the offering of face-amount certificates to the public and issues face-amount certificates only to the holders of certificates previously issued pursuant to an obligation expressed or implied in such certificates.

(h) Declaration or payment of dividends

It shall be unlawful for any registered face-amount certificate company which does not maintain the minimum certificate reserve on all its outstanding face-amount certificates issued prior to the effective date of this chapter, in an aggregate amount calculated and adjusted as provided in this section to declare or pay any dividends on the shares of such company for or during any calendar year which shall exceed one-third of the net earnings for the next preceding calendar year or which shall exceed 10 per centum of the aggregate net earnings for the next preceding five calendar years, whichever is the lesser amount, or any dividend which shall have been forbidden by the Commission pursuant to the provision of the next sentence of this paragraph. At least thirty days before such company shall declare, pay, or distribute any dividend, it shall give the Commission written notice of its intention to declare, pay, or distribute the same; and if at any time it shall appear to the Commission that the declaration, payment or distribution of any dividend for or during any calendar year might impair the financial integrity of such company or its ability to meet its liabilities under its outstanding face-amount certificates, it may by order forbid the declaration, distribution, or payment of any such dividend.

(i) Application of section to certificates issued prior to effective date of section

The foregoing provisions of this section shall apply to all face-amount certificates issued prior to the effective date of this subsection; to the collection or acceptance of any payment on such certificates; to the issuance of face-amount certificates to the holders of such certificates pursuant to an obligation expressed or implied in such certificates; to the provisions of such certificates; to the minimum certificate reserves and deposits maintained with respect thereto; and to the assets that the issuer of such certificate was and is required to have with respect to such certificates. With respect to all face-amount certificates issued after the effective date of this subsection, the provisions of this section shall apply except as hereinafter provided.

(1) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a), the reserves for each certificate of the installment type shall be based on assumed annual, semiannual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed $3\frac{1}{2}$ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first three certificate years shall amount to at least 80 per centum of the required gross annual payment for such years; the reserve payment or payments for the fourth certificate year shall amount to at least 90 per centum of such year's required gross annual payment; the reserve payment or payments for the fifth certificate year shall amount to at least 93 per centum of such year's gross annual payment; and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided*, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company

may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken.

(2) Notwithstanding paragraphs (1) and (2) of subsection (d), (A) in respect of any certificate of the installment type, during the first certificate year, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than 80 per centum of the amount of the gross payments made on the certificate; and (B) in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by clauses (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a), less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 80 per centum of the gross payments made on the certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate.

(Aug. 22, 1940, ch. 686, title I, §28, 54 Stat. 829; Pub. L. 91-547, §17, Dec. 14, 1970, 84 Stat. 1426; Pub. L. 100-181, title VI, §§620, 621, Dec. 4, 1987, 101 Stat. 1262.)

EDITORIAL NOTES

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsecs. (a), (b), (d), (e), and (f), see section 80a-52 of this title.

For the effective date of this chapter, referred to in subsecs. (a)(2)(C), (g), and (h), see sections 80a-52 and 80b-21 of this title.

For the effective date of this subsection, referred to in subsec. (i), as the day upon expiration of 6 months after Dec. 14, 1970, see section 30(3) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

AMENDMENTS

1987—Subsec. (a)(2)(B). Pub. L. 100-181, §620, substituted "paragraph" for "subsection".
Subsec. (d)(2). Pub. L. 100-181, §621, inserted "of" before "subsection (a)".

1970—Subsec. (i). Pub. L. 91-547 added subsec. (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective on expiration of six months after Dec. 14, 1970, see section 30(3) of Pub. L. 91-547, set out as a note under section 80a-2 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-29. Reports and financial statements of investment companies and affiliated

persons

(a) Annual report by company

Every registered investment company shall file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)] and the rules and regulations issued thereunder.

(b) Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders

Every registered investment company shall file with the Commission—

(1) such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company filed under this subchapter; and

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

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

(c) Minimizing reporting burdens

(1) The Commission shall take such action as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons in exercising its authority—

(A) under subsection (f); and

(B) under subsection (b)(1), if the Commission requires the filing of information, documents, and reports under that subsection on a basis more frequently than semiannually.

(2) Action taken by the Commission under paragraph (1) shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the reporting burdens on registered investment companies; and

(B) the utility of such information, documents, and reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing such information, documents, and reports.

(d) Reports under this section in lieu of reports under other provisions of law

The Commission shall issue rules and regulations permitting the filing with the Commission, and with any national securities exchange concerned, of copies of periodic reports, or of extracts therefrom, filed by any registered investment company pursuant to subsections (a) and (b), in lieu of any reports and documents required of such company under section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)].

(e) Semiannual reports to stockholders

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

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

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

(3) a statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;

(4) a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;

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

(6) a statement of the aggregate dollar amounts of purchases and sales of investment securities, other than Government securities, made during the period covered by the report:

Provided, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

(f) Additional information

The Commission may, by rule, require that semiannual reports containing the information set forth in subsection (e) include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(g) Certificate of independent public accountants

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

(h) Duties and liabilities of affiliated persons

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.

(i) Disclosure to church plan participants

A person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 80a-3(c)(14) of this title shall provide disclosure to plan participants, in writing, and not less frequently than annually, and for new participants joining such a plan after May 31, 1996, as soon as is practicable after joining such plan, that—

(1) the plan, or any company or account maintained to manage or hold plan assets and interests in such plan, company, or account, are not subject to registration, regulation, or reporting under this subchapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or State securities laws; and

(2) plan participants and beneficiaries therefore will not be afforded the protections of those provisions.

(j) Notice to Commission

The Commission may issue rules and regulations to require any person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 80a-3(c)(14) of this title to file a notice with the Commission containing such information and in such form as the Commission may prescribe as necessary or appropriate in the public interest or consistent with the protection of investors.

(k) Data standards for reports

(1) Requirement

The Commission shall, by rule, adopt data standards for all reports required to be filed with the Commission under this section, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(Aug. 22, 1940, ch. 686, title I, §30, 54 Stat. 836; Pub. L. 104-290, title II, §206, title V, §508(g), Oct. 11, 1996, 110 Stat. 3430, 3449; Pub. L. 105-353, title III, §301(c)(5), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 117-263, div. E, title LVIII, §5821(b)(2), Dec. 23, 2022, 136 Stat. 3425.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (i)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (i)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2022—Subsec. (k). Pub. L. 117-263 added subsec. (k).

1998—Subsec. (b)(1). Pub. L. 105-353, §301(c)(5)(A), inserted "and" after semicolon at end.

Subsec. (e). Pub. L. 105-353, §301(c)(5)(B), substituted "semiannually" for "semi-annually" in introductory provisions.

Subsecs. (g) to (j). Pub. L. 105-353, §301(c)(5)(C), redesignated subsecs. (g) and (h), relating to disclosure to church plan participants and notice to Commission, respectively, as (i) and (j), respectively.

1996—Subsec. (b)(1). Pub. L. 104-290, §206(1), added par. (1) and struck out former par. (1) which read as follows: "such information and documents (other than financial statements) as the Commission may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the registration statement of such company filed under this subchapter; and".

Subsecs. (c) to (e). Pub. L. 104-290, §206(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 104-290, §206(2), (4), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 104-290, §508(g), added subsec. (g), relating to disclosure to church plan participants.

Pub. L. 104-290, §206(2), (5), redesignated subsec. (e), relating to certificate of independent public accountants, as (g), and substituted "pursuant to subsections (a) and (e)" for "pursuant to subsections (a) and (d)".

Subsec. (h). Pub. L. 104-290, §508(g), added subsec. (h), relating to notice to Commission.

Pub. L. 104-290, §206(2), redesignated subsec. (f), relating to duties and liabilities of affiliated persons, as (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–30. Accounts and records

(a) Maintenance of records

(1) In general

Each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 78c(a)(37) of this title) for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Each investment adviser that is not a majority-owned subsidiary of, and each depositor of any registered investment company, and each principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such records as are necessary or appropriate to record such person's transactions with such registered company. Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.

(2) Minimizing compliance burden

In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary recordkeeping by, and minimize the compliance burden on, persons required to maintain records under this subsection (hereafter in this section referred to as "subject persons"). Such steps shall include considering, and requesting public comment on—

- (A) feasible alternatives that minimize the recordkeeping burdens on subject persons;
- (B) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through Commission examination;
- (C) the costs associated with maintaining the information that would be required to be reflected in such records; and
- (D) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

(b) Examinations of records

(1) In general

All records required to be maintained and preserved in accordance with subsection (a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission

may prescribe.

(2) Availability

For purposes of examinations referred to in paragraph (1), any subject person shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

(3) Commission action

The Commission shall exercise its authority under this subsection with due regard for the benefits of internal compliance policies and procedures and the effective implementation and operation thereof.

(4) Records of persons with custody or use

(A) In general

Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) Certain persons subject to other regulation

Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.

(c) Regulatory authority

The Commission may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required pursuant to this subchapter.

(d) Exemption authority

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

(Aug. 22, 1940, ch. 686, title I, §31, 54 Stat. 838; Pub. L. 104–290, title II, §207, Oct. 11, 1996, 110 Stat. 3430; Pub. L. 105–353, title III, §301(c)(6), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §§929I(b), 929Q(a), July 21, 2010, 124 Stat. 1858, 1865; Pub. L. 111–257, §1(b), Oct. 5, 2010, 124 Stat. 2646.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §929Q(a)(1), inserted at end "Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors."

Subsec. (b)(4). Pub. L. 111–203, §929Q(a)(2), added par. (4).

Subsec. (c). Pub. L. 111–257 redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: "Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section,

or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this subchapter, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to this section shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44."

Pub. L. 111–203, §929I(b)(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any internal compliance or audit records, or information contained therein, provided to the Commission under this section. Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of the jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552."

Subsec. (d). Pub. L. 111–257, §1(b)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Pub. L. 111–203, §929I(b)(2), (3), redesignated subsec. (e) as (d) and struck out former subsec. (d) which defined "internal compliance policies and procedures" and "internal compliance and audit record" for purposes of this section.

Subsec. (e). Pub. L. 111–257, §1(b)(2), redesignated subsec. (e) as (d).

Pub. L. 111–203, §929I(b)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 111–203, §929I(b)(3), redesignated subsec. (f) as (e).

1998—Subsec. (f). Pub. L. 105–353 substituted "subsection (e)" for "subsection (c)".

1996—Subsecs. (a), (b). Pub. L. 104–290, §207(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

"(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and preserve for such period or periods as the Commission may prescribe by rules and regulations, such accounts, books, and other documents as constitute the record forming the basis for financial statements required to be filed pursuant to section 80a–29 of this title, and of the auditor's certificates relating thereto. Every investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such accounts, books, and other documents as are necessary or appropriate to record such person's transactions with such registered company.

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

Subsecs. (c), (d). Pub. L. 104–290, §207(3), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 104–290, §207(2), (4), redesignated subsec. (c) as (e) and inserted heading.

Subsec. (f). Pub. L. 104–290, §207(2), (5), redesignated subsec. (d) as (f) and inserted heading.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-31. Accountants and auditors

(a) Selection of accountant

It shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless—

(1) such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not interested persons of such registered company;

(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of those members of the board of directors who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action;

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

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

If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in section 80a-16(c) of this title, no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding shares of beneficial interest in such trust in the same manner as is provided in section 80a-16(c) of this title in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the shares of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the custodian, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of section 80a-2(a) of this title as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection.

(b) Selection of controller or other principal accounting officer

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

(c) Reports of accountants and auditors

The Commission is authorized, by rules and regulations or order in the public interest or for the protection of investors, to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such period or periods as the Commission may prescribe, and to make the same available for inspection by the Commission or any member or representative thereof.

(Aug. 22, 1940, ch. 686, title I, §32, 54 Stat. 838; Pub. L. 91-547, §18, Dec. 14, 1970, 84 Stat. 1427; Pub. L. 94-29, §28(4), June 4, 1975, 89 Stat. 165.)

EDITORIAL NOTES

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 substituted "section 80a-16(c) of this title" for "section 80a-16(b) of this title".

1970—Subsec. (a). Pub. L. 91-547 struck out introductory text "After one year from the effective date of this subchapter," and substituted "It" for "it"; inserted "the vote, cast in person, of" before "a majority" and substituted "interested persons of" for "investment advisers of, or affiliated persons of an investment adviser of, or officers or employees of," in par. (1); inserted "the vote of a majority of those members of" before "the board of directors" and "who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action" after "the board of directors" in par. (2); substituted period for colon in par. (4); and in text after par. (4), substituted "if not so filled," for "if not so filled then" and "if not so filed" for "if not so filled", and substituted reference to par. (42) for par. (40) of section 80a-2(a) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-32. Filing of documents with Commission in civil actions

Every registered investment company which is a party and every affiliated person of such company who is a party defendant to any action or claim by a registered investment company or a security holder thereof in a derivative or representative capacity against an officer, director, investment adviser, trustee, or depositor of such company, shall file with the Commission, unless already so filed, (1) a copy of all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim, (2) a copy of any proposed settlement, compromise, or discontinuance of such action, and (3) a copy of such motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any document referred to in clause (1) or (2)—

(A) is delivered to such company or party defendant, such document shall be filed with the Commission not later than ten days after the receipt thereof; or

(B) is filed in such court or delivered by such company or party defendant, such documents

shall be filed with the Commission not later than five days after such filing or delivery.
(Aug. 22, 1940, ch. 686, title I, §33, 54 Stat. 839; Pub. L. 91-547, §19, Dec. 14, 1970, 84 Stat. 1428.)

EDITORIAL NOTES

AMENDMENTS

1970—Pub. L. 91-547 inserted provision for party acting in representative capacity and substituted provisions for prompt filing with the Commission of copies of all pleadings, verdicts, judgments, settlements, compromises, or discontinuances served or filed in suits by a registered investment company or a security holder thereof against an officer, director, investment adviser, trustee, or depositor of such company and of copies of motions, transcripts, or other documents if the Commission requests them for prior requirement that registered companies and their affiliated persons who are defendants in derivative suits involving an alleged breach of official duty transmit to the Commission copies of the pleadings and the record in such actions after a settlement or compromise of the action has been approved by a court of competent jurisdiction or a verdict or final judgment on the merits has been rendered, Commission use of information, and nondisclosure of identity of persons.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-33. Destruction and falsification of reports and records

(a) Willful destruction

It shall be unlawful for any person, except as permitted by rule, regulation, or order of the Commission, willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to section 80a-30(a) or 80a-31(c) of this title.

(b) Untrue statements or omissions

It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a-30 (a) of this title. It shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. For the purposes of this subsection, any part of any such document which is signed or certified by an accountant or auditor in his capacity as such shall be deemed to be made, filed, transmitted, or kept by such accountant or auditor, as well as by the person filing, transmitting, or keeping the complete document.

(Aug. 22, 1940, ch. 686, title I, §34, 54 Stat. 840.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–34. Unlawful representations and names

(a) Misrepresentation of guarantees

(1) In general

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 United States, or any agency, instrumentality or officer of the United States;

(B) has been insured by the Federal Deposit Insurance Corporation; or

(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

(2) Disclosures

Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

(3) Definitions

The terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings as given in section 1813 of title 12.

(b) Unlawful representation of sponsorship by United States or agency thereof

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

(c) Statement of registration under securities provisions

No provision of subsection (a) or (b) shall be construed to prohibit a statement that a person or security is registered under this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(d) Deceptive or misleading names

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 Commission finds are materially deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.

(Aug. 22, 1940, ch. 686, title I, §35, 54 Stat. 840; Pub. L. 104–290, title II, §208, Oct. 11, 1996, 110 Stat. 3432; Pub. L. 106–102, title II, §214, Nov. 12, 1999, 113 Stat. 1398.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (c), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–102 inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof."

1996—Subsec. (d). Pub. L. 104–290 inserted heading and amended text generally. Prior to amendment, text read as follows: "It shall be unlawful for any registered investment company hereafter to adopt as a part of the name or title of such company, or of any security of which it is the issuer, any word or words which the Commission finds and by order declares to be deceptive or misleading. The Commission is authorized to bring an action in the proper district court of the United States or United States court of any Territory or other place subject to the jurisdiction of the United States alleging that the name or title of any registered investment company, or of any security which it has issued, is materially deceptive or misleading. If the court finds that the Commission's allegations in this respect, taking into consideration the history of the investment company and the length of time which it may have used any such name or title, are established, the court shall enjoin such investment company from continuing to use any such name or title."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–35. Breach of fiduciary duty

(a) Civil actions by Commission; jurisdiction; allegations; injunctive or other relief

The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person who is, or at the time of the alleged misconduct was, serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts, or at the time of the alleged misconduct, so served or acted—

- (1) as officer, director, member of any advisory board, investment adviser, or depositor; or
- (2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

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 or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the

protection of investors and to the effectuation of the policies declared in section 80a-1(b) of this title.

(b) Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction

For the purposes of this subsection, the investment adviser of a registered investment company shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such registered investment company or by the security holders thereof, to such investment adviser or any affiliated person of such investment adviser. An action may be brought under this subsection by the Commission, or by a security holder of such registered investment company on behalf of such company, against such investment adviser, or any affiliated person of such investment adviser, or any other person enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or payments, for breach of fiduciary duty in respect of such compensation or payments paid by such registered investment company or by the security holders thereof to such investment adviser or person. With respect to any such action the following provisions shall apply:

(1) It shall not be necessary to allege or prove that any defendant engaged in personal misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty.

(2) In any such action approval by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payment received from such investment company, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 80a-17 of this title, or rules, regulations, or orders thereunder, or to sales loads for the acquisition of any security issued by a registered investment company.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a-9 and 80a-48 of this title, section 78o of this title, or section 80b-3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

(c) Corporate or other trustees performing functions of investment advisers

For the purposes of subsections (a) and (b) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, §36, 54 Stat. 841; Pub. L. 91-547, §20, Dec. 14, 1970, 84 Stat. 1428; Pub. L. 94-29, §28(7), June 4, 1975, 89 Stat. 166; Pub. L. 100-181, title VI, §622, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 111-203, title IX, §929F(f), July 21, 2010, 124 Stat. 1854.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, in introductory provisions, substituted "a person who is, or at the time of the alleged misconduct was, serving or acting" for "a person serving or acting" and "for which such person so serves or acts, or at the time of the alleged misconduct, so served or acted" for "for which such person so

serves or acts".

1987—Subsec. (b)(4). Pub. L. 100–181, §622(1), substituted "loads" for "loans".

Subsecs. (c), (d). Pub. L. 100–181, §622(2), (3), redesignated as subsec. (c) provisions which were added and designated as subsec. (d) by Pub. L. 94–29, and substituted "subsections (a) and (b)" for "subsections (a) through (c)".

1975—Subsec. (d). Pub. L. 94–29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–547 designated existing provisions as subsec. (a) and substituted in first sentence "has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct" for "has been guilty, after August 22, 1940, and within five years of the commencement of the action, of gross misconduct or gross abuse of trust" and second sentence reading "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 or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a–1(b) of this title" for prior provision reading "If the Commission's allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities either permanently or for such period of time as it in its discretion shall deem appropriate."

Subsec. (b). Pub. L. 91–547 added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that subsec. (b) of this section effective on expiration of eighteen months after Dec. 14, 1970, see section 30 (introductory text and par. (4)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–36. Larceny and embezzlement

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section 80a–48 of this title. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

(Aug. 22, 1940, ch. 686, title I, §37, 54 Stat. 841.)

§80a–37. Rules, regulations, and orders

(a) Powers of Commission

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

(b) Filing of information and documents

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under this subchapter, subchapter II of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this subchapter or any of such Acts.

(c) Good faith conformance with rules, regulations, and orders

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

(Aug. 22, 1940, ch. 686, title I, §38, 54 Stat. 841; Pub. L. 111–203, title IX, §986(c)(3), July 21, 2010, 124 Stat. 1936.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (b), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 struck out "the Public Utility Holding Company Act of 1935," after "the Securities Exchange Act of 1934,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of

such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–38. Procedure for issuance of rules and regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(Aug. 22, 1940, ch. 686, title I, §39, 54 Stat. 842.)

EDITORIAL NOTES

CODIFICATION

"Chapter 15 of title 44" substituted in text for "the Federal Register Act" on authority of Pub. L. 90–620, §2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–39. Procedure for issuance of orders

(a) Notice and hearing

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(b) Application verified under oath admissible as evidence

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

(c) Parties

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

(Aug. 22, 1940, ch. 686, title I, §40, 54 Stat. 842; Pub. L. 86–507, §1(15), June 11, 1960, 74 Stat. 201.)

EDITORIAL NOTES

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–507 inserted "or certified mail" after "registered mail".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–40. Hearings by Commission

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

(Aug. 22, 1940, ch. 686, title I, §41, 54 Stat. 842.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–41. Enforcement of subchapter

(a) Investigation

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

(b) Administration of oaths and affirmations, subpoena of witnesses, etc.

For the purpose of any investigation or any other proceeding under this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do,

in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Action for injunction

Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. In any proceeding under this subsection to enforce compliance with section 80a-7 of this title, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the investment company or companies involved and the books, records, and assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(e) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80a-9(f) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

- (I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
- (II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

(B) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 80a-43 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80a-9(f) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(Aug. 22, 1940, ch. 686, title I, §42, 54 Stat. 842; Pub. L. 91-452, title II, §215, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title VI, §623, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 101-429, title III, §302, Oct. 15, 1990, 104 Stat. 945; Pub. L. 107-204, title III, §308(d)(4), July 30, 2002, 116 Stat. 785; Pub. L. 111-203, title IX, §923(a)(2), July 21, 2010, 124 Stat. 1849.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (e)(3)(A). Pub. L. 111-203 inserted "and section 78u-6 of this title" after "section 7246 of this title".

2002—Subsec. (e)(3)(A). Pub. L. 107-204 inserted ", except as otherwise provided in section 7246 of this title" before period at end.

1990—Subsec. (e). Pub. L. 101-429 added subsec. (e).

1987—Subsecs. (d), (e). Pub. L. 100-181 redesignated subsec. (e) as (d).

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-42. Court review of orders

(a) Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) to review an order of the Commission issued under section 80a-8(e) of this title shall operate as a stay of the Commission's order unless the court otherwise orders. The commencement of proceedings under subsection (a) to review an order of the Commission issued under any provision of this subchapter other than section 80a-8(e) of this title shall not operate as a stay of the Commission's order unless the court specifically so orders.

(Aug. 22, 1940, ch. 686, title I, §43, 54 Stat. 844; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §25, Aug. 28, 1958, 72 Stat. 949; Pub. L. 91-547, §21, Dec. 14, 1970, 84 Stat. 1430.)

EDITORIAL NOTES

AMENDMENTS

1970—Pub. L. 91-547 substituted reference to "section 1254" for "sections 346 and 347" of title 28.

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission or" for "served upon any member of the Commission or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28" and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–43. Jurisdiction of offenses and suits

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 80a–33 of this title, or upon a failure to file a report or other document required to be filed under this subchapter, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a–35(b) of this title at any stage of such action or suit prior to final judgment therein.

(Aug. 22, 1940, ch. 686, title I, §44, 54 Stat. 844; Pub. L. 91–547, §22, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 111–203, title IX, §929E(c), July 21, 2010, 124 Stat. 1853.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2010—Pub. L. 111–203 inserted "In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence." after "defendant may be found."

1970—Pub. L. 91–547 substituted reference to "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 225 and 347 of title 28 and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia, approved February 9, 1893' " and provided for Commission intervention as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a–35(b) of this title at any stage of such action or suit prior to final judgment therein, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–44. Disclosure of information filed with Commission; copies

(a) The information contained in any registration statement, application, report, or other document filed with the Commission pursuant to any provision of this subchapter or of any rule or regulation thereunder (as distinguished from any information or document transmitted to the Commission) shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Except as provided in section 78x(c) of this title, it shall be unlawful for any member, officer, or employee of the Commission to use for personal benefit, or to disclose to any person other than an official or employee of the United States or of a State, for official use, or for any such official or employee to use for personal benefit, any information contained in any document so filed or transmitted, if such information is not available to the public.

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

(Aug. 22, 1940, ch. 686, title I, §45, 54 Stat. 845; Pub. L. 101–550, title II, §202(b)(1), Nov. 15, 1990, 104 Stat. 2715.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550 substituted "Except as provided in section 78x(c) of this title, it shall be unlawful" for "It shall be unlawful".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–45. Reports by Commission; hiring and leasing authority

(a) Omitted

(b) Hiring and leasing authority

The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(Aug. 22, 1940, ch. 686, title I, §46, 54 Stat. 845; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 101–550, title I, §104(c), Nov. 15, 1990, 104 Stat. 2714.)

EDITORIAL NOTES

CODIFICATION

Subsection (a), which required the Securities and Exchange Commission to submit an annual report to Congress on the work of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 191 of House Document No. 103–7.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–550 amended subsec. (b) generally. Prior to amendment, subsec. (b) related to appointment and compensation of employees.

1949—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act Oct. 28, 1949, ch. 782, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a-46. Validity of contracts

(a) Waiver of compliance as void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Equitable results; rescission; severance

(1) A contract that is made, or whose performance involves, a violation of this subchapter, or of any rule, regulation, or order thereunder, is unenforceable by either party (or by a nonparty to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this subchapter or of any rule, regulation, or order thereunder) unless a court finds that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this subchapter.

(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this subchapter.

(3) This subsection shall not apply (A) to the lawful portion of a contract to the extent that it may be severed from the unlawful portion of the contract, or (B) to preclude recovery against any person for unjust enrichment.

(Aug. 22, 1940, ch. 686, title I, §47, 54 Stat. 845; Pub. L. 96-477, title I, §104, Oct. 21, 1980, 94 Stat. 2277.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-477 provided that a contract whose terms violated this subchapter or any rule, regulation, or order thereunder would be unenforceable by either party or by a nonparty to the contract who acquired a right under such contract with knowledge of the facts by reason of which the making or performance of the contract would violate this subchapter, struck out provisions declaring such contracts void as regards the rights of the violators or nonparties to the contract with actual knowledge of its illegality, authorized the court to enforce such contracts where the court found that under the circumstances enforcement would produce a more equitable result than nonenforcement and such enforcement would not be inconsistent with the purposes of this subchapter, authorized the same two-part test to save from rescission any portions of such contracts which had been performed, and provided that subsec. (b) was not to apply to a lawful portion of a contract to the extent it could be severed from an unlawful portion of such contract, or to preclude recovery against any person for unjust enrichment.

§80a-47. Liability of controlling persons; preventing compliance with subchapter

(a) Procurement

It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder.

(b) Substantially assisting a violation

For purposes of any action brought by the Commission under subsection (d) or (e) of section 80a-41 of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(c) Obstructing compliance

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

(Aug. 22, 1940, ch. 686, title I, §48, 54 Stat. 846; Pub. L. 111–203, title IX, §929M(b), July 21, 2010, 124 Stat. 1861.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203 added subsec. (b) and redesignated former subsec. (b) as (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§80a–48. Penalties

Any person who willfully violates any provision of this subchapter or of any rule, regulation, or order hereunder, or any person who willfully in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a–30(a) of this title makes any untrue statement of a material fact or omits to state any material fact necessary in order to prevent the statements made therein from being materially misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no actual knowledge of such rule, regulation, or order.

(Aug. 22, 1940, ch. 686, title I, §49, 54 Stat. 846; Pub. L. 94–29, §27(e), June 4, 1975, 89 Stat. 163.)

EDITORIAL NOTES

AMENDMENTS

1975—Pub. L. 94–29 substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§80a–49. Construction with other laws

Except where specific provision is made to the contrary, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], or subchapter II of this chapter, over any person, security, or transaction, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or transaction,

insofar as such jurisdiction does not conflict with any provision of this subchapter or of any rule, regulation, or order hereunder.

(Aug. 22, 1940, ch. 686, title I, §50, 54 Stat. 846; Pub. L. 111–203, title IX, §986(c)(4), July 21, 2010, 124 Stat. 1936.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Trust Indenture Act of 1939, referred to in text, is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 struck out "the Public Utility Holding Company Act of 1935," after "the Securities Exchange Act of 1934,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80a–50. Separability

If any provision of this subchapter or any provision incorporated in this subchapter by reference, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter and the application of any such provision to person or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 22, 1940, ch. 686, title I, §51, 54 Stat. 846.)

§80a–51. Short title

This subchapter may be cited as the "Investment Company Act of 1940".

(Aug. 22, 1940, ch. 686, title I, §52, 54 Stat. 847.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–141, div. S, title VIII, §801, Mar. 23, 2018, 132 Stat. 1138, provided that: "This title [amending sections 80a–56, 80a–60, 80a–62, and 80b–5 of this title and enacting provisions set out as a note under under section 80a–53 of this title] may be cited as the 'Small Business Credit Availability Act'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–290, title II, §201, Oct. 11, 1996, 110 Stat. 3426, provided that: "This title [amending sections 80a–2, 80a–3, 80a–12, 80a–24, 80a–26, 80a–27, 80a–29, 80a–30, 80a–34, and 80b–5 of this title and enacting provisions set out as notes under sections 80a–2, 80a–3, and 80a–24 of this title] may be cited as the 'Investment Company Act Amendments of 1996'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–62, §1(a), Dec. 8, 1995, 109 Stat. 682, provided that: "This Act [enacting section 80a–3a of this title, amending sections 77c, 78c, 78l, 80a–3, 80a–7, and 80b–3 of this title, and enacting provisions set out as a note under section 77c of this title] may be cited as the 'Philanthropy Protection Act of 1995'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–477, §1, Oct. 21, 1980, 94 Stat. 2275, provided that: "That this Act [enacting sections 80a–53 to 80a–64 and 80c to 80c–3 of this title, amending sections 77b, 77c, 77d, 77s, 77ddd, 78c, 78kk, 80a–2, 80a–3, 80a–6, 80a–46, 80b–2, 80b–3, and 80b–5 of this title, and enacting provisions set out as notes under sections 77a and 80c of this title] may be cited as the 'Small Business Investment Incentive Act of 1980'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–547, §1, Dec. 14, 1970, 84 Stat. 1413, provided: "That this Act [enacting section 80b–6a of this title, amending sections 77b, 77c, 78c, 78l, 80a–2, 80a–3, 80a–8 to 80a–13, 80a–15, 80a–17 to 80a–19, 80a–22, 80a–24 to 80a–28, 80a–31, 80a–32, 80a–35, 80a–42, 80a–43, 80b–2, 80b–3, and 80b–5 of this title, and enacting provisions set out as notes under sections 77c and 80a–2 of this title] may be cited as the 'Investment Company amendments Act of 1970'."

§80a–52. Effective date

The effective date of the provisions of this subchapter, so far as the same relate to face-amount certificates or to face-amount certificate companies, is January 1, 1941. The effective date of provisions hereof, insofar as the same do not apply to face-amount certificates or face-amount certificate companies is November 1, 1940. Except as herein otherwise provided, every provision of this subchapter shall take effect on November 1, 1940.

(Aug. 22, 1940, ch. 686, title I, §53, 54 Stat. 847; Pub. L. 100–181, title VI, §624, Dec. 4, 1987, 101 Stat. 1262.)

EDITORIAL NOTES

AMENDMENTS

1987—Pub. L. 100–181 struck out at end of first sentence ": *Provided, however,* That any such face-amount certificate company may register prior to said date, as provided by section 80a–8 of this title, and such registration shall not operate to change or affect said effective date as to any such company or any face-amount certificates issued by it".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–547, §30, Dec. 14, 1970, 84 Stat. 1436, provided that: "This Act [see Short Title note set out under section 80a–51 of this title] shall take effect on the date of its enactment [Dec. 14, 1970], except that—

"(1) sections (5)(a), (b), and (c); 8; 9(a); 11; 18; 24(a); and 25 (amending sections 10(a), (b), and (c) [section 80a–10(a), (b), and (c)]; 15 [section 80a–15]; 17(f) [section 80a–17(f)]; 19 [section 80a–19]; and 32(a) of the Investment Company Act of 1940 [section 80a–31(a)]; and sections 203(b) and 205 of the Investment Advisers Act of 1940 [sections 80b–3(b) and 80b–5 of this title], respectively) shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

"(2) that part of section 5(d) which substitutes 'interested persons' for 'affiliated persons' in section 10(d) of the Investment Company Act of 1940 [section 80a–10(d) of this title] shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

"(3) sections 16 and 17 (amending section 27 and 28 of the Investment Company Act of 1940 [sections 80a–27 and 80a–28 of this title]) shall take effect upon the expiration of six months after the date of enactment of this Act [Dec. 14, 1970]; and

"(4) that part of section 20 which adds a subsection (b) to section 36 of the Investment Company Act of 1940 [section 80a–35 of this title] shall take effect upon the expiration of eighteen months after the date of enactment of this Act [Dec. 14, 1970]."

§80a–53. Election to be regulated as business development company

(a) Eligibility

Any company defined in section 80a–2(a)(48)(A) and (B) of this title may elect to be subject to the provisions of sections 80a–54 through 80a–64 of this title by filing with the Commission a notification of election, if such company—

(1) has a class of its equity securities registered under section 78l of this title; or

(2) has filed a registration statement pursuant to section 78l of this title for a class of its equity securities.

(b) Form and manner of notification; effect

The Commission may, by rule, prescribe the form and manner in which notification of election under this section shall be given. A business development company shall be deemed to be subject to sections 80a–54 through 80a–64 of this title upon receipt by the Commission of such notification of election.

(c) Revocation or withdrawal of election

Whenever the Commission finds, on its own motion or upon application, that a business development company which has filed a notification of election pursuant to subsection (a) of this section has ceased to engage in business, the Commission shall so declare by order revoking such company's election. Any business development company may voluntarily withdraw its election under subsection (a) by filing a notice of withdrawal of election with the Commission, in a form and manner which the Commission may, by rule, prescribe. Such withdrawal shall be effective immediately upon receipt by the Commission.

(Aug. 22, 1940, ch. 686, title I, §54, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100–181, title VI, §625, Dec. 4, 1987, 101 Stat. 1262.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–181 substituted "defined in section" for "defined in sections".

STATUTORY NOTES AND RELATED SUBSIDIARIES

PARITY FOR BUSINESS DEVELOPMENT COMPANIES REGARDING OFFERING AND PROXY RULES

Pub. L. 115–141, div. S, title VIII, §803, Mar. 23, 2018, 132 Stat. 1140, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'business development company' has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a));

"(2) the term 'Commission' means the Securities and Exchange Commission;

"(3) the term 'Form N–2' means the form described in section 239.14 of title 17, Code of Federal Regulations;

"(4) the term 'Form S–3' means the form described in section 239.13 of title 17, Code of Federal

Regulations; and

"(5) the term 'Schedule 14A' means the information required under section 240.14a-101 of title 17, Code of Federal Regulations.

"(b) REVISION TO RULES.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Mar. 23, 2018], the Commission shall make the revisions described in paragraph (2) to allow a business development company that has filed an election under section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a); 78o(d)).

"(2) REQUIRED REVISIONS.—The revisions described in this paragraph are revisions to—

"(A) section 230.405 of title 17, Code of Federal Regulations—

"(i) to remove the exclusion of a business development company from the definition of the term 'well-known seasoned issuer' under that section; and

"(ii) to add a registration statement filed on Form N-2 to the definition of the term 'automatic shelf registration statement' under that section;

"(B) sections 230.168 and 230.169 of title 17, Code of Federal Regulations, to remove the exclusion of a business development company from an issuer that is eligible for the exemptions under those sections;

"(C) section 230.163 of title 17, Code of Federal Regulations, to remove a business development company from the list of issuers that are ineligible for the exemption under that section;

"(D) section 230.163A of title 17, Code of Federal Regulations, to remove the communications made by a business development company from the list of communications that are ineligible for the exemption under that section;

"(E) section 230.134 of title 17, Code of Federal Regulations, to remove the exclusion of a communication relating to a business development company from the application of that section;

"(F) sections 230.138 and 230.139 of title 17, Code of Federal Regulations, to specifically include a business development company as an issuer to which those sections apply;

"(G) section 230.156 of title 17, Code of Federal Regulations, to provide that nothing in that section may be construed to prevent a business development company from qualifying for an exemption under section 230.168 or 230.169 of title 17, Code of Federal Regulations, as amended by the Commission in accordance with the requirements of this section;

"(H) section 230.164 of title 17, Code of Federal Regulations, to remove a business development company from the list of issuers that are excluded under that section;

"(I) section 230.433 of title 17, Code of Federal Regulations, to specifically include a business development company that is a well-known seasoned issuer as an issuer to which that section applies;

"(J) section 230.415 of title 17, Code of Federal Regulations to state that the registration for securities under section 230.415(a)(1)(x) of title 17, Code of Federal Regulations, includes securities registered on Form N-2 by a business development company that would otherwise meet the eligibility requirements of Form S-3;

"(K) section 230.497 of title 17, Code of Federal Regulations, to include a process for a business development company to file a form of prospectus in the same manner as the process for filing a form of prospectus under section 230.424(b) of title 17, Code of Federal Regulations;

"(L) sections 230.172 and 230.173 of title 17, Code of Federal Regulations, to remove the exclusion of an offering of a business development company from the application of those sections;

"(M) section 230.418 of title 17, Code of Federal Regulations, to provide that a business development company that would otherwise meet the eligibility requirements of Form S-3 shall be exempt from paragraph (a)(3) of that section;

"(N) Schedule 14A to revise item 13(b)(1) of that Schedule to include a business development company that would otherwise meet the requirements of note E of that Schedule as an issuer to which that item applies;

"(O) section 243.103 of title 17, Code of Federal Regulations, to provide that paragraph (a) of that section applies for the purposes of Form N-2; and

"(P) item 34 on Form N-2 to require a business development company to provide undertakings that are no more restrictive than the undertakings that are required of a registrant under section 229.512 of title 17, Code of Federal Regulations.

"(c) REVISION TO FORM N-2.—Not later than 1 year after the date of enactment of this Act, the Commission shall revise Form N-2—

"(1) to include an item or instruction that is similar to item 12 on Form S-3 to provide that a business

development company that would otherwise meet the requirements of Form S-3 shall incorporate by reference the reports and documents filed by the business development company under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) into the registration statement of the business development company filed on Form N-2; and

"(2) to include an item or instruction that is similar to the instruction regarding automatic shelf offerings by well-known seasoned issuers on Form S-3 to provide that a business development company that is a well-known seasoned issuer may file automatic shelf offerings on Form N-2.

"(d) TREATMENT IF REVISIONS NOT COMPLETED IN TIMELY MANNER.—If the Commission fails to complete the revisions required under subsections (b) and (c) by the dates described in those subsections, a business development company, during the period beginning on the date that is 1 day after 1 year after the date of enactment of this Act and ending on the date that the Commission completes those revisions, may deem those revisions to have been completed in accordance with the actions required to be taken by the Commission under those subsections.

"(e) RULES OF CONSTRUCTION.—

"(1) TREATMENT OF SUCCESSOR REGULATIONS AND FORMS.—Any reference in this section to a regulation or form shall be construed as a reference to—

"(A) that regulation or form, as in effect on the day before the date of enactment of this Act; or

"(B) any successor to that regulation or form.

"(2) DISTRIBUTION OF SALES MATERIAL.—Nothing in this section, or in the amendments made pursuant to the requirements of this section, may be construed to prevent a business development company from distributing sales material under section 230.482 of title 17, Code of Federal Regulations."

§80a-54. Acquisition of assets by business development companies

(a) Permissible assets; percentage

It shall be unlawful for a business development company to acquire any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the value of its total assets (other than assets described in paragraph (7) below):

(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this subchapter and of the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small amount, or the limited nature of the public offering, involved in such transactions—

(A) from the issuer of such securities, which issuer is an eligible portfolio company, from any person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; or

(B) from the issuer of such securities, which issuer is described in section 80a-2(a)(46)(A) and (B) of this title but is not an eligible portfolio company because it has issued a class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 78g of this title, or from any person who is an officer or employee of such issuer, if—

(i) at the time of the purchase, the business development company owns at least 50 per centum of—

(I) the greatest number of equity securities of such issuer and securities convertible into or exchangeable for such securities; and

(II) the greatest amount of debt securities of such issuer,

held by such business development company at any point in time during the period when such issuer was an eligible portfolio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid

or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

(ii) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 80a-2(a)(46)(C)(ii) of this title;

(3) securities purchased in transactions not involving any public offering from an issuer described in sections 80a-2(a)(46)(A) and (B) of this title or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any person in transactions incident thereto, if such securities were—

(A) issued by an issuer that is, or was immediately prior to the purchase of its securities by the business development company, in bankruptcy proceedings, subject to reorganization under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such bankruptcy proceedings or reorganization;

(B) issued by an issuer pursuant to or in consummation of such a plan or arrangement; or

(C) issued by an issuer that, immediately prior to the purchase of such issuer's securities by the business development company, was not in bankruptcy proceedings but was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements;

(4) securities of eligible portfolio companies purchased from any person in transactions not involving any public offering, if there is no ready market for such securities and if immediately prior to such purchase the business development company owns at least 60 per centum of the outstanding equity securities of such issuer (giving effect to all securities presently convertible into or exchangeable for equity securities of such issuer as if such securities were so converted or exchanged);

(5) securities received in exchange for or distributed on or with respect to securities described in paragraphs (1) through (4) of this subsection, or pursuant to the exercise of options, warrants, or rights relating to securities described in such paragraphs;

(6) cash, cash items, Government securities, or high quality debt securities maturing in one year or less from the time of investment in such high quality debt securities; and

(7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the business development company, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a business development company, including notes of indebtedness of directors, officers, employees, and general partners held by a business development company as payment for securities of such company issued in connection with an executive compensation plan described in section 80a-56(j) of this title.

(b) Valuation of assets

For purposes of this section, the value of a business development company's assets shall be determined as of the date of the most recent financial statements filed by such company with the Commission pursuant to section 78m of this title, and shall be determined no less frequently than annually.

(Aug. 22, 1940, ch. 686, title I, §55, as added Pub. L. 96-477, title I, §105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100-181, title VI, §626, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104-290, title V, §505, Oct. 11, 1996, 110 Stat. 3446.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–290 substituted "from any person" for "or from any person" and inserted before semicolon ", or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors".

1987—Subsec. (a)(1)(B). Pub. L. 100–181 substituted "described in section" for "described in sections".

§80a–55. Qualifications of directors

(a) Non-interested persons

A majority of a business development company's directors or general partners shall be persons who are not interested persons of such company.

(b) Vacancies; suspension of provisions

If, by reason of the death, disqualification, or bona fide resignation of any director or general partner, a business development company does not meet the requirements of subsection (a) of this section, or the requirements of section 80a–15(f)(1) of this title with respect to directors, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the Commission may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §56, as added Pub. L. 96–477, title I §105, Oct. 21, 1980, 94 Stat. 2280.)

§80a–56. Transactions with certain affiliates

(a) Transactions involving controlling or closely affiliated persons

It shall be unlawful for any person who is related to a business development company in a manner described in subsection (b) of this section, acting as principal—

(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 80a–21(b) or section 80a–61 of this title; or

(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

(b) Controlling or closely affiliated persons

The provisions of subsection (a) of this section shall apply to the following persons:

(1) Any director, officer, employee, or member of an advisory board of a business development company or any person (other than the business development company itself) who is, within the meaning of section 80a-2(a)(3)(C) of this title, an affiliated person of any such person specified in this paragraph.

(2) Any investment adviser or promoter of, general partner in, principal underwriter for, or person directly or indirectly either controlling, controlled by, or under common control with, a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company), or any person who is, within the meaning of section 80a-2(a)(3)(C) or (D) of this title, an affiliated person of any such person specified in this paragraph.

(c) Exemption orders

Notwithstanding paragraphs (1), (2), and (3) of subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of such paragraphs. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

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

(2) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], its registration statement and reports filed under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and its reports to shareholders or partners; and

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

(d) Transactions involving noncontrolling shareholders or affiliated persons

It shall be unlawful for any person who is related to a business development company in the manner described in subsection (e) of this section and who is not subject to the prohibitions of subsection (a) of this section, acting as principal—

(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 80a-21(b) of this title; or

(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such affiliated person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

(e) Noncontrolling shareholders or affiliated persons; executive officer

The provisions of subsection (d) of this section shall apply to the following persons:

(1) Any person (A) who is, within the meaning of section 80a-2(a)(3)(A) of this title, an

affiliated person of a business development company, (B) who is an executive officer or a director of, or general partner in, any such affiliated person, or (C) who directly or indirectly either controls, is controlled by, or is under common control with, such affiliated person.

(2) Any person who is an affiliated person of a director, officer, employee, investment adviser, member of an advisory board or promoter of, principal underwriter for, general partner in, or an affiliated person of any person directly or indirectly either controlling or under common control with a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company).

For purposes of this subsection, the term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function, and any other person who performs similar policymaking functions.

(f) Approval of proposed transactions

Notwithstanding subsection (d) of this section, a person described in subsection (e) may engage in a proposed transaction described in subsection (d) if such proposed transaction is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in the business development company on the basis that—

(1) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the shareholders or partners of the business development company and do not involve overreaching of such company or its shareholders or partners on the part of any person concerned;

(2) the proposed transaction is consistent with the interests of the shareholders or partners of the business development company and is consistent with the policy of such company as recited in filings made by such company with the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], its registration statement and reports filed under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and its reports to shareholders or partners; and

(3) the directors or general partners record in their minutes and preserve in their records, for such periods as if such records were required to be maintained pursuant to section 80a-30(a) of this title, a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefor.

(g) Transactions in the ordinary course of business

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

(h) Inquiry procedures

The directors of or general partners in any business development company shall adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction in which such business development company or a company controlled by such business development company proposes to participate, with respect to the possible involvement in the transaction of persons described in subsections (b) and (e) of this section.

(i) Rules and regulations of Commission

Until the adoption by the Commission of rules or regulations under subsections (a) and (d) of this section, the rules and regulations of the Commission under subsections (a) and (d) of section 80a-17 of this title applicable to registered closed-end investment companies shall be deemed to apply to transactions subject to subsections (a) and (d) of this section. Any rules or regulations adopted by the Commission to implement this section shall be no more restrictive than the rules or regulations adopted by the Commission under subsections (a) and (d) of section 80a-17 of this title that are applicable to all registered closed-end investment companies.

(j) Warrants, options, and rights to purchase voting securities; loans to facilitate executive compensation plans

Notwithstanding subsections (a) and (d) of this section, any director, officer, or employee of, or general partner in, a business development company may—

(1) acquire warrants, options, and rights to purchase voting securities of such business development company, and securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan offered by such company which meets the requirements of section 80a-60(a)(4)(B) of this title; and

(2) borrow money from such business development company for the purpose of purchasing securities issued by such company pursuant to an executive compensation plan, if each such loan—

(A) has a term of not more than ten years;

(B) becomes due within a reasonable time, not to exceed sixty days, after the termination of such person's employment or service;

(C) bears interest at no less than the prevailing rate applicable to 90-day United States Treasury bills at the time the loan is made;

(D) at all times is fully collateralized (such collateral may include any securities issued by such business development company); and

(E)(i) in the case of a loan to any officer or employee of such business development company (including any officer or employee who is also a director of such company), is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in such company on the basis that the loan is in the best interests of such company and its shareholders or partners; or

(ii) in the case of a loan to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, is approved by order of the Commission, upon application, on the basis that the terms of the loan are fair and reasonable and do not involve overreaching of such company or its shareholders or partners.

(k) Restriction on brokerage commissions

It shall be unlawful for any person described in subsection (l)—

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

(2) acting as broker, in connection with the sale of securities to or by the business development company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds—

(A) the usual and customary broker's commission if the sale is effected on a securities exchange;

(B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities; or

(C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected,

unless the Commission, by rules and regulations or order in the public interest and consistent with the protection of investors, permits a larger commission.

(l) Persons subject to brokerage commission restrictions

The provisions of subsection (k) of this section shall apply to the following persons:

(1) Any affiliated person of a business development company.

(2)(A) Any person who is, within the meaning of section 80a-2(a)(3)(B), (C), or (D) of this title, an affiliated person of any director, officer, employee, or member of an advisory board of the business development company.

(B) Any person who is, within the meaning of section 80a-2(a)(3)(A), (B), (C), or (D) of this title, an affiliated person of any investment adviser of, general partner in, or person directly or indirectly either controlling, controlled by, or under common control with, the business development company.

(C) Any person who is, within the meaning of section 80a-2(a)(3)(C) of this title, an affiliated person of any person who is an affiliated person of the business development company within the meaning of section 80a-2(a)(3)(A) of this title.

(m) Receipt of fee or salary from transaction participant

For purposes of subsections (a) and (d), a person who is a director, officer, or employee of a party to a transaction and who receives his usual and ordinary fee or salary for usual and customary services as a director, officer, or employee from such party shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such fee or salary.

(n) Profit-sharing plans

(1) Notwithstanding subsection (a)(4) of this section, a business development company may establish and maintain a profit-sharing plan for its directors, officers, employees, and general partners and such directors, officers, employees, and general partners may participate in such profit-sharing plan, if—

(A)(i) in the case of a profit-sharing plan for officers and employees of the business development company (including any officer or employee who is also a director of such company), such profit-sharing plan is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in such company on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; or

(ii) in the case of a profit-sharing plan which includes one or more directors of the business development company who are not also officers or employees of such company, or one or more general partners in such company, such profit-sharing plan is approved by order of the Commission, upon application, on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; and

(B) the aggregate amount of benefits which would be paid or accrued under such plan shall not exceed 20 per centum of the business development company's net income after taxes in any fiscal year.

(2) This subsection may not be used where the business development company has outstanding any stock option, warrant, or right issued as part of an executive compensation plan, including a plan pursuant to section 80a-60(a)(4)(B) of this title, or has an investment adviser registered or required to be registered under subchapter II of this chapter.

(o) Required majority for approval of proposed transactions

The term "required majority", when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

(Aug. 22, 1940, ch. 686, title I, §57, as added Pub. L. 96-477, title I, §105, Oct. 21, 1980, 94 Stat. 2280; amended Pub. L. 100-181, title VI, §627, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 115-141, div. S, title VIII, §802(b)(2)(A), Mar. 23, 2018, 132 Stat. 1140.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (c)(2) and (f)(2), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (c)(2) and (f)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2018—Subsecs. (j)(1), (n)(2). Pub. L. 115–141 substituted "section 80a–60(a)(4)(B) of this title" for "section 80a–60(a)(3)(B) of this title".

1987—Subsec. (i). Pub. L. 100–181 substituted "subsections (a) and (d) of section 80a–17 of this title" for "sections 80a–17(a) and (d) of this title" in two places.

§80a–57. Changes in investment policy

No business development company shall, unless authorized by the vote of a majority of its outstanding voting securities or partnership interests, change the nature of its business so as to cease to be, or to withdraw its election as, a business development company.

(Aug. 22, 1940, ch. 686, title I, §58, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§80a–58. Incorporation of subchapter provisions

Notwithstanding the exemption set forth in section 80–6(f) of this title, sections 80a–1, 80a–2, 80a–3, 80a–4, 80a–5, 80a–6, 80a–9, 80a–10(f), 80a–15(a), (c), and (f), 80a–16(b), 80a–17(f) through (j), 80a–19(a), 80a–20(b), 80a–31(a) and (c), 80a–32 through 80a–46, and 80a–48 through 80a–52 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company.

(Aug. 22, 1940, ch. 686, title I, §59, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§80a–59. Functions and activities of business development companies

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–12 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the Commission shall not prescribe any rule, regulation, or order pursuant to section 80a–12(a)(1) of this title governing the circumstances in which a business development company may borrow from a bank in order to purchase any security.

(Aug. 22, 1940, ch. 686, title I, §60, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§80a–60. Capital structure

(a) Exceptions for business development company

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–18 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

(1) Except as provided in paragraph (2), the asset coverage requirements of subparagraphs (A) and (B) of section 80a–18(a)(1) of this title (and any related rule promulgated under this subchapter) applicable to business development companies shall be 200 percent.

(2) The asset coverage requirements of subparagraphs (A) and (B) of section 80a–18(a)(1) of

this title and of subparagraphs (A) and (B) of section 80a-18(a)(2) of this title (and any related rule promulgated under this subchapter) applicable to a business development company shall be 150 percent if—

(A) not later than 5 business days after the date on which those asset coverage requirements are approved under subparagraph (D) of this paragraph, the business development company discloses that the requirements were approved, and the effective date of the approval, in—

- (i) any filing submitted to the Commission under section 78m(a) or 78o(d) of this title; and
- (ii) a notice on the website of the business development company;

(B) the business development company discloses, in each periodic filing required under section 78m(a) of this title—

- (i) the aggregate outstanding principal amount or liquidation preference, as applicable, of the senior securities issued by the business development company and the asset coverage percentage as of the date of the business development company's most recent financial statements included in that filing;
- (ii) that the business development company, under subparagraph (D), has approved the asset coverage requirements under this paragraph; and
- (iii) the effective date of the approval described in clause (ii);

(C) with respect to a business development company that is an issuer of common equity securities, each periodic filing of the company required under section 78m(a) of this title includes disclosures that are reasonably designed to ensure that shareholders are informed of—

- (i) the amount of senior securities (and the associated asset coverage ratios) of the company, determined as of the date of the most recent financial statements of the company included in that filing; and
- (ii) the principal risk factors associated with the senior securities described in clause (i), to the extent that risk is incurred by the company; and

(D) the company—

(i)(I) through a vote of the required majority (as defined in section 80a-56(o) of this title), approves the application of this paragraph to the company, to become effective on the date that is 1 year after the date of the approval; or

(II) obtains, at a special or annual meeting of shareholders or partners at which a quorum is present, the approval of more than 50 percent of the votes cast for the application of this paragraph to the company, to become effective on the first day after the date of the approval; and

(ii) if the company is not an issuer of common equity securities that are listed on a national securities exchange, extends, to each person that is a shareholder as of the date of an approval described in subclause (I) or (II) of clause (i), as applicable, the opportunity (which may include a tender offer) to sell the securities held by that shareholder as of that applicable approval date, with 25 percent of those securities to be repurchased in each of the 4 calendar quarters following the calendar quarter in which that applicable approval date takes place.

(3) Notwithstanding section 80a-18(c) of this title, a business development company may issue more than one class of senior security representing indebtedness.

(4) Notwithstanding section 80a-18(d) of this title—

(A) a business development company may issue warrants, options, or rights to subscribe or convert to voting securities of such company, accompanied by securities, if—

- (i) such warrants, options, or rights expire by their terms within ten years;
- (ii) such warrants, options, or rights are not separately transferable unless no class of such warrants, options, or rights and the securities accompanying them has been publicly distributed;
- (iii) the exercise or conversion price is not less than the current market value at the date of

issuance, or if no such market value exists, the current net asset value of such voting securities; and

(iv) the proposal to issue such securities is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 80a-56(o) of this title) of the directors of or general partners in such company on the basis that such issuance is in the best interests of such company and its shareholders or partners;

(B) a business development company may issue, to its directors, officers, employees, and general partners, warrants, options, and rights to purchase voting securities of such company pursuant to an executive compensation plan, if—

(i)(I) in the case of warrants, options, or rights issued to any officer or employee of such business development company (including any officer or employee who is also a director of such company), such securities satisfy the conditions in clauses (i), (iii), and (iv) of subparagraph (A); or (II) in the case of warrants, options, or rights issued to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, the proposal to issue such securities satisfies the conditions in clauses (i) and (iii) of subparagraph (A), is authorized by the shareholders or partners of such company, and is approved by order of the Commission, upon application, on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its shareholders or partners;

(ii) such securities are not transferable except for disposition by gift, will, or intestacy;

(iii) no investment adviser of such business development company receives any compensation described in section 80b-5(a)(1) of this title, except to the extent permitted by paragraph (1) or (2) of section 80b-5(b) of this title; and

(iv) such business development company does not have a profit-sharing plan described in section 80a-56(n) of this title; and

(C) a business development company may issue warrants, options, or rights to subscribe to, convert to, or purchase voting securities not accompanied by securities, if—

(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

(ii) the proposal to issue such warrants, options, or rights is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 80a-56(o) of this title) of the directors of or general partners in such company on the basis that such issuance is in the best interests of the company and its shareholders or partners.

Notwithstanding this paragraph, the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25 per centum of the outstanding voting securities of the business development company, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, employees, and general partners pursuant to any executive compensation plan meeting the requirements of subparagraph (B) of this paragraph would exceed 15 per centum of the outstanding voting securities of such company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

(5) For purposes of measuring the asset coverage requirements of section 80a-18(a) of this title, a senior security created by the guarantee by a business development company of indebtedness issued by another company shall be the amount of the maximum potential liability less the fair market value of the net unencumbered assets (plus the indebtedness which has been guaranteed) available in the borrowing company whose debts have been guaranteed, except that a guarantee

issued by a business development company of indebtedness issued by a company which is a wholly-owned subsidiary of the business development company and is licensed as a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] shall not be deemed to be a senior security of such business development company for purposes of section 80a-18(a) of this title if the amount of the indebtedness at the time of its issuance by the borrowing company is itself taken fully into account as a liability by such business development company, as if it were issued by such business development company, in determining whether such business development company, at that time, satisfies the asset coverage requirements of section 80a-18(a) of this title.

(b) Compliance

A business development company shall comply with the provisions of this section at the time it becomes subject to sections 80a-54 through 80a-64 of this title, as if it were issuing a security of each class which it has outstanding at such time.

(Aug. 22, 1940, ch. 686, title I, §61, as added Pub. L. 96-477, title I, §105, Oct. 21, 1980, 94 Stat. 2286; amended Pub. L. 104-290, title V, §506, Oct. 11, 1996, 110 Stat. 3446; Pub. L. 111-203, title IX, §985(d)(5), July 21, 2010, 124 Stat. 1934; Pub. L. 115-141, div. S, title VIII, §802(a), Mar. 23, 2018, 132 Stat. 1138.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), (2), was in the original "this Act", meaning title I of act Aug. 22, 1940, ch. 686, known as the Investment Company Act of 1940, which is classified generally to this subchapter.

The Small Business Investment Act of 1958, referred to in subsec. (a)(5), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689), which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-141 added pars. (1) and (2), redesignated former pars. (2) to (4) as (3) to (5), respectively, and struck out former par. (1) which read as follows: "The asset coverage requirements of section 80a-18(a)(1)(A) and (B) of this title applicable to business development companies shall be 200 per centum."

2010—Subsec. (a)(3)(B)(iii). Pub. L. 111-203 substituted "section 80b-5(a)(1) of this title" for "paragraph (1) of section 80b-5 of this title" and "paragraph (1) or (2) of section 80b-5(b) of this title" for "clause (A) or (B) of that section".

1996—Subsec. (a)(2). Pub. L. 104-290, §506(1), substituted a period for "if such business development company does not have outstanding any publicly held indebtedness, and all such securities of each class are—

"(A) privately held or guaranteed by the Small Business Administration, or banks, insurance companies, or other institutional investors; and

"(B) not intended to be publicly distributed."

Subsec. (a)(3)(A). Pub. L. 104-290, §506(2)(A), (B), inserted "accompanied by securities," after "of such company," and struck out "senior securities representing indebtedness accompanied by" before "warrants, options, or rights".

Subsec. (a)(3)(A)(ii). Pub. L. 104-290, §506(2)(C), struck out "senior" before "securities".

Subsec. (a)(3)(C). Pub. L. 104-290, §506(3), added subpar. (C).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§80a–61. Loans

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–21 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that nothing in that section shall be deemed to prohibit—

(1) any loan to a director, officer, or employee of, or general partner in, a business development company for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of section 80a–56(j) of this title; or

(2) any loan to a company controlled by a business development company, which companies could be deemed to be under common control solely because a third person controls such business development company.

(Aug. 22, 1940, ch. 686, title I, §62, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2287.)

§80a–62. Distribution and repurchase of securities

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–23 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

(1) The prohibitions of section 80a–23(a)(2) of this title shall not apply to any company which (A) is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company, and (B) immediately after the issuance of any of its securities for property other than cash or securities, will not be an investment company within the meaning of section 80a–3(a) of this title.

(2) Notwithstanding the provisions of section 80a–23(b) of this title, a business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock, and may sell warrants, options, or rights to acquire any such common stock at a price below the current net asset value of such stock, if—

(A) the holders of a majority of such business development company's outstanding voting securities, and the holders of a majority of such company's outstanding voting securities that are not affiliated persons of such company, approved such company's policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the initial public offering by a business development company of its securities;

(B) a required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such business development company have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

(C) a required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such business development company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any distributing commission or discount.

(3) A business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock upon the exercise of any warrant, option, or right issued in accordance with section 80a–60(a)(4) of this title.

(Aug. 22, 1940, ch. 686, title I, §63, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2288; amended Pub. L. 115–141, div. S, title VIII, §802(b)(2)(B), Mar. 23, 2018, 132 Stat. 1140.)

EDITORIAL NOTES

AMENDMENTS

2018—Par. (3). Pub. L. 115–141 substituted "section 80a–60(a)(4) of this title" for "section 80a–60(a)(3) of this title".

§80a–63. Accounts and records

(a) Exception for business development company

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–30 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the reference to the financial statements required to be filed pursuant to section 80a–29 of this title shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 78m of this title.

(b) Risk factors statement; availability

(1) In addition to the requirements of subsection (a), a business development company shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule, prescribe, describing the risk factors involved in an investment in the securities of a business development company due to the nature of such company's investment portfolio and capital structure, and shall supply copies of such statement to any registered broker or dealer upon request.

(2) If the Commission finds it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, the Commission may also require, by rule, any person who, acting as principal or agent, sells a security of a business development company to inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such business development company pursuant to this subsection, and make such risk statement available on request. The Commission, in making such rules and regulations, shall consider, among other matters, whether any such rule or regulation would impose any unreasonable burdens on such brokers or dealers or unreasonably impair the maintenance of fair and orderly markets.

(Aug. 22, 1940, ch. 686, title I, §64, as added Pub. L. 96–477, title I §105, Oct. 21, 1980, 94 Stat. 2289; amended Pub. L. 104–290, title V, §507, Oct. 11, 1996, 110 Stat. 3446.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–290 inserted "and capital structure" after "portfolio".

§80a–64. Preventing compliance with subchapter; liability of controlling persons

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–47 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the provisions of section 80a–47(a) of this title shall not be construed to require any company which is not an investment company within the meaning of section 80a–3(a) of this title to comply with the provisions of this subchapter which are applicable to a business development company solely because such company is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company.

(Aug. 22, 1940, ch. 686, title I, §65, as added Pub. L. 96–477, title I, §105, Oct. 21, 1980, 94 Stat. 2289.)

SUBCHAPTER II—INVESTMENT ADVISERS

§80b–1. Findings

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 79z–4 ¹ of this title, and facts otherwise disclosed and ascertained, it is found that investment advisers are of national concern, in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on national securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System; and

(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, national securities exchanges, and other securities markets, the national banking system and the national economy.

(Aug. 22, 1940, ch. 686, title II, §201, 54 Stat. 847.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 79z–4 of this title, referred to in text, was repealed by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ [*See References in Text note below.*](#)

§80b–2. Definitions

(a) In general

When used in this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1) "Assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) "Bank" means (A) a banking institution organized under the laws of the United States or a

Federal savings association, as defined in section 1462(5) of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 1462(4) of title 12, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(4) "Commission" means the Securities and Exchange Commission.

(5) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term "dealer" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], but does not include an insurance company or investment company.

(8) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

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

(10) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] which is not an investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)], as exempted securities for the purposes of that Act [15 U.S.C. 78a et seq.]; (F) any nationally

recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others;; ¹ (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this subchapter; or (H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) "Investment company", affiliated person, and "insurance company" have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.]. "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.

(13) "Investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(15) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

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

(17) The term "person associated with an investment adviser" means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 80b-3 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion of portions of this subchapter, persons, including employees controlled by an investment adviser.

(18) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

(19) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

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

(21) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.], mean those Acts, respectively, as heretofore or hereafter amended.

(22) "Business development company" means any company which is a business development company as defined in section 80a-2(a)(48) of this title and which complies with section 80a-54 of this title, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 80a-2(a)(48) and 80a-54 of this title shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 80a-54 through 80a-64 of this title; and

(C) the securities which may be purchased pursuant to section 80a-54(a) of this title may be purchased from any person.

For purposes of this paragraph, all terms in sections 80a-2(a)(48) and 80a-54 of this title shall have the same meaning set forth in subchapter I as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 80a-54 through 80a-64 of this title shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

(23) "Foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(24) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(25) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(26) The term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this subchapter or the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and rules and regulations promulgated under this subchapter or the Investment Company Act of 1940.

(27) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].

(28) The term "credit rating agency" has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(29) ² The term "private fund" means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act.

(30) The term "foreign private adviser" means any investment adviser who—

(A) has no place of business in the United States;

(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than

\$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; and

(D) neither—

(i) holds itself out generally to the public in the United States as an investment adviser; nor

(ii) acts as—

(I) an investment adviser to any investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]; or

(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.

(29) ³ The terms "commodity pool", "commodity pool operator", "commodity trading advisor", "major swap participant", "swap", "swap dealer", and "swap execution facility" have the same meanings as in section 1a of title 7.

(b) Applicability to Federal or State government, agency, or instrumentality, or to officers, agents, or employees thereof

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

(c) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(Aug. 22, 1940, ch. 686, title II, §202, 54 Stat. 847; Pub. L. 86–70, §12(c), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, §7(d), July 12, 1960, 74 Stat. 412; Pub. L. 86–750, §1, Sept. 13, 1960, 74 Stat. 885; Pub. L. 89–485, §13(j), July 1, 1966, 80 Stat. 243; Pub. L. 91–547, §23, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 95–598, title III, §311, Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96–477, title II, §201, Oct. 21, 1980, 94 Stat. 2289; Pub. L. 97–303, §6, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100–181, title VII, §701, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101–550, title II, §206(b), Nov. 15, 1990, 104 Stat. 2720; Pub. L. 104–290, title III, §303(c), Oct. 11, 1996, 110 Stat. 3438; Pub. L. 106–102, title II, §§217–219, 224, Nov. 12, 1999, 113 Stat. 1399, 1400, 1402; Pub. L. 106–554, §1(a)(5) [title II, §209(a)(2), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435, 2763A–436; Pub. L. 109–291, §4(b)(3)(A), (B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 109–351, title IV, §401(b)(1), Oct. 13, 2006, 120 Stat. 1973; Pub. L. 111–203, title IV, §§402(a), 409(a), title VII, §770, title IX, §986(d), July 21, 2010, 124 Stat. 1570, 1575, 1801, 1936.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsec. (a)(11)(A), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(12), (26)(B), (30)(D)(ii)(I), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Securities Act of 1933, referred to in subsec. (a)(21), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(21), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(21), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

This subchapter, referred to in subsec. (a)(26)(B), was in the original "this Act" and was translated as reading "this title", meaning title II of act Aug. 22, 1940, ch. 686, known as the Investment Advisers Act of 1940, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (a)(11)(G), (H). Pub. L. 111–203, §409(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(21). Pub. L. 111–203, §986(d), struck out " 'Public Utility Holding Company Act of 1935'," after " 'Securities Exchange Act of 1934',".

Subsec. (a)(29). Pub. L. 111–203, §770, added par. (29) relating to certain terms having the same meanings as in section 1a of title 7.

Pub. L. 111–203, §402(a), added par. (29) defining the term "private fund".

Subsec. (a)(30). Pub. L. 111–203, §402(a), added par. (30).

2006—Subsec. (a)(2)(A). Pub. L. 109–351, §401(b)(1)(A), inserted "or a Federal savings association, as defined in section 1462(5) of title 12" after "a banking institution organized under the laws of the United States".

Subsec. (a)(2)(C). Pub. L. 109–351, §401(b)(1)(B), inserted ", savings association, as defined in section 1462(4) of title 12," after "other banking institution" and "or savings associations" after "having supervision over banks".

Subsec. (a)(11)(F), (G). Pub. L. 109–291, §4(b)(3)(B), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (a)(28). Pub. L. 109–291, §4(b)(3)(A), added par. (28).

2000—Subsec. (a)(18). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(2)], inserted "security future," after "treasury stock,".

Subsec. (a)(27). Pub. L. 106–554, §1(a)(5) [title II, §209(a)(4)], added par. (27).

1999—Subsec. (a)(3). Pub. L. 106–102, §218, amended par. (3) generally. Prior to amendment, par. (3) read as follows: " 'Broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

Subsec. (a)(7). Pub. L. 106–102, §219, amended par. (7) generally. Prior to amendment, par. (7) read as follows: " 'Dealer' means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(11)(A). Pub. L. 106–102, §217(a), substituted "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser" for "investment company".

Subsec. (a)(26). Pub. L. 106–102, §217(b), added par. (26).

Subsec. (c). Pub. L. 106–102, §224, added subsec. (c).

1996—Subsec. (a). Pub. L. 104–290, §303(c)(1), substituted "requires, the following definitions shall apply:" for "requires—" in introductory provisions.

Subsec. (a)(25). Pub. L. 104–290, §303(c)(2), added par. (25).

1990—Subsec. (a)(23), (24). Pub. L. 101–550 added pars. (23) and (24).

1987—Subsec. (a)(19). Pub. L. 100–181 struck out reference to Canal Zone.

1982—Subsec. (a)(18). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "mineral rights,".

1980—Subsec. (a)(22). Pub. L. 96–477 added par. (22).

1978—Subsec. (a)(5). Pub. L. 95–598 substituted "a case under title 11" for "bankruptcy".

1970—Subsec. (a)(2). Pub. L. 91–547, §23(1), substituted "under the authority of the Comptroller of the Currency" for "under section 248(k) of Title 12".

Subsec. (a)(17) to (21). Pub. L. 91–547, §23(2), added par. (17) and redesignated former pars. (17) to (20) as (18) to (21), respectively.

1966—Subsec. (a)(11)(A). Pub. L. 89–485 substituted "bank holding company as defined in the Bank Holding Company Act of 1956" for "holding company affiliate, as defined in the Banking Act of 1933".

1960—Subsec. (a)(12). Pub. L. 86–750, §1(a), substituted definition of "control" as "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" for its prior definition which was the same as in the Investment Company Act of 1940.

Subsec. (a)(18). Pub. L. 86–750, §1(b), struck out reference to Philippine Islands, which change was previously executed in the codification of this section pursuant to Proc. No. 2695 that granted independence to the Philippine Islands.

Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(18). Pub. L. 86–70 struck out reference to Alaska.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 986(d) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title IV, §419, July 21, 2010, 124 Stat. 1580, provided that: "Except as otherwise provided in this title [enacting sections 80b–18b and 80b–18c of this title, amending this section and sections 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under this section and sections 77b and 80b–20 of this title], this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act [July 21, 2010], except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] during that 1-year period, subject to the rules of the Commission."

[For definitions of "investment adviser" and "Commission" as used in section 419 of Pub. L. 111–203, set out above, see section 402(b) of Pub. L. 111–203, set out below, and section 5301 of Title 12, Banks and Banking, respectively.]

Amendment by section 770 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 308(a) of title III of Pub. L. 104–290, as amended by Pub. L. 105–8, §1, Mar. 31, 1997, 111 Stat. 15, provided that: "This title [enacting section 80b–3a of this title, amending this section, sections 80b–3 and 80b–18a of this title, and section 1002 of Title 29, Labor, and enacting provisions set out as notes under sections 80b–3a, 80b–10, and 80b–20 of this title and section 1002 of Title 29] and the amendments made by this title shall take effect 270 days after the date of enactment of this Act [Oct. 11, 1996]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

REGULATIONS; CONSTRUCTION

Pub. L. 111–203, title IV, §409(b), (c), July 21, 2010, 124 Stat. 1575, provided that:

"(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(a)(11)(G)], as added by this section, regarding the definition of the term 'family office' shall provide for an exemption that—

"(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act [July 21, 2010], and the grandfathering provisions in paragraph (3);

"(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices; and

"(3) does not exclude any person who was not registered or required to be registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] on January 1, 2010 from the definition of the term 'family office', solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to—

"(A) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who—

"(i) have invested with the family office before January 1, 2010; and

"(ii) are accredited investors, as defined in Regulation D of the Commission (or any successor thereto) under the Securities Act of 1933 [15 U.S.C. 77a et seq.], or, as the Commission may prescribe by rule, the successors-in-interest thereto;

"(B) any company owned exclusively and controlled by members of the family of the family office, or as the Commission may prescribe by rule;

"(C) any investment adviser registered under the Investment Adviser[s] Act of 1940 [15 U.S.C. 80b–1 et seq.] that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice.

"(c) ANTIFRAUD AUTHORITY.—A family office that would not be a family office, but for subsection (b)(3), shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6]."

[For definitions of "Commission" and "investment adviser" as used in section 409(b), (c) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking, and section 402(b) of Pub. L. 111–203, set out below, respectively.]

DEFINITIONS

Pub. L. 111–203, title IV, §402(b), July 21, 2010, 124 Stat. 1570, provided that: "As used in this title [enacting sections 80b–18b and 80b–18c of this title, amending this section and sections 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under this section and sections 77b and 80b–20 of this title], the terms 'investment adviser' and 'private fund' have the same meanings as in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2], as amended by this title."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ So in original.

² So in original. Another par. (29) is set out after par. (30).

³ So in original. Another par. (29) is set out preceding par. (30).

§80b–3. Registration of investment advisers

(a) Necessity of registration

Except as provided in subsection (b) and section 80b–3a of this title, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

(b) Investment advisers who need not be registered

The provisions of subsection (a) shall not apply to—

(1) any investment adviser, other than an investment adviser who acts as an investment adviser to any private fund, all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies;

(3) any investment adviser that is a foreign private adviser;

(4) any investment adviser that is a charitable organization, as defined in section 80a–3(c)(10)(D) of this title, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title; or

(C) a trust or other donative instrument described in section 80a–3(c)(10)(B) of this title, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of title 26, any person or entity eligible to establish and maintain such a plan under title 26, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 80a–3(c)(14) of this title;

(6)(A) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 80b–2(a)(11) of this title, and that does not act as an investment adviser to—

(i) an investment company registered under subchapter I of this chapter; or

(ii) a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election; or

(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after July 21, 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission;

(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a–53 of this title, who solely advises—

(A) small business investment companies that are licensees under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

(C) applicants that are affiliated with 1 or more licensed small business investment

companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending; or

(8) any investment adviser, other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title, who solely advises—

(A) rural business investment companies (as defined in section 2009cc of title 7); or

(B) companies that have submitted to the Secretary of Agriculture an application in accordance with section 2009cc-3(b) of title 7 that—

(i) have received from the Secretary of Agriculture a letter of conditions, which has not been revoked; or

(ii) are affiliated with 1 or more rural business investment companies described in subparagraph (A).

(c) Procedure for registration; filing of application; effective date of registration; amendment of registration

(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal office, principal place of business, and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied and that the applicant is not prohibited from registering as an investment adviser under section 80b-3a of this title. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

(d) Other acts prohibited by subchapter

Any provision of this subchapter (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(e) Censure, denial, or suspension of registration; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of ¹ substantially equivalent foreign statute.

(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) is permanently or temporarily enjoined by order, judgment, or decree of any court of

competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, 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.

(5) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(6) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person, if—

(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;

(8) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign financial ² regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision; or

(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations,

or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(f) Bar or suspension from association with investment adviser; notice and hearing

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

(g) Registration of successor to business of investment adviser

Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (c) or subsection (e) of this section, shall deny registration to or revoke or suspend the registration of such successor.

(h) Withdrawal of registration

Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 80b-3a of this title, the Commission shall by order cancel the registration of such person.

(i) Money penalties in administrative proceedings

(1) Authority of Commission

(A) In general

In any proceeding instituted pursuant to subsection (e) or (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(i) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a

violation by any other person;

(iii) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein; or

(iv) has failed reasonably to supervise, within the meaning of subsection (e)(6), with a view to preventing violations of the provisions of this subchapter and the rules and regulations thereunder, another person who commits such a violation, if such other person is subject to his supervision; ³

(B) Cease-and-desist proceedings

In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

(2) Maximum amount of penalty

(A) First tier

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for a natural person or \$50,000 for any other person.

(B) Second tier

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(3) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in subsection (e)(2);

(E) the need to deter such person and other persons from committing such acts or omissions;
and

(F) such other matters as justice may require.

(4) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(j) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(k) Cease-and-desist proceedings

(1) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) Temporary order

(A) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 80b-11(c) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the

public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) Applicability

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(4) Review of temporary orders

(A) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

- (i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or
- (ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal office or place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) Exclusive review

Section 80b-13 of this title shall not apply to a temporary order entered pursuant to this section.

(5) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under paragraph (1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(I) Exemption of venture capital fund advisers

(1) In general

No investment adviser that acts as an investment adviser solely to 1 or more venture capital

funds shall be subject to the registration requirements of this subchapter with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after July 21, 2010, the Commission shall issue final rules to define the term "venture capital fund" for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(2) Advisers of SBICS

For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title).

(3) Advisers of RBICS

For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated as a business development company pursuant to section 80a-53 of this title).

(m) Exemption of and reporting by certain private fund advisers

(1) In general

The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of ⁴ such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than \$150,000,000.

(2) Reporting

The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(3) Advisers of SBICS

For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title) shall be excluded from the limit set forth in paragraph (1).

(4) Advisers of RBICS

For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title) shall be excluded from the limit set forth in paragraph (1).

(n) Registration and examination of mid-sized private fund advisers

In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.

(Aug. 22, 1940, ch. 686, title II, §203, 54 Stat. 850; Pub. L. 86-750, §§2-5, Sept. 13, 1960, 74 Stat. 885, 886; Pub. L. 91-547, §24, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 94-29, §29(1)-(4), June 4, 1975, 89 Stat. 166-169; Pub. L. 96-477, title II, §202, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 99-571, title I, §102(m), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100-181, title VII, §702, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101-429, title IV, §401, Oct. 15, 1990, 104 Stat. 946; Pub. L. 101-550, title II, §205(b), (c), Nov. 15, 1990, 104 Stat. 2719, 2720; Pub. L. 104-62, §5, Dec. 8, 1995, 109 Stat. 685;

Pub. L. 104–290, title III, §§303(b), (d), 305, title V, §508(d), Oct. 11, 1996, 110 Stat. 3438, 3439, 3448; Pub. L. 105–353, title III, §301(d)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 106–554, §1(a)(5) [title II, §209(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–436; Pub. L. 107–204, title VI, §604(b), (c)(2), July 30, 2002, 116 Stat. 796; Pub. L. 109–291, §4(b)(3)(C), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title IV, §§403, 407, 408, title IX, §§925(b), 929P(a)(4), 985(e)(1), July 21, 2010, 124 Stat. 1571, 1574, 1575, 1851, 1864, 1935; Pub. L. 114–94, div. G, title LXXIV, §§74001, 74002, Dec. 4, 2015, 129 Stat. 1786; Pub. L. 115–417, §2, Jan. 3, 2019, 132 Stat. 5438.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(7), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(2)(B), (4)–(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2019—Subsec. (b)(6)(B). Pub. L. 115–417, §2(1)(A), realigned margin and substituted semicolon for period at end.

Subsec. (b)(8). Pub. L. 115–417, §2(1)(B), (C), added par. (8).

Subsec. (l)(3). Pub. L. 115–417, §2(2), added par. (3).

Subsec. (m)(4). Pub. L. 115–417, §2(3), added par. (4).

2015—Subsec. (l). Pub. L. 114–94, §74001, designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (m)(3). Pub. L. 114–94, §74002, added par. (3).

2010—Subsec. (b)(1). Pub. L. 111–203, §403(1), inserted ", other than an investment adviser who acts as an investment adviser to any private fund," after "any investment adviser".

Subsec. (b)(3). Pub. L. 111–203, §403(2), added par. (3) and struck out former par. (3) which read as follows: "any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under subchapter I of this chapter, or a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this subchapter, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner;".

Subsec. (b)(5). Pub. L. 111–203, §403(3), struck out "or" at end.

Subsec. (b)(6). Pub. L. 111–203, §403(4), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (b)(7). Pub. L. 111–203, §403(5), added par. (7).

Subsec. (c)(1)(A). Pub. L. 111–203, §985(e)(1)(A), substituted "principal office, principal place of business, and" for "principal business office and".

Subsec. (f). Pub. L. 111–203, §925(b), substituted "12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with an investment adviser,".

Subsec. (i)(1). Pub. L. 111–203, §929P(a)(4), designated existing provisions as subpar. (A) and inserted heading, inserted "that such penalty is in the public interest and" before "that such person—" in introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, and realigned margins,

struck out concluding provisions which read "and that such penalty is in the public interest.", and added subpar. (B).

Subsec. (k)(4)(B). Pub. L. 111-203, §985(e)(1)(B), substituted "principal office or place of business" for "principal place of business" in concluding provisions.

Subsec. (l). Pub. L. 111-203, §407, added subsec. (l).

Subsecs. (m), (n). Pub. L. 111-203, §408, added subsecs. (m) and (n).

2006—Subsec. (e)(2)(B), (4). Pub. L. 109-291 inserted "credit rating agency," after "transfer agent,".

2002—Subsec. (e)(7). Pub. L. 107-204, §604(b)(1), added par. (7) and struck out former par. (7) which read as follows: "is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person."

Subsec. (e)(9). Pub. L. 107-204, §604(b)(2), (3), added par. (9).

Subsec. (f). Pub. L. 107-204, §604(c)(2), substituted "(8), or (9)" for "or (8)" and inserted "or (3)" after "paragraph (2)".

2000—Subsec. (b)(6). Pub. L. 106-554 added par. (6).

1998—Subsec. (e)(8)(B). Pub. L. 105-353 inserted "or" after semicolon at end.

1996—Subsec. (a). Pub. L. 104-290, §303(d), which directed substitution of "subsection (b) and section 80b-3a of this title" for "subsection (b) of this section", was executed by making the substitution for "subsection (b)" to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 104-290, §508(d), added par. (5).

Subsec. (c)(2). Pub. L. 104-290, §303(b)(1), inserted "and that the applicant is not prohibited from registering as an investment adviser under section 80b-3a of this title" after "satisfied" in closing provisions.

Subsec. (e)(3) to (5). Pub. L. 104-290, §305(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 104-290, §305(b)(1), substituted "this paragraph" for "this paragraph (5)".

Pub. L. 104-290, §305(a)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (e)(7), (8). Pub. L. 104-290, §305(a)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f). Pub. L. 104-290, §305(b)(2), substituted "paragraph (1), (5), (6), or (8) of subsection (e)" for "paragraph (1), (4), (5), or (7) of subsection (e) of this section" and "paragraph (4)" for "paragraph (3)" and substituted "subsection (e)" for "said subsection (e)" in two places.

Subsec. (h). Pub. L. 104-290, §303(b)(2), substituted "existence," for "existence or" and inserted "or is prohibited from registering as an investment adviser under section 80b-3a of this title," after "investment adviser,".

Subsec. (i)(1)(D). Pub. L. 104-290, §305(b)(3), substituted "subsection (e)(6)" for "subsection (e)(5)".

1995—Subsec. (b)(4). Pub. L. 104-62 added par. (4).

1990—Subsec. (e)(2). Pub. L. 101-550, §205(b)(1), inserted "or of a substantially equivalent crime by a foreign court of competent jurisdiction" after "misdemeanor".

Subsec. (e)(2)(A). Pub. L. 101-550, §205(b)(2), inserted "any substantially equivalent activity however denominated by the laws of the relevant foreign government," after "burglary,".

Subsec. (e)(2)(B). Pub. L. 101-550, §205(b)(3), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," and "or any substantially equivalent statute or regulation" after "Commodity Exchange Act".

Subsec. (e)(2)(C). Pub. L. 101-550, §205(b)(4), inserted "or substantially equivalent activity however denominated by the laws of the relevant foreign government" after "securities".

Subsec. (e)(2)(D). Pub. L. 101-550, §205(b)(5), inserted ", or a violation of substantially equivalent foreign statute" after "title 18".

Subsec. (e)(3). Pub. L. 101-550, §205(b)(3), (6), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," "or any substantially equivalent statute or regulation" after "Commodity Exchange Act" wherever appearing, ", including any foreign court of competent jurisdiction", and "foreign entity substantially equivalent to any of the above," after "insurance company,".

Subsec. (e)(5). Pub. L. 101-550, §205(b)(7), inserted "the Commodity Exchange Act" after "this subchapter,".

Subsec. (e)(7). Pub. L. 101-550, §205(b)(8), added par. (7).

Subsec. (f). Pub. L. 101-550, §205(c), substituted "paragraph (1), (4), (5), or (7)" for "paragraph (1), (4), or (5)".

Subsecs. (i) to (k). Pub. L. 101-429 added subsecs. (i) to (k).

1987—Subsec. (e)(2)(B). Pub. L. 100-181, §702(1), inserted "transfer agent," after "fiduciary,".

Subsec. (e)(3). Pub. L. 100-181, §702(2), inserted "transfer agent," after "government securities dealer,".

Subsec. (f). Pub. L. 100-181, §702(3), inserted ", seeking to become associated, or, at the time of the alleged misconduct, associated" before "or seeking to become associated".

Subsec. (g). Pub. L. 100-181, §702(4), substituted "subsection (c) or subsection (e)" for "subsection (d)".

1986—Subsec. (e)(2)(B). Pub. L. 99-571, §102(m)(1), substituted "government securities broker, government securities dealer, fiduciary, or entity or person required to be registered under the Commodity Exchange Act" for "or fiduciary".

Subsec. (e)(3). Pub. L. 99-571, §102(m)(2), inserted par. (3) and struck out former par. (3) which read as follows: "is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

Subsec. (e)(4). Pub. L. 99-571, §102(m)(3), inserted reference to Commodity Exchange Act.

1980—Subsec. (b)(3). Pub. L. 96-477 required investment advisers to business development companies to register under this section and provided that for purposes of determining the number of clients of an investment adviser under par. (3), no shareholders, partners, or beneficial owners of business development companies were to be deemed to be clients of an investment adviser unless such person qualified as a client apart from his status in connection with the business development company.

1975—Subsec. (c). Pub. L. 94-29, §29(1), inserted provision authorizing the Commission to require a balance sheet certified by an independent public accountant and other financial statements which, as the Commission specifies, may be certified, and substituted provisions directing the Commission either to grant the registration within forty-five days or institute proceedings to determine whether registration should be denied, directing the Commission to grant registration if it finds that the requirements of this section are satisfied, and requiring the Commission to deny registration if it does not make such a finding or finds that if the applicant were registered its registration would be subject to suspension or revocation for provisions directing that registration be effective thirty days after receipt of the application by the Commission except as otherwise provided and making allowances for amendment of the application.

Subsec. (e). Pub. L. 94-29, §29(2), added the placing of limitations on the activities of investment advisers to the enumeration of sanctions available to the Commission as set out in the provisions preceding par. (1), inserted references in par. (2)(A) to the taking of a false oath, the making of a false report, bribery, perjury, burglary, and conspiracy to commit such offenses, expanded par. (2)(B) to include municipal securities dealers, banks, insurance companies, and fiduciaries, inserted references in par. (2)(C) to larceny, theft, robbery, extortion, forgery, counterfeiting, and fraudulent concealment, inserted references in par. (2)(D) to section 152 and chapters 25 and 47 of title 18, and inserted reference to the rules of the Municipal Securities Rulemaking Board in pars. (4) and (5).

Subsec. (f). Pub. L. 94-29, §29(3), added the placing of limitations on the activities of persons associated or seeking to become associated with an investment adviser to the enumeration of sanctions available to the Commission.

Subsecs. (g), (h). Pub. L. 94-29, §29(4), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g), covering the postponement of the effective day of registration by the commencement of a proceeding to deny registration, was struck out.

1970—Subsec. (b). Pub. L. 91-547, §24(a), struck out "investment companies and" before "insurance companies" in par. (2) and struck out "does not hold" after "clients and who" and inserted "neither hold" and "nor acts as an investment adviser to any investment company registered under subchapter I of this chapter" in par. (3).

Subsec. (c)(1)(F). Pub. L. 91-547, §24(b), substituted "any person associated with such investment adviser" for "any partner, officer, director thereof, or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser" and reference to subsec. "(e)" for "(d)".

Subsecs. (d), (e). Pub. L. 91-547, §24(c), (d), added subsec. (d), redesignated former subsec. (d) as (e), and in amending its provisions, inserted reference to "censure" in two places and substituted "such investment adviser or any person associated with such investment adviser" for "(1) such investment adviser, whether prior or subsequent to becoming such, or (2) any partner, officer, or director thereof, or any person performing similar functions, or (3) any person directly or indirectly controlling or controlled by such investment adviser, whether prior or subsequent to becoming such," in introductory text preceding par. (1), formerly cl. (A), redesignated as pars. (1) to (5) former cls. (A) to (E), redesignated as items (A) to (D) of par. (2) former items (i) to (iv), striking out ", as heretofore or hereafter amended" after "Title 18", substituted in par. (3) "an affiliated person" for "as an affiliated person", in par. (4) included reference to subchapter I of this chapter and struck out "as any of such statutes heretofore have been or hereafter may be amended" after "this subchapter",

in par. (5) included reference to subchapter I of this chapter, struck out "as any of such statutes heretofore have been or hereafter may be amended" after "this subchapter", inserted provision respecting disciplining an investment adviser for failure reasonably to supervise, with a view to preventing violations of statutes, rules, and regulations, another person who commits such a violation if such other person is subject to his supervision, including subpars. (A) and (B) respecting failure to supervise a person, and inserted par. (6).

Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91-547, §24(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 91-547, §24(c), redesignated former subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 91-547, §24(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1960—Subsec. (c)(1)(F). Pub. L. 86-750, §2, substituted "or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (d)" for "person performing similar function or controlling person thereof (i) within ten years of the filing of such application has been convicted of any felony or misdemeanor of the character described in paragraph (1) of subsection (d) of this section, or (ii) is permanently or temporarily enjoined by an order, judgment or decree of the character described in paragraph (2) of said subsection (d) and in each case the facts relating to such conviction or injunction".

Subsec. (c)(2). Pub. L. 86-750, §3(a), substituted "a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment supervisory services" for "a statement as to whether such investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services".

Subsec. (d). Pub. L. 86-750, §3(b), among other changes, limited the period of suspension to twelve months, included people controlled by the adviser, provided that the ten year period within which convictions are counted be measured from the filing of the application or after specified felonies or misdemeanors, increased the number of offenses by including willful, false or misleading statements as to any material fact, or omissions thereof, in any application for registration or report filed with the Commission, embezzlement, fraudulent conversion, and misappropriation of funds or securities, violations of sections 1341, 1342 or 1343 of title 18, willful violations of, or aiding, abetting, counseling, commanding, inducing or procuring the violation of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, and any amendment or rule or regulation thereunder.

Subsec. (e). Pub. L. 86-750, §4, substituted provisions postponing the effective date of registration for ninety days at commencement of a proceeding to deny registration, or until final determination whether such registration should be denied, whichever was first, and authorizing the Commission after notice and opportunity for hearing, to postpone said effective date beyond the ninety-day period or final determination, provided that upon request of any interested party, made more than ninety days after such postponement, the Commission shall consider the postponement's continuation, for provisions prohibiting postponement of the effective date of registration upon a proceeding to deny registration, unless the Commission found it in the public interest to do so, and which limited said postponement to three months.

Subsec. (g). Pub. L. 86-750, §5, substituted "existence" for "business".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(b), 929P(a)(4), and 985(e)(1) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by sections 403, 407, and 408 of Pub. L. 111-203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111-203, set out as a note under section 80b-2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 303(b), (d) and 305 of Pub. L. 104-290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104-290, as amended, set out as a note under section 80b-2 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that amendment by section 24(a) of Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30 (introductory text and par. (1)) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ *So in original. Probably should be "of a".*

² *So in original. Probably should be "financial".*

³ *So in original. The semicolon probably should be a period.*

⁴ *So in original. The word "of" probably should not appear.*

§80b–3a. State and Federal responsibilities

(a) Advisers subject to State authorities

(1) In general

No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 80b–3 of this title, unless the investment adviser—

(A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; or

(B) is an adviser to an investment company registered under subchapter I of this chapter.

(2) Treatment of mid-sized investment advisers

(A) In general

No investment adviser described in subparagraph (B) shall register under section 80b-3 of this title, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a-53], and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 80b-3 of this title.

(B) Covered persons

An investment adviser described in this subparagraph is an investment adviser that—

(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

(ii) has assets under management between—

(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

(II) \$100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter.

(3) "Assets under management" defined

For purposes of this subsection, the term "assets under management" means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.

(b) Advisers subject to Commission authority

(1) In general

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person—

(A) that is registered under section 80b-3 of this title as an investment adviser, or that is a supervised person of such person, except that a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State;

(B) that is not registered under section 80b-3 of this title because that person is excepted from the definition of an investment adviser under section 80b-2(a)(11) of this title; or ¹

(C) that is not registered under section 80b-3 of this title because that person is exempt from registration as provided in subsection (b)(7) of such section, or is a supervised person of such person; or

(D) that is not registered under section 80b-3 of this title because that person is exempt from registration as provided in subsection (b)(8) of such section, or is a supervised person of such person.

(2) Limitation

Nothing in this subsection shall prohibit the securities commission (or any agency or office performing like functions) of any State from investigating and bringing enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser.

(c) Exemptions

Notwithstanding subsection (a), the Commission, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the Commission of any person or class of persons to which the application of subsection (a) would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of this section.

(d) State assistance

Upon request of the securities commissioner (or any agency or officer performing like functions) of any State, the Commission may provide such training, technical assistance, or other reasonable assistance in connection with the regulation of investment advisers by the State.

(Aug. 22, 1940, ch. 686, title II, §203A, as added Pub. L. 104–290, title III, §303(a), Oct. 11, 1996, 110 Stat. 3437; amended Pub. L. 109–290, §7(b)(1), Sept. 29, 2006, 120 Stat. 1321; Pub. L. 111–203, title IV, §410, July 21, 2010, 124 Stat. 1576; Pub. L. 114–94, div. G, title LXXIV, §74003, Dec. 4, 2015, 129 Stat. 1786; Pub. L. 115–417, §3, Jan. 3, 2019, 132 Stat. 5439.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

AMENDMENTS

2019—Subsec. (b)(1)(D). Pub. L. 115–417 added subpar. (D).

2015—Subsec. (b)(1)(C). Pub. L. 114–94 added subpar. (C).

2010—Subsec. (a)(2), (3). Pub. L. 111–203 added par. (2) and redesignated former par. (2) as (3).

2006—Subsecs. (d), (e). Pub. L. 109–290 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "The Commission may, by rule, require an investment adviser—

"(1) to file with the Commission any fee, application, report, or notice required by this subchapter or by the rules issued under this subchapter through any entity designated by the Commission for that purpose; and

"(2) to pay the reasonable costs associated with such filing."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE

Section effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as an Effective Date of 1996 Amendment note under section 80b–2 of this title.

CONTINUED STATE AUTHORITY

Pub. L. 104–290, title III, §307, Oct. 11, 1996, 110 Stat. 3440, provided that:

"(a) **PRESERVATION OF FILING REQUIREMENTS.**—Nothing in this title [see Short Title of 1996 Amendment note set out under section 80b–20 of this title] or any amendment made by this title prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any documents filed with the Commission pursuant to the securities laws solely for notice purposes, together with a consent to service of process and any required fee.

"(b) **PRESERVATION OF FEES.**—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of this Act [Oct. 11, 1996], filing, registration, or licensing fees shall, notwithstanding the amendments made by this title, continue to be paid in amounts determined pursuant to the law, rule, regulation, or order, or other administrative action as in effect on the day before such date of enactment.

"(c) **AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.**—

"(1) **IN GENERAL.**—During the period beginning on the date of enactment of this Act [Oct. 11, 1996] and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require registration of any investment adviser that fails or refuses to pay the fees required by subsection (b) in or to such State, notwithstanding the limitations on the

laws, rules, regulations, or orders, or other administrative actions of any State, or any political subdivision thereof, contained in subsection (a), if the laws of such State require registration of investment advisers.

"(2) DELAYS.—For purposes of this subsection, delays in payment of fees or underpayments of fees that are promptly remedied in accordance with the applicable laws, rules, regulations, or orders, or other administrative actions of the relevant State shall not constitute a failure or refusal to pay fees."

¹ *So in original. The word "or" probably should not appear.*

§80b–4. Reports by investment advisers

(a) In general

Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 80b–3(b) of this title), shall make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(b) Records and reports of private funds

(1) In general

The Commission may require any investment adviser registered under this subchapter—

(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the "Council"); and

(B) to provide or make available to the Council those reports or records or the information contained therein.

(2) Treatment of records

The records and reports of any private fund to which an investment adviser registered under this subchapter provides investment advice shall be deemed to be the records and reports of the investment adviser.

(3) Required information

The records and reports required to be maintained by an investment adviser and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

(B) counterparty credit risk exposure;

(C) trading and investment positions;

(D) valuation policies and practices of the fund;

(E) types of assets held;

(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

(G) trading practices; and

(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the

assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

(4) Maintenance of records

An investment adviser registered under this subchapter shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(5) Filing of records

The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

(6) Examination of records

(A) Periodic and special examinations

The Commission—

(i) shall conduct periodic inspections of the records of private funds maintained by an investment adviser registered under this subchapter in accordance with a schedule established by the Commission; and

(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(B) Availability of records

An investment adviser registered under this subchapter shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

(7) Information sharing

(A) In general

The Commission shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

(B) Confidentiality

The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5 with respect to any information in any report, document, record, or information made available, to the Council under this subsection." ¹

(8) Commission confidentiality of reports

Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

(A) to withhold information from Congress, upon an agreement of confidentiality; or

(B) prevent ² the Commission from complying with—

(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

(ii) an order of a court of the United States in an action brought by the United States or the Commission.

(9) Other recipients confidentiality

Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).

(10) Public information exception

(A) In general

The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5 with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 80b-10(b) of this title.

(B) Proprietary information

For purposes of this paragraph, proprietary information includes sensitive, non-public information regarding—

- (i) the investment or trading strategies of the investment adviser;
- (ii) analytical or research methodologies;
- (iii) trading data;
- (iv) computer hardware or software containing intellectual property; and
- (v) any additional information that the Commission determines to be proprietary.

(11) Annual report to Congress

The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.

(c) Filing depositories

The Commission may, by rule, require an investment adviser—

(1) to file with the Commission any fee, application, report, or notice required to be filed by this subchapter or the rules issued under this subchapter through any entity designated by the Commission for that purpose; and

(2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

(d) Access to disciplinary and other information

(1) Maintenance of system to respond to inquiries

(A) In general

The Commission shall require the entity designated by the Commission under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving investment advisers and persons associated with investment advisers.

(B) Applicability

This subsection shall apply to any investment adviser (and the persons associated with that adviser), whether the investment adviser is registered with the Commission under section 80b-3 of this title or regulated solely by a State, as described in section 80b-3a of this title.

(2) Recovery of costs

An entity designated by the Commission under subsection (b)(1) may charge persons making inquiries, other than individual investors, reasonable fees for responses to inquiries described in paragraph (1).

(3) Limitation on liability

An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(e) Records of persons with custody or use

(1) In general

Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(2) Certain persons subject to other regulation

Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.

(f) Data standards for reports filed under this section

(1) Requirement

The Commission shall, by rule, adopt data standards for all reports filed by investment advisers with the Commission under this section.

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(Aug. 22, 1940, ch. 686, title II, §204, 54 Stat. 852; Pub. L. 86–750, §6, Sept. 13, 1960, 74 Stat. 886; Pub. L. 94–29, §29(5), June 4, 1975, 89 Stat. 169; Pub. L. 109–290, §7(a), Sept. 29, 2006, 120 Stat. 1321; Pub. L. 111–203, title IV, §404, title IX, §929Q(b), July 21, 2010, 124 Stat. 1571, 1866; Pub. L. 117–263, div. E, title LVIII, §5821(a), Dec. 23, 2022, 136 Stat. 3424.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsecs. (d), (e). Pub. L. 117–263, §5821(a)(1), redesignated subsec. (d) relating to records of persons with custody or use as (e).

Subsec. (f). Pub. L. 117–263, §5821(a)(2), added subsec. (f).

2010—Subsecs. (b), (c). Pub. L. 111–203, §404, added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d) relating to access to disciplinary and other information.

Subsec. (d). Pub. L. 111–203, §929Q(b), added subsec. (d) relating to records of persons with custody or use.

Pub. L. 111–203, §404(1), redesignated subsec. (c) as (d) relating to access to disciplinary and other information.

2006—Pub. L. 109–290 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 94–29 substituted "make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of

investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors" for "make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors".

1960—Pub. L. 86–750 substituted provisions requiring investment advisers who make business use of the mails or any instrument of interstate commerce, unless exempted from registration by section 80b–3(b) of this title, to keep and preserve accounts, correspondence, memorandums, papers, books, and records, and make such reports as the Commission requires by its rules and regulations, and that these accounts, correspondence, memorandums, papers, books and records shall be subject to examination by representatives of the Commission, for provisions requiring investment advisers registered under section 80b–3 of this title to file annual and special reports in such form as the Commission prescribed by its rules and regulations to keep current the information contained in the registration application.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929Q(b) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 404 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5826 of Pub. L. 117–263, set out as a note under section 77g of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ *So in original. The quotation marks and period probably should not appear.*

² *So in original. Probably should be preceded by "to".*

§80b–4a. Prevention of misuse of nonpublic information

Every investment adviser subject to section 80b–4 of this title shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of this chapter or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the rules or regulations thereunder, of material,

nonpublic information by such investment adviser or any person associated with such investment adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this chapter or the Securities Exchange Act of 1934 (or the rules or regulations thereunder) of material, nonpublic information.

(Aug. 22, 1940, ch. 686, title II, §204A, as added Pub. L. 100–704, §3(b)(2), Nov. 19, 1988, 102 Stat. 4680.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

§80b–5. Investment advisory contracts

(a) Compensation, assignment, and partnership-membership provisions

No investment adviser registered or required to be registered with the Commission shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed on or after November 1, 1940, if such contract—

(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

(b) Compensation prohibition inapplicable to certain compensation computations

Paragraph (1) of subsection (a) shall not—

(1) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

(2) apply to an investment advisory contract with—

(A) an investment company registered under subchapter I of this chapter, or

(B) any other person (except a trust, governmental plan, collective trust fund, or separate account referred to in section 80a–3(c)(11) of this title), provided that the contract relates to the investment of assets in excess of \$1 million,

if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify;

(3) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this subchapter, if (A) the compensation provided

for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 80a-60(a)(4)(B)(iii) of this title is satisfied, and (B) the business development company does not have outstanding any option, warrant, or right issued pursuant to section 80a-60(a)(4)(B) of this title and does not have a profit-sharing plan described in section 80a-56(n) of this title;

(4) apply to an investment advisory contract with a company excepted from the definition of an investment company under section 80a-3(c)(7) of this title; or

(5) apply to an investment advisory contract with a person who is not a resident of the United States.

(c) Measurement of changes in compensation

For purposes of paragraph (2) of subsection (b), the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise.

(d) "Investment advisory contract" defined

As used in paragraphs (2) and (3) of subsection (a), "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser to or to manage any investment or trading account of another person other than an investment company registered under subchapter I of this chapter.

(e) Exempt persons and transactions

The Commission, by rule or regulation, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (a)(1), if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protections of subsection (a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with this section. With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after July 21, 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000.

(f) Authority to restrict mandatory pre-dispute arbitration

The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

(Aug. 22, 1940, ch. 686, title II, §205, 54 Stat. 852; Pub. L. 86-750, §7, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91-547, §25, Dec. 14, 1970, 84 Stat. 1432; Pub. L. 96-477, title II, §203, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 100-181, title VII, §703, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104-290, title II, §210, Oct. 11, 1996, 110 Stat. 3436; Pub. L. 111-203, title IV, §418, title IX, §§921(b), 928, July 21, 2010, 124 Stat. 1579, 1841, 1852; Pub. L. 115-141, div. S, title VIII, §802(b)(1), Mar. 23, 2018, 132 Stat. 1140.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115–141 substituted "section 80a–60(a)(4)(B)(iii) of this title" for "section 80a–60(a)(3)(B)(iii) of this title" and "section 80a–60(a)(4)(B) of this title" for "section 80a–60(a)(3)(B) of this title".

2010—Subsec. (a). Pub. L. 111–203, §928, in introductory provisions, substituted "registered or required to be registered with the Commission" for ", unless exempt from registration pursuant to section 80b–3(b) of this title," and struck out "make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to" after "shall" and "to" after "in any way".

Subsec. (e). Pub. L. 111–203, §418, inserted at end "With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after July 21, 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000."

Subsec. (f). Pub. L. 111–203, §921(b), added subsec. (f).

1996—Subsec. (b)(4), (5). Pub. L. 104–290, §210(1), added pars. (4) and (5).

Subsec. (e). Pub. L. 104–290, §210(2), added subsec. (e).

1987—Pub. L. 100–181 completely revised and expanded provisions on investment advisory contracts, changing structure of section from a single unlettered paragraph to one consisting of four subsections lettered (a) to (d).

1980—Pub. L. 96–477 provided that par. (1) of this section was not to apply with respect to any investment advisory contract between an investment adviser and a business development company so long as the compensation provided for in such contract did not exceed 20 per cent of the realized capital gains upon the funds of the business development company and such business development company did not have outstanding any option, warrant, or right issued pursuant to section 80a–60(a)(3)(B) of this title and did not have a profit-sharing plan.

1970—Pub. L. 91–547 substituted reference to section "80b–3(b)" for "80b–3" of this title in first sentence, redesignated as second sentence former third sentence, designating existing provisions as cl. (A) and adding cl. (B) and items (i) and (ii) and provision respecting compensation based on asset value of company or fund under management averaged over a specified period in relation to investment record of an index of securities or such other measure of investment performance specified by Commission rules, regulations, or orders, inserted third sentence provision respecting point from which compensation is to be measured, substituted in fourth, formerly third, sentence "paragraphs (2) and (3) of this section" for "this section" and in definition of "investment advisory contract" the words "account of another person other than an investment company registered under subchapter I of this chapter" for "account for a person other than an investment company".

1960—Pub. L. 86–750 substituted "unless exempt from registration pursuant to" for "registered under".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 921(b) and 928 of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 418 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–6. Prohibited transactions by investment advisers

It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

- (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
- (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;
- (3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction; or
- (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

(Aug. 22, 1940, ch. 686, title II, §206, 54 Stat. 852; Pub. L. 86–750, §§8, 9, Sept. 13, 1960, 74 Stat. 887; Pub. L. 111–203, title IX, §985(e)(2), July 21, 2010, 124 Stat. 1935.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (3). Pub. L. 111–203 inserted "or" at end.

1960—Pub. L. 86–750, §8, struck out "registered under section 80b–3 of this title" from introductory text. Par. (4). Pub. L. 86–750, §9, added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§80b–6a. Exemptions

The Commission, by rules and regulations, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(Aug. 22, 1940, ch. 686, title II, §206A, as added Pub. L. 91–547, §26, Dec. 14, 1970, 84 Stat. 1433.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–2 of this title.

§80b-7. Material misstatements

It shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 80b-3 or 80b-4 of this title, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

(Aug. 22, 1940, ch. 686, title II, §207, 54 Stat. 853.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b-8. General prohibitions

(a) Representations of sponsorship by United States or agency thereof

It shall be unlawful for any person registered under section 80b-3 of this title to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or any officer thereof.

(b) Statement of registration under Securities Exchange Act of 1934 provisions

No provision of subsection (a) shall be construed to prohibit a statement that a person is registered under this subchapter or under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(c) Use of name "investment counsel" as descriptive of business

It shall be unlawful for any person registered under section 80b-3 of this title to represent that he is an investment counsel or to use the name "investment counsel" as descriptive of his business unless (1) his or its principal business consists of acting as investment adviser, and (2) a substantial part of his or its business consists of rendering investment supervisory services.

(d) Use of indirect means to do prohibited act

It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this subchapter or any rule or regulation thereunder.

(Aug. 22, 1940, ch. 686, title II, §208, 54 Stat. 853; Pub. L. 86-750, §§10, 11, Sept. 13, 1960, 74 Stat. 887.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

1960—Pub. L. 86-750, §10, substituted "General prohibitions" for "Unlawful representations" in section catchline.

Subsec. (c). Pub. L. 86-750, §11(a), authorized representation as an investment counsel if person's principal business consisted of acting as investment adviser, and a substantial part of the business was rendering investment supervisory services, and struck out the requirements that the person be primarily engaged in

rendering investment supervisory services, or that his registration application state that the person is, or is about to become engaged primarily in rendering investment advisory services.

Subsec. (d). Pub. L. 86-750, §11(b), added subsec. (d).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b-9. Enforcement of subchapter

(a) Investigation

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person, it may in its discretion require, and in any event shall permit, such person to file with it a statement in writing, under oath or otherwise, as to all the facts and circumstances relevant to such violation, and may otherwise investigate all such facts and circumstances.

(b) Administration of oaths and affirmations, subpoena of witnesses, etc.

For the purposes of any investigation or any proceeding under this subchapter, any member of the Commission or any officer thereof designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Action for injunction

Whenever it shall appear to the Commission that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of

any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged, is engaged, or is about to engage in any such act or practice, or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(e) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80b-3(k) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

- (I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
- (II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

(B) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 80b–14 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to violation of cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80b–3(k) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(f) Aiding and abetting

For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.

(Aug. 22, 1940, ch. 686, title II, §209, 54 Stat. 853; Pub. L. 86–750, §12, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91–452, title II, §216, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100–181, title VII, §704, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 101–429, title IV, §402, Oct. 15, 1990, 104 Stat. 949; Pub. L. 107–204, title III, §308(d)(5), July 30, 2002, 116 Stat. 785; Pub. L. 111–203, title IX, §§923(a)(3), 929N, July 21, 2010, 124 Stat. 1849, 1862.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (e)(3)(A). Pub. L. 111–203, §923(a)(3), inserted "and section 78u–6 of this title" after "section 7246 of this title".

Subsec. (f). Pub. L. 111–203, §929N, added subsec. (f).

2002—Subsec. (e)(3)(A). Pub. L. 107–204 inserted ", except as otherwise provided in section 7246 of this title" before period at end.

1990—Subsec. (e). Pub. L. 101–429 added subsec. (e).

1987—Subsecs. (d), (e). Pub. L. 100–181 redesignated subsec. (e) as (d).

1970—Subsec. (d). Pub. L. 91–452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1960—Subsec. (e). Pub. L. 86–750 inserted ", is engaged," after "has engaged" wherever appearing, and inserted provisions relating to aiders and abettors.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b-10. Disclosure of information by Commission

(a) Information available to public

The information contained in any registration application or report or amendment thereto filed with the Commission pursuant to any provision of this subchapter shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(b) Disclosure of fact of examination or investigation; exceptions

Subject to the provisions of subsections (c) and (d) of section 80b-9 of this title and section 78x(c) of this title, the Commission, or any member, officer, or employee thereof, shall not make public the fact that any examination or investigation under this subchapter is being conducted, or the results of or any facts ascertained during any such examination or investigation; and no member, officer, or employee of the Commission shall disclose to any person other than a member, officer, or employee of the Commission any information obtained as a result of any such examination or investigation except with the approval of the Commission. The provisions of this subsection shall not apply—

(1) in the case of any hearing which is public under the provisions of section 80b-12 of this title; or

(2) in the case of a resolution or request from either House of Congress.

(c) Disclosure by investment adviser of identity of clients

No provision of this subchapter shall be construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this subchapter or for purposes of assessment of potential systemic risk.

(Aug. 22, 1940, ch. 686, title II, §210, 54 Stat. 854; Pub. L. 86-750, §13, Sept. 13, 1960, 74 Stat. 887; Pub. L. 101-550, title II, §202(b)(2), Nov. 15, 1990, 104 Stat. 2715; Pub. L. 111-203, title IV, §405, title IX, §929I(c), July 21, 2010, 124 Stat. 1574, 1858; Pub. L. 111-257, §1(c), Oct. 5, 2010, 124 Stat. 2646.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-203, §405, inserted "or for purposes of assessment of potential systemic risk" before period at end.

Subsec. (d). Pub. L. 111–257 struck out subsec. (d). Text read as follows: "Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under section 80b–4 of this title, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this subchapter, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 80b–4 of this title shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44."

Pub. L. 111–203, §929I(c), added subsec. (d).

1990—Subsec. (b). Pub. L. 101–550 substituted "subsections (c) and (d) of section 80b–9 of this title and section 78x(c) of this title" for "subsections (c) and (e) of section 80b–9 of this title".

1960—Subsec. (b). Pub. L. 86–750 inserted ", or any member, officer, or employee thereof," after "the Commission", and inserted proscription against disclosing information to any person not a member, officer, or employee of the Commission.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929I(c) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 405 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

STUDY ON IMPROVED INVESTOR ACCESS TO INFORMATION ON INVESTMENT ADVISERS AND BROKER-DEALERS

Pub. L. 111–203, title IX, §919B, July 21, 2010, 124 Stat. 1838, provided that:

"(a) **STUDY**.—

"(1) **IN GENERAL**.—Not later than 6 months after the date of enactment of this Act [July 21, 2010], the Commission shall complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as identify additional information that should be made publicly available.

"(2) **CONTENTS**.—The study required by subsection (a) shall include an analysis of the advantages and disadvantages of further centralizing access to the information contained in the 2 systems, including—

"(A) identification of those data pertinent to investors; and

"(B) the identification of the method and format for displaying and publishing such data to enhance accessibility by and utility to investors.

"(b) **IMPLEMENTATION**.—Not later than 18 months after the date of completion of the study required by subsection (a), the Commission shall implement any recommendations of the study."

[For definitions of terms used in section 919B of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

INVESTOR ACCESS TO INFORMATION

Pub. L. 104–290, title III, §306, Oct. 11, 1996, 110 Stat. 3439, required the Securities and Exchange Commission to provide for investor access to information concerning disciplinary actions involving investment advisers, prior to repeal by Pub. L. 109–290, §7(b)(2), Sept. 29, 2006, 120 Stat. 1321.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–10a. Consultation

(a) Examination results and other information

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access—

(A) with respect to the investment advisory activities of any—

(i) bank holding company or savings and loan holding company;

(ii) bank; or

(iii) separately identifiable department or division of a bank,

that is registered under section 80b–3 of this title; and

(B) in the case of a bank holding company or savings and loan holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, with respect to the investment advisory activities of such bank or bank holding company or savings and loan holding company.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company or savings and loan holding company, bank, or separately identifiable department or division of a bank, which is registered under section 80b–3 of this title.

(3) Notwithstanding any other provision of law, the Commission and the appropriate Federal banking agencies shall not be compelled to disclose any information provided under paragraph (1) or (2). Nothing in this paragraph shall authorize the Commission or such agencies to withhold information from Congress, or prevent the Commission or such agencies from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States, the Commission, or such agencies. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(b) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company or savings and loan holding company (or affiliates or subsidiaries thereof), bank, or subsidiary, department, or division or a bank under any other provision of law.

(c) Definition

For purposes of this section, the term "appropriate Federal banking agency" shall have the same meaning as given in section 1813 of title 12.

(Aug. 22, 1940, ch. 686, title II, §210A, as added Pub. L. 106–102, title II, §220, Nov. 12, 1999, 113 Stat. 1400; Pub. L. 109–351, title IV, §401(b)(2), Oct. 13, 2006, 120 Stat. 1973.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109–351 substituted "bank holding company or savings and loan holding company" for "bank holding company" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 77c of this title.

§80b–11. Rules, regulations, and orders of Commission

(a) Power of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining technical, trade, and other terms used in this subchapter, except that the Commission may not define the term "client" for purposes of paragraphs (1) and (2) of section 80b–6 of this title to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser. For the purposes of its rules or regulations the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.

(b) Effective date of regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Orders of Commission after notice and hearing; type of notice

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(d) Good faith compliance with rules and regulations

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

(e) Disclosure rules on private funds

The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after July 21, 2010, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection ¹ 80b–4(b) of this title and with the Commodity Futures Trading Commission by investment advisers that are registered both under this subchapter and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(g) ² Standard of conduct

(1) In general

The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the

broker, dealer, or investment adviser providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 80b-6(1) and (2) of this title when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term "customer" that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

(2) Retail customer defined

For purposes of this subsection, the term "retail customer" means a natural person, or the legal representative of such natural person, who—

- (A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and
- (B) uses such advice primarily for personal, family, or household purposes.

(h) Other matters

The Commission shall—

- (1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and
- (2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(i) Harmonization of enforcement

The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

- (1) the enforcement authority of the Commission with respect to such violations provided under this subchapter; and
- (2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment adviser under this subchapter to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(Aug. 22, 1940, ch. 686, title II, §211, 54 Stat. 855; Pub. L. 86-507, §1(16), June 11, 1960, 74 Stat. 201; Pub. L. 86-750, §14, Sept. 13, 1960, 74 Stat. 888; Pub. L. 100-181, title VII, §705, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 111-203, title IV, §406, title IX, §913(g)(2), (h)(2), July 21, 2010, 124 Stat. 1574, 1828, 1829.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (e), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §406(1), inserted ", including rules and regulations defining technical, trade, and other terms used in this subchapter, except that the Commission may not define the term 'client' for purposes of paragraphs (1) and (2) of section 80b–6 of this title to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser" after "elsewhere in this subchapter".

Subsec. (e). Pub. L. 111–203, §406(2), which directed addition of subsec. (e) at end of section, was executed by adding subsec. (e) after subsec. (d) to reflect the probable intent of Congress. See Effective Date of 2010 Amendment notes below.

Subsecs. (g), (h). Pub. L. 111–203, §913(g)(2), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 111–203, §913(h)(2), added subsec. (i).

1987—Subsec. (b). Pub. L. 100–181 substituted "chapter 15 of title 44" for "the Federal Register Act".

1960—Subsec. (a). Pub. L. 86–750 inserted "functions and".

Subsec. (c). Pub. L. 86–507 inserted "or certified mail" after "registered mail".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 913(g)(2), (h)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 406 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

STUDY ON ENHANCING INVESTMENT ADVISER EXAMINATIONS

Pub. L. 111–203, title IX, §914, July 21, 2010, 124 Stat. 1830, provided that:

"(a) **STUDY REQUIRED.**—

"(1) **IN GENERAL.**—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

"(2) **AREAS OF CONSIDERATION.**—The study required by this subsection shall examine—

"(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle [July 21, 2010];

"(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

"(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

"(b) **REPORT REQUIRED.**—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle [July 21, 2010], and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study."

[For definitions of terms used in section 914 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

¹ *So in original. Probably should be "section".*

² So in original. No subsec. (f) has been enacted.

§80b–12. Hearings

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

(Aug. 22, 1940, ch. 686, title II, §212, 54 Stat. 855.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–13. Court review of orders

(a) Petition; jurisdiction; findings of Commission; additional evidence; finality

Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal office or place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Stay of Commission's order

The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(Aug. 22, 1940, ch. 686, title II, §213, 54 Stat. 855; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §26, Aug. 28, 1958, 72 Stat. 949; Pub. L. 100–181, title VII, §706, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 111–203, title IX, §985(e)(3), July 21,

2010, 124 Stat. 1935.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "principal office or place of business" for "principal place of business".

1987—Subsec. (a). Pub. L. 100–181 substituted "section 1254 of title 28" for "sections 239 and 240 of the Judicial Code, as amended".

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission, or" for "served upon any member of the Commission, or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28", and which, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–14. Jurisdiction of offenses and suits

(a) In general

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.

Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court.

(b) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 80b-6 of this title involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(Aug. 22, 1940, ch. 686, title II, §214, 54 Stat. 856; Pub. L. 100-181, title VII, §707, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 101-429, title IV, §403, Oct. 15, 1990, 104 Stat. 951; Pub. L. 111-203, title IX, §§929E(d), 929P(b)(3), July 21, 2010, 124 Stat. 1853, 1865.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2010—Pub. L. 111-203, §929P(b)(3), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 111-203, §929E(d), inserted "In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence." after "defendant may be found."

1990—Pub. L. 101-429 inserted "and actions at law brought to enforce any liability or duty created by, or" after "all suits in equity" and "to enforce any liability or duty created by, or" after "Any suit or action".

1987—Pub. L. 100-181 substituted "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 128 and 240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–15. Validity of contracts

(a) Waiver of compliance as void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Rights affected by invalidity

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

(Aug. 22, 1940, ch. 686, title II, §215, 54 Stat. 856.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–16. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act Aug. 22, 1940, ch. 686, title II, §216, 54 Stat. 857, which required the Securities and Exchange Commission to submit an annual report to Congress on the work of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 191 of House Document No. 103–7.

§80b–17. Penalties

Any person who willfully violates any provision of this subchapter, or any rule, regulation, or order promulgated by the Commission under authority thereof, shall, upon conviction, be fined not more than \$10,000, imprisoned for not more than five years, or both.

(Aug. 22, 1940, ch. 686, title II, §217, 54 Stat. 857; Pub. L. 86–750, §15, Sept. 13, 1960, 74 Stat. 888; Pub. L. 94–29, §27(f), June 4, 1975, 89 Stat. 163.)

EDITORIAL NOTES

AMENDMENTS

1975—Pub. L. 94–29 substituted "imprisoned for not more than five years" for "imprisoned for not more than two years".

1960—Pub. L. 86–750 inserted ", or any rule, regulation or order promulgated by the Commission under authority thereof,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§80b–18. Hiring and leasing authority of Commission

The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such other employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(Aug. 22, 1940, ch. 686, title II, §218, 54 Stat. 857; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 101–550, title I, §104(d), Nov. 15, 1990, 104 Stat. 2714.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–550 amended section generally. Prior to amendment, section related to appointment and compensation of employees.

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§80b–18a. State regulation of investment advisers

(a) Jurisdiction of State regulators

Nothing in this subchapter shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this subchapter or the rules and regulations thereunder.

(b) Dual compliance purposes

No State may enforce any law or regulation that would require an investment adviser to maintain any books or records in addition to those required under the laws of the State in which it maintains its principal office and place of business, if the investment adviser—

(1) is registered or licensed as such in the State in which it maintains its principal office and place of business; and

(2) is in compliance with the applicable books and records requirements of the State in which it maintains its principal office and place of business.

(c) Limitation on capital and bond requirements

No State may enforce any law or regulation that would require an investment adviser to maintain a higher minimum net capital or to post any bond in addition to any that is required under the laws of the State in which it maintains its principal office and place of business, if the investment adviser—

(1) is registered or licensed as such in the State in which it maintains its principal office and place of business; and

(2) is in compliance with the applicable net capital or bonding requirements of the State in which it maintains its principal office and place of business.

(d) National de minimis standard

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser—

(1) does not have a place of business located within the State; and

(2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

(Aug. 22, 1940, ch. 686, title II, §222, as added Pub. L. 86–750, §16, Sept. 13, 1960, 74 Stat. 888; amended Pub. L. 104–290, title III, §304, Oct. 11, 1996, 110 Stat. 3438; Pub. L. 105–353, title III, §301(d)(2), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §985(e)(4), July 21, 2010, 124 Stat. 1935.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203 substituted "principal office and place of business" for "principal place of business" wherever appearing.

1998—Subsec. (b)(2). Pub. L. 105–353 substituted "principal" for "principle".

1996—Pub. L. 104–290 substituted "regulation" for "control" in section catchline and amended text generally, designating existing provisions as subsec. (a), inserting heading, and adding subsecs. (b) to (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as a note under section 80b–2 of this title.

§80b–18b. Custody of client accounts

An investment adviser registered under this subchapter shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.

(Aug. 22, 1940, ch. 686, title II, §223, as added Pub. L. 111–203, title IV, §411, July 21, 2010, 124 Stat. 1577.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 80b–2 of this title.

§80b–18c. Rule of construction relating to the Commodities Exchange Act

Nothing in this subchapter shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Commodity Futures Trading Commission or any private party, arising under the Commodity Exchange Act (7 U.S.C. 1 et seq.) governing commodity pools, commodity pool operators, or commodity trading advisors.

(Aug. 22, 1940, ch. 686, title II, §224, as added Pub. L. 111–203, title IV, §414, July 21, 2010, 124 Stat. 1578.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 80b–2 of this title.

§80b–19. Separability

If any provision of this subchapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the subchapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 22, 1940, ch. 686, title II, §219, 54 Stat. 857.)

§80b–20. Short title

This subchapter may be cited as the "Investment Advisers Act of 1940".

(Aug. 22, 1940, ch. 686, title II, §220, 54 Stat. 857.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 115–417, §1, Jan. 3, 2019, 132 Stat. 5438, provided that: "This Act [amending sections 80b–3 and 80b–3a of this title] may be cited as the 'RBIC Advisers Relief Act of 2018'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title IV, §401, July 21, 2010, 124 Stat. 1570, provided that: "This title [enacting sections 80b–18b and 80b–18c of this title, amending sections 80b–2, 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and

80b-11 of this title, and enacting provisions set out as notes under sections 77b and 80b-2 of this title] may be cited as the 'Private Fund Investment Advisers Registration Act of 2010'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-290, title III, §301, Oct. 11, 1996, 110 Stat. 3436, provided that: "This title [enacting section 80b-3a of this title, amending sections 80b-2, 80b-3, and 80b-18a of this title and section 1002 of Title 29, Labor, and enacting provisions set out as notes under sections 80b-2, 80b-3a, and 80b-10 of this title and section 1002 of Title 29] may be cited as the 'Investment Advisers Supervision Coordination Act'."

§80b-21. Effective date

This subchapter shall become effective on November 1, 1940.
(Aug. 22, 1940, ch. 686, title II, §221, 54 Stat. 857.)

CHAPTER 2E—OMNIBUS SMALL BUSINESS CAPITAL FORMATION

Sec.

- 80c. Liaison between Securities and Exchange Commission and Small Business Administration.
- 80c-1. Annual government-business forum on capital formation.
- 80c-2. Authorization of appropriations.
- 80c-3. Reduction of costs of small securities issues.

§80c. Liaison between Securities and Exchange Commission and Small Business Administration

(a) Studies on needs, problems, and costs of businesses; availability

The Securities and Exchange Commission shall gather, analyze, and make available to the public, information with respect to the capital formation needs, and the problems and costs involved with new, small, medium-sized, and independent businesses.

(b) Availability of studies to Small Business Administration

The Commission shall make the results of such studies available to the Small Business Administration and otherwise have regular communication and liaison with such Administration in these matters.

(Pub. L. 96-477, title V, §502, Oct. 21, 1980, 94 Stat. 2292.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 96-477, title V, §507, Oct. 21, 1980, 94 Stat. 2294, provided that: "Except as otherwise specified, the amendments made by this title [enacting this chapter and amending section 77s of this title] shall become effective January 1 of the year following the date of enactment of this Act [Oct. 21, 1980]."

SHORT TITLE

Pub. L. 96-477, title V, §501, Oct. 21, 1980, 94 Stat. 2291, provided that: "This title [enacting this chapter and amending section 77s of this title] may be cited as the 'Omnibus Small Business Capital Formation Act of 1980'."

§80c-1. Annual government-business forum on capital formation

(a) Responsibility of Securities and Exchange Commission

Pursuant to the consultation called for in section 80c of this title, the Securities and Exchange Commission (acting through the Office of the Advocate for Small Business Capital Formation and in consultation with the Small Business Capital Formation Advisory Committee) shall conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation.

(b) Participation in forum planning

The Commission shall invite other Federal agencies, such as the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Small Business Administration, organizations representing State securities commissioners, and leading small business and professional organizations concerned with capital formation, to participate in the planning for such forums.

(c) Preparation of statements and reports

The Commission may request any of the Federal departments, agencies, or organizations such as those specified in subsection (b), or other groups or individuals, to prepare statements and reports to be delivered at such forums. Such departments and agencies shall cooperate in this effort.

(d) Transmittal of proceedings and findings

A summary of the proceedings of such forums and any findings or recommendations thereof shall be prepared and transmitted to the participants, appropriate committees of the Congress, and others who may be interested in the subject matter.

(e) Review of findings and recommendations

The Commission shall—

- (1) review the findings and recommendations of the forum; and
- (2) each time the forum submits a finding or recommendation to the Commission, promptly issue a public statement—
 - (A) assessing the finding or recommendation of the forum; and
 - (B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

(Pub. L. 96–477, title V, §503, Oct. 21, 1980, 94 Stat. 2292; Pub. L. 114–284, §2(c), Dec. 16, 2016, 130 Stat. 1452; Pub. L. 115–174, title V, §503, May 24, 2018, 132 Stat. 1362.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–174 added subsec. (e).

2016—Subsec. (a). Pub. L. 114–284 inserted "(acting through the Office of the Advocate for Small Business Capital Formation and in consultation with the Small Business Capital Formation Advisory Committee)" after "the Securities and Exchange Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 507 of Pub. L. 96–477, set out as a note under section 80c of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (d) of this section is listed on page 190), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§80c–2. Authorization of appropriations

For fiscal year 1982, and for each of the three succeeding fiscal years, there are hereby authorized to be appropriated such amounts as may be necessary and appropriate to carry out the provisions and purposes of this chapter. Any sums so appropriated shall remain available until expended.

(Pub. L. 96–477, title V, §504, Oct. 21, 1980, 94 Stat. 2292.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 507 of Pub. L. 96–477, set out as a note under section 80c of this title.

§80c–3. Reduction of costs of small securities issues

(a) The Securities and Exchange Commission shall use its best efforts to identify and reduce the costs of raising capital in connection with the issuance of securities by firms whose aggregate outstanding securities and other indebtedness have a market value of \$25,000,000 or less, through such means as studies, giving appropriate publicity to improved technology developments in fields such as printing, communications, and filing, and giving special attention to the effect of existing and proposed regulatory changes upon the small companies wishing to raise capital and independent broker-dealers which are in a key position with respect to the costs of underwriting and making markets in the securities of smaller companies.

(b) The Commission shall report on these efforts at the annual Government-business forum required by section 80c–1 of this title.

(Pub. L. 96–477, title V, §506, Oct. 21, 1980, 94 Stat. 2293.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1981, see section 507 of Pub. L. 96–477, set out as a note under section 80c of this title.

CHAPTER 3—TRADE-MARKS

§§81 to 134. Repealed. July 5, 1946, ch. 540, §46(a), 60 Stat. 444

DISTRIBUTION TABLE

<i>Title 15</i> <i>Former Sections</i>	<i>Title 15</i> <i>New Sections</i>
81	1051, 1054, 1126(b).
82	1051, 1061.
83	1126.
84	1125(c), (d).
85	1052.
86	1062, 1063.
87	1063, 1066 to 1068.
88	1070.

89	1071.
90	1060.
91	1057(a), (c).
92	1058, 1059, 1126(f).
93	1064, 1068, 1070.
94	1113.
95	1113.
96	1057(b), 1114, 1115, 1117.
97	1121.
98	1122.
99	1116, 1117.
100	1116, 1118.
101	1115.
102	1071, 1119.
103	1051 note.
104	1120.
105	1123.
106	1124.
107	1111.
108	1127.
109	1051 note.
121	1051 note, 1091, 1126.
122	1092.
123	1125.
124	1114, 1117.
125	1111.
126	1094, 1126(f).
127	1057(e).
128	1113.
131	1112.
132	1051 note.
133	1057(f).
134	not now covered.

Sections were repealed effective one year from July 5, 1946, insofar as inconsistent with present trade-mark provisions contained in chapter 22, §1051 et seq. of this title. For effect of repeal on existing registrations and pending proceedings see notes under section 1051 of this title.

Sections 98 and 127 were rerepealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948.

EDITORIAL NOTES

DERIVATION

Sections were derived from the following acts:

Feb. 20, 1905, ch. 592, §§1 to 23, 25–30, 33 Stat. 724 to 731.

May 4, 1906, ch. 2081, §§1 to 3, 34 Stat. 168, 169.

Mar. 2, 1907, ch. 2573, §§1, 2, 34 Stat. 1251, 1252.

Feb. 18, 1909, ch. 144, 35 Stat. 627, 628.

Feb. 18, 1911, ch. 113, 36 Stat. 918.

Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167.

Aug. 24, 1912, ch. 370, §5, 37 Stat. 498.

Jan. 8, 1913, ch. 7, 37 Stat. 649.

Mar. 19, 1920, ch. 104, §§1 to 9, 41 Stat. 533 to 535.
June 7, 1924, ch. 341, 43 Stat. 647.
Mar. 4, 1925, ch. 535, §§1, 3, 43 Stat. 1268, 1269.
Mar. 2, 1929, ch. 488, §2(b), 45 Stat. 1476.
Apr. 11, 1930, ch. 132, §4, 46 Stat. 155.
June 7, 1934, ch. 426, 48 Stat. 926.
June 20, 1936, ch. 617, 49 Stat. 1539.
June 25, 1936, ch. 804, 49 Stat. 1921.
June 10, 1938, ch. 332, §§1 to 3, 5, 52 Stat. 638, 639.

CHAPTER 4—CHINA TRADE

Sec.	
141.	Short title.
142.	Definitions.
143.	Registrar; designation; station; supervision by Secretary of Commerce.
144.	China trade corporations.
144a.	Incorporation fee for perpetual existence.
145.	Certificate of incorporation.
146.	General powers of corporation.
146a.	Jurisdiction of suits by or against China Trade Act corporation.
147.	Stock; issuance at par value.
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149.	Bylaws.
150.	Stockholders' meetings.
151.	Directors.
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155.	Authority of registrar in obtaining evidence.
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158.	False or fraudulent statements prohibited; penalties.
159.	Unauthorized use of legend; penalty.
160.	Maintenance of agent for service.
161.	Alteration, amendment, or repeal.
162.	Creation of China corporations restricted.

§141. Short title

This chapter may be cited as the "China Trade Act, 1922."
(Sept. 19, 1922, ch. 346, §1, 42 Stat. 849.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act Sept. 19, 1922, ch. 346, 42 Stat. 849. The Act (except sections 21 to 27) is classified to this chapter. Sections 21 to 27 of the Act amended title II of the Revenue Act of 1921, which was repealed by section 1100 of the Revenue Act of 1924 (43 Stat. 352).

§142. Definitions

When used in this chapter, unless the context otherwise indicates—

- (a) The term "person" includes individual, partnership, corporation, and association;
- (b) The term "China" means (1) China including Manchuria, Tibet, Mongolia, and any territory leased by China to any foreign government, (2) the Crown Colony of Hong Kong, and (3) the Province of Macao;
- (c) The terms "China Trade Act corporation" and "corporation" mean a corporation chartered under the provisions of this chapter;
- (d) The term "Federal district court" means any Federal district court, and the United States District Court for the District of Columbia;
- (e) The term "Secretary" means the Secretary of Commerce; and
- (f) The term "registrar" means the China Trade Act registrar appointed under section 143 of this title.

(Sept. 19, 1922, ch. 346, §2, 42 Stat. 849; June 25, 1936, ch. 804, 49 Stat. 1921; Treaty Jan. 11, 1943, 57 Stat. 767; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

Words "the United States Court for China" deleted from definition of "Federal district court" under the authority of Treaty between the United States and the Republic of China, 57 Stat. 767, which was signed in Washington, Jan. 11, 1943, ratified by the United States Senate on Feb. 11, 1943, ratified by the President on May 4, 1943, and ratified by the Republic of China on Feb. 4, 1943, by which the United States relinquished all extraterritorial jurisdiction and rights in China.

Congress by private act Dec. 22, 1944, ch. 691, 58 Stat. 1086, provided for the relief of certain former employees of the United States Court for China for the period of July 1, 1942 to May 20, 1943, on which date the Court ceased to exist.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

Act June 25, 1936, substituted "district court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia".

§143. Registrar; designation; station; supervision by Secretary of Commerce

The Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under his direction. The official station of the registrar shall be in China at a place to be designated by the Secretary. All functions vested in the registrar by this chapter shall be administered by him under the supervision of the Secretary; except that upon appeal to the Secretary in such manner as he shall by regulation prescribe, any action of the registrar may be affirmed, modified, or set aside by the Secretary as he deems advisable.

(Sept. 19, 1922, ch. 346, §3, 42 Stat. 850; 1939 Reorg. Plan No. II, §1(d), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under direction of Secretary of Commerce to

conform to 1939 Reorg. Plan No. II, set out in the Appendix to Title 5, Government Organization and Employees.

Responsibilities of Secretary of Commerce with regard to China Trade Act Registrar are exercised by Deputy Assistant Secretary for International Commerce in Domestic and International Business Administration of the Department of Commerce, with the power of redelegation.

§144. China trade corporations

(a) Incorporation

Three or more individuals (hereinafter in this chapter referred to as "incorporators"), a majority of whom are citizens of the United States, may, as hereinafter in this chapter provided, form a District of Columbia corporation for the purpose of engaging in business within China.

(b) Articles of incorporation

The incorporators may adopt articles of incorporation which shall be filed with the Secretary at his office in the District of Columbia and may thereupon make application to the Secretary for a certificate of incorporation in such manner and form as shall be by regulation prescribed. The articles of incorporation shall state—

- (1) The name of the proposed China Trade Act corporation, which shall end with the legend, "Federal Inc. U.S.A.", and which shall not, in the opinion of the Secretary, be likely in any manner to mislead the public;
- (2) The location of its principal office, which shall be in the District of Columbia;
- (3) The particular business in which the corporation is to engage;
- (4) The amount of the authorized capital stock, the designation of each class of stock, the terms upon which it is to be issued, and the number and par value of the shares of each class of stock;
- (5) The duration of the corporation, which may be perpetual or for a limited period;
- (6) The names and addresses of at least three individuals (a majority of whom, at the time of designation and during their term of office, shall be citizens of the United States), to be designated by the incorporators, who shall serve as temporary directors; and
- (7) The fact that an amount equal to 25 per centum of the amount of the authorized capital stock has been in good faith subscribed to.

(c) Prohibited transactions

A China Trade Act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business; nor engage in, nor be formed to engage in, the business of owning or operating any vessel, unless the controlling interest in such corporation is owned by citizens of the United States, within the meaning of section 50501 of title 46.

(d) Capital stock requirements

No certificate of incorporation shall be delivered to a China Trade Act corporation and no incorporation shall be complete until at least 25 per centum of its authorized capital stock has been paid in cash, or, in accordance with the provisions of section 148 of this title, in real or personal property which has been placed in the custody of the directors, and such corporation has filed a statement to this effect under oath with the registrar within six months after the issuance of its certificate of incorporation, except that the registrar may grant additional time for the filing of such statement upon application made prior to the expiration of such six months. If any such corporation transacts business in violation of this subdivision of this section or fails to file such statement within six months, or within such time as the registrar prescribes upon such application, the registrar shall institute proceedings under section 154 of this title for the revocation of the certificate.

(Sept. 19, 1922, ch. 346, §4, 42 Stat. 850; Feb. 26, 1925, ch. 345, §§1–5, 43 Stat. 995; June 25, 1938, ch. 696, §1, 52 Stat. 1195.)

EDITORIAL NOTES

CODIFICATION

In subsec. (c), "section 50501 of title 46" substituted for "section 2 of the Shipping Act, 1916, as amended" on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, section 8(b) of which enacted parts A and B of subtitle V of Title 46, Shipping.

AMENDMENTS

1938—Subsec. (b)(5). Act June 25, 1938, amended par. (5) generally.

1925—Act Feb. 26, 1925 amended subsecs. (a), (b)(6), (7), and (c), and added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1938 AMENDMENT

Act June 25, 1938, provided that the amendment shall apply to all China Trade Act corporations created after the date of enactment of the act.

§144a. Incorporation fee for perpetual existence

Any China Trade Act corporation existing on June 25, 1938, may make its existence perpetual only upon application to the Secretary of Commerce to amend its charter in that respect and upon payment of a fee equivalent to the incorporation fee. Upon receipt of such application and the payment of such prescribed fee, the Secretary shall approve such application and the charter of the corporation shall be amended accordingly.

(June 25, 1938, ch. 696, §2, 52 Stat. 1196.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the China Trade Act, 1922, which comprises this chapter.

§145. Certificate of incorporation

The Secretary shall, upon the filing of such application, issue a certificate of incorporation certifying that the provisions of this chapter have been complied with and declaring that the incorporators are a body corporate, if (a) an incorporation fee of \$100 has been paid him; (b) he finds that the articles of incorporation and statements therein conform to the requirements of, and that the incorporation is authorized by, this chapter; and (c) he finds that such corporation will aid in developing markets in China for goods produced in the United States. A copy of the articles of incorporation shall be made a part of the certificate of incorporation and printed in full thereon. Any failure, previous to the issuance of the certificate of incorporation, by the incorporators or in respect to the application for the certificate of incorporation, to conform to any requirement of law which is a condition precedent to such issuance, may not subsequent thereto be held to invalidate the certificate of incorporation or alter the legal status of any act of a China Trade Act corporation, except in proceedings instituted by the registrar for the revocation of the certificate of incorporation. (Sept. 19, 1922, ch. 346, §5, 42 Stat. 850.)

§146. General powers of corporation

In addition to the powers granted elsewhere in this chapter, a China Trade Act corporation—

(a) Shall have the right of succession during the existence of the corporation;

- (b) Shall have a corporate seal and may, with the approval of the Secretary, alter it;
 - (c) May sue and be sued;
 - (d) Shall have the right to transact the business authorized by its articles of incorporation and such further business as is properly connected therewith or necessary and incidental thereto;
 - (e) May make contracts and incur liabilities;
 - (f) May acquire and hold real or personal property, necessary to effect the purpose for which it is formed, and dispose of such property when no longer needed for such purposes;
 - (g) May borrow money and issue its notes, coupon or registered bonds, or other evidences of debt, and secure their payment by a mortgage of its property; and
 - (h) May establish such branch offices at such places in China as it deems advisable.
- (Sept. 19, 1922, ch. 346, §6, 42 Stat. 851; Feb. 26, 1925, ch. 345, §6, 43 Stat. 996.)

EDITORIAL NOTES

AMENDMENTS

1925—Par. (b). Act Feb. 26, 1925, substituted "Shall" for "May".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TREATY

Par. (h) of this section has been affected by the 1943 Treaty between United States of America and the Republic of China, 57 Stat. 767, in which the United States relinquished all extraterritorial jurisdiction and rights in China. See Codification note set out under section 142 of this title.

§146a. Jurisdiction of suits by or against China Trade Act corporation

The Federal district courts shall have exclusive original jurisdiction of all suits to which a China Trade Act corporation, or a stockholder, director, or officer thereof in his capacity as such, is a party. Suit against the corporation may be brought in the United States District Court for the District of Columbia or in the Federal district court for any district in which the corporation has an agent and is engaged in doing business.

(Sept. 19, 1922, ch. 346, §20(a), formerly §20, 42 Stat. 855; renumbered §20(a), Feb. 26, 1925, ch. 345, §10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921; Treaty of Jan. 11, 1943, 57 Stat. 767; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

Section comprises subsec. (a) of section 20 of act Sept. 19, 1922, as amended by act Feb. 26, 1925. Subsec. (b) of section 20 is classified to section 160 of this title.

In the first sentence, the words "(except as provided by the Act entitled 'An Act creating a United States Court for China and prescribing the jurisdiction thereof,' approved June 30, 1906, as amended)" have been omitted because that Act (formerly classified to sections 191 to 197, 199, 200, and 202 of Title 22, Foreign Relations and Intercourse) was repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948.

The provision in the second sentence that suits against the China Trade Act corporation might also be brought in the United States Court for China was omitted as that court is no longer in operation. By the treaty of Jan. 11, 1943, between the United States and China, the United States relinquished extraterritorial rights in China. See Codification note set out under section 142 of this title.

Section was formerly classified to section 53 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, §1, 62 Stat. 869.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

Act June 25, 1936, changed name of "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

§147. Stock; issuance at par value

Each share of the original or any subsequent issue of stock of a China Trade Act corporation shall be issued at not less than par value, and shall be paid for in cash, or in accordance with the provisions of section 148 of this title, in real or personal property which has been placed in the custody of the directors. No such share shall be issued until the amount of the par value thereof has been paid the corporation; and when issued, each share shall be held to be full paid and nonassessable; except that if any share is, in violation of this section, issued without the amount of the par value thereof having been paid to the corporation, the holder of such share shall be liable in suits by creditors for the difference between the amount paid for such share and the par value thereof.

(Sept. 19, 1922, ch. 346, §7, 42 Stat. 851; Feb. 26, 1925, ch. 345, §7, 43 Stat. 996.)

EDITORIAL NOTES

AMENDMENTS

1925—Act Feb. 26, 1925, substituted "not less than par value" for "par value only".

§148. Payment of stock in real or personal property

No share of stock of a China Trade Act corporation shall, for the purposes of section 147 of this title or of subdivision (d) of section 144 of this title, be held paid in real or personal property unless (1) a certificate describing the property and stating the value at which it is to be received has been filed by the corporation with the Secretary or the registrar in such manner as shall be by regulation prescribed, and a fee to be fixed by the Secretary or the registrar, respectively, to cover the cost of any necessary investigation has been paid, and (2) the Secretary or the registrar, as the case may be, finds and has certified to the corporation that such value is not more than the fair market value of the property.

(Sept. 19, 1922, ch. 346, §8, 42 Stat. 851.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subdivision (d) of section 144 of this title, referred to in text, was in the original "paragraph (7) of subdivision (b) of section 4", which is classified to section 144(b)(7) of this title. Part of the provisions of par. (7) were transferred to subd. (d) of section 144 by act Feb. 26, 1925, ch. 345, §§3, 5, 43 Stat. 995.

§149. Bylaws

The bylaws may provide—

(a) The time, place, manner of calling, giving notice, and conduct of, and determination of a quorum for, the meetings, annual or special, of the stockholders or directors;

(b) The number, qualifications, and manner of choosing and fixing the tenure of office and compensation of all directors; but the number of such directors shall be not less than three, and a majority of the directors, and the president and the treasurer, or each officer holding a corresponding

office, shall, during their tenure of office, be citizens of the United States resident in China.

(c) The manner of calling for and collecting payments upon shares of stock, the penalties and forfeitures for nonpayment, the preparation of certificates of the shares, the manner of recording their sale or transfer, and the manner of their representation at stockholders' meetings.

(Sept. 19, 1922, ch. 346, §9, 42 Stat. 852; Feb. 26, 1925, ch. 345, §8, 43 Stat. 996.)

EDITORIAL NOTES

AMENDMENTS

1925—Par. (b). Act Feb. 26, 1925, amended par. (b) generally.

§150. Stockholders' meetings

(a) Time of first meeting; quorum

Within six months after the issuance of the certificate of incorporation of a China Trade Act corporation there shall be held a stockholders' meeting either at the principal office or a branch office of the corporation. Such meeting shall be called by a majority of the directors named in the articles of incorporation and each stockholder shall be given at least ninety days' notice of the meeting either in person or by mail. The holders of two-thirds of the voting shares, represented in person or by proxy, shall constitute a quorum at such meetings authorized to transact business. At this meeting or an adjourned meeting thereof a code of bylaws for the corporation shall be adopted by a majority of the voting shares represented at the meeting.

(b) Questions for determination only by stockholders

The following questions shall be determined only by the stockholders at a stockholders' meeting:

- (1) Adoption of the bylaws;
- (2) Amendments to the articles of incorporation or bylaws;
- (3) Authorization of the sale of the entire business of the corporation or of an independent branch of such business;
- (4) Authorization of the voluntary dissolution of the corporation; and
- (5) Authorization of application for the extension of the period of duration of the corporation.

(c) Authorization of amendments to articles of incorporation

The adoption of any such amendment or authorization shall require the approval of at least two-thirds of the voting shares. No amendment to the articles of incorporation or authorization for dissolution or extension shall take effect until (1) the corporation files a certificate with the Secretary stating the action taken, in such manner and form as shall be by regulation prescribed, and (2) such amendment or authorization is found and certified by the Secretary to conform to the requirements of this chapter.

(d) Filing of bylaws and amendments and minutes of stockholders' meetings with registrar

A certified copy of the bylaws and amendments thereof and of the minutes of all stockholders' meetings of the corporation shall be filed with the registrar.

(Sept. 19, 1922, ch. 346, §10, 42 Stat. 852; Feb. 26, 1925, ch. 345, §9, 43 Stat. 996.)

EDITORIAL NOTES

AMENDMENTS

1925—Subsec. (a). Act Feb. 26, 1925, inserted ", represented in person or by proxy," in third sentence.

§151. Directors

The directors designated in the articles of incorporation shall, until their successors take office, direct the exercise of all powers of a China Trade Act corporation except such as are conferred upon the stockholders by law or by the articles of incorporation or bylaws of the corporation. Thereafter the directors elected in accordance with the bylaws of the corporation shall direct the exercise of all powers of the corporation except such as are so conferred upon the stockholders. In the exercise of such powers the directors may appoint and remove and fix the compensation of such officers and employees of the corporation as they deem advisable.

(Sept. 19, 1922, ch. 346, §11, 42 Stat. 852.)

§152. Reports; records for public inspection

(a) For the purposes of this chapter the fiscal year of a China Trade Act corporation shall correspond to the calendar year. The corporation shall make and file with the registrar, in such manner and form and at such time as shall be by regulation prescribed, a report of its business for each such fiscal year and of its financial condition at the close of the year. The corporation shall furnish a true copy of the report to each of its stockholders.

(b) The registrar shall file with the Secretary copies of all reports, certificates, and certified copies received or issued by the registrar under the provisions of this chapter. The Secretary shall file with the registrar copies of all applications for a certificate of incorporation, and certificates received or issued by the Secretary under the provisions of this chapter. All such papers shall be kept on record in the offices of the registrar and the Secretary, and shall be available for public inspection under such regulations as may be prescribed.

(Sept. 19, 1922, ch. 346, §12, 42 Stat. 853.)

§153. Dividends

Dividends declared by a China Trade Act corporation shall be derived wholly from the surplus profits of its business.

(Sept. 19, 1922, ch. 346, §13, 42 Stat. 853.)

§154. Investigations by registrar; revocation of certificate of incorporation

The registrar may, in order to ascertain if the affairs of a China Trade Act corporation are conducted contrary to any provision of this chapter, or any other law, or any treaty of the United States, or the articles of incorporation or bylaws of the corporation, investigate the affairs of the corporation. The registrar, whenever he is satisfied that the affairs of any China Trade Act corporation are or have been so conducted, may institute in the United States Court for China proceedings for the revocation of the certificate of incorporation of the corporation. The court may revoke such certificate if it finds the affairs of such corporation have been so conducted. Pending final decision in the revocation proceedings the court may at any time, upon application of the registrar or upon its own motion, make such orders in respect to the conduct of the affairs of the corporation as it deems advisable.

(Sept. 19, 1922, ch. 346, §14, 42 Stat. 853.)

EDITORIAL NOTES

REFERENCES IN TEXT

United States Court for China, referred to in text, has been abolished. See Codification note set out under section 142 of this title.

§155. Authority of registrar in obtaining evidence

(a) Subpena for attendance of witness and production of records, etc.

For the efficient administration of the functions vested in the registrar by this chapter, he may require, by subpoena issued by him or under his direction, (1) the attendance of any witness and the production of any book, paper, document, or other evidence from any place in China at any designated place of hearing in China, or, if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within fifty miles of the actual residence or place of sojourn of such witness, and (2) the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. The registrar, or any officer, employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. Any witness summoned or whose deposition is taken under this section shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) Aid of Federal district court

In the case of failure to comply with any subpoena or in the case of the contumacy of any witness before the registrar or any individual so authorized by him, the registrar or such individual may invoke the aid of any Federal district court. Such court may thereupon order the witness to comply with the requirements of such subpoena and to give evidence touching the matter in question. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) Repealed. Pub. L. 91-452, title II, §217, Oct. 15, 1970, 84 Stat. 929

(d) Access of registrar or his employee to books and records

For the efficient administration of the functions vested in the registrar by this chapter, he, or any officer, employee, or agent of the United States authorized in writing by him, shall at all reasonable times, for the purpose of examination, have access to and the right to copy any book, account, record, paper, or correspondence relating to the business or affairs of a China Trade Act corporation. Any person who upon demand refuses the registrar, or any duly authorized officer, employee, or agent, such access or opportunity to copy, or hinders, obstructs, or resists him in the exercise of such right, shall be liable to a penalty of not more than \$5,000 for each such offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States.

(Sept. 19, 1922, ch. 346, §15, 42 Stat. 853; Pub. L. 91-452, title II, §217, Oct. 15, 1970, 84 Stat. 929.)

EDITORIAL NOTES

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-452 struck out subsec. (c) which granted immunity from prosecution for any natural person testifying in obedience to a subpoena.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§156. Dissolution of corporation; trustees

In case of the voluntary dissolution of a China Trade Act corporation or revocation of its certificate of incorporation, the directors of the corporation shall be trustees for the creditors and stockholders of the corporation; except that upon application to the United States Court for China by any interested party, or upon the motion of any court of competent jurisdiction in any proceeding pending before it, the court may in its discretion appoint as the trustees such persons, other than the directors, as it may determine. The trustees are invested with the powers, and shall do all acts, necessary to wind up the affairs of the corporation and divide among the stockholders according to their respective interests the property of the corporation remaining after all obligations against it have been settled. For the purposes of this section the trustees may sue and be sued in the name of the corporation and shall be jointly and severally liable to the stockholders and creditors of the corporation to the extent of the property coming into their hands as trustees.

(Sept. 19, 1922, ch. 346, §16, 42 Stat. 854.)

EDITORIAL NOTES

REFERENCES IN TEXT

United States Court for China, referred to in text, has been abolished. See Codification note set out under section 142 of this title.

§157. Regulations and fees; disposition of fees and penalties

(a) The Secretary is authorized to make such regulations as may be necessary to carry into effect the functions vested in him or in the registrar by this chapter.

(b) The Secretary is authorized to prescribe and fix the amount of such fees (other than the incorporation fee) to be paid him or the registrar for services rendered by the Secretary or the registrar to any person in the administration of the provisions of this chapter. All fees and penalties paid under this chapter shall be covered into the Treasury of the United States as miscellaneous receipts.

(Sept. 19, 1922, ch. 346, §17, 42 Stat. 854.)

§158. False or fraudulent statements prohibited; penalties

No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall make, issue, or publish any statement, written or oral, or advertisement in any form, as to the value or as to the facts affecting the value of stocks, bonds, or other evidences of debt, or as to the financial condition or transactions, or facts affecting such condition or transactions, of such corporation if it has issued or is to issue stocks, bonds, or other evidences of debt, whenever he knows or has reason to believe that any material representation in such statement or advertisement is false. No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall, if all the authorized capital stock thereof has not been paid in, make, issue, or publish any written statement or advertisement, in any form, stating the amount of the authorized capital stock without also stating as the amount actually paid in, a sum not greater than the amount paid in. Any person violating any provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than ten years, or both.

(Sept. 19, 1922, ch. 346, §18, 42 Stat. 855.)

§159. Unauthorized use of legend; penalty

No individual, partnership, or association, or corporation not incorporated under this chapter or under a law of the United States, shall engage in business within China under a name in connection with which the legend "Federal Inc. U.S.A." is used. Any person violating this section shall, upon conviction thereof, be fined not more than \$1,000 for each violation.

(Sept. 19, 1922, ch. 346, §19, 42 Stat. 855.)

§160. Maintenance of agent for service

Every China Trade Act corporation shall maintain in the District of Columbia a person as its accredited agent, upon whom legal process may be served, in any suit to be brought in the United States District Court for the District of Columbia, and who is authorized to enter an appearance in its behalf. In the event of the death or inability to serve, or the resignation or removal, of such person, such corporation shall, within such time as the Secretary by regulation prescribes, appoint a successor. Such corporation shall file with the Secretary a certified copy of each power of attorney appointing a person under this section, and a certified copy of the written consent of each person so appointed.

(Sept. 19, 1922, ch. 346, §20(b), as added Feb. 26, 1925, ch. 345, §10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

Section comprises subsec. (b) of section 20 of act Sept. 19, 1922, as added by act Feb. 26, 1925. Subsec. (a) of section 20 is classified to section 146a of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia."

Act June 25, 1936, changed name of "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

§161. Alteration, amendment, or repeal

The Congress of the United States reserves the right to alter, amend, or repeal any provision of this chapter.

(Sept. 19, 1922, ch. 346, §28, 42 Stat. 856.)

§162. Creation of China corporations restricted

No corporation for the purpose of engaging in business within China shall be created under any law of the United States other than this chapter.

(Sept. 19, 1922, ch. 346, §29, as added Feb. 26, 1925, ch. 345, §13, 43 Stat. 997.)

CHAPTER 5—STATISTICAL AND COMMERCIAL INFORMATION

Sec.

171.

Repealed.

- 172. Transfer of duties of Department of Labor; special investigations.
- 173, 174. Repealed.
- 175. Additional duties of Bureau.
- 176. Collection of commercial statistics.
- 176a. Confidential nature of information furnished Bureau.
- 176b, 177. Repealed.
- 178. Collection of statistics of foreign and interstate commerce and transportation.
- 179 to 181. Repealed.
- 182. Statistics of manufactures.
- 183. Report of statistics.
- 184 to 187. Repealed.
- 188. Publication of commercial information.
- 189, 189a. Repealed.
- 190. Discussions in commercial reports of partisan questions.
- 191. Terms of measure, weight, and money in commercial reports.
- 192 to 195. Repealed or Omitted.
- 196. Payments for rent of offices in foreign countries.
- 197 to 198. Repealed.

§171. Repealed. Pub. L. 90–620, §3, Oct. 22, 1968, 82 Stat. 1308

Section, acts Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, directed that, as of July 12, 1912, the Bureau of Manufactures and the Bureau of Statistics, both of the Department of Commerce, be consolidated into one bureau to be known as the Bureau of Foreign and Domestic Commerce, and that the duties required by law to be performed by the Bureau of Manufactures and the Bureau of Statistics be transferred to and performed by the Bureau of Foreign and Domestic Commerce. Pursuant to the powers transferred to and vested in the Secretary of Commerce under Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the functions of officers of the Department of Commerce and the functions of all agencies and employees of such Department, with a few exceptions, to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, the Secretary, through internal reorganizations, has reassigned the functions of the Bureau of Foreign and Domestic Commerce to other offices of the Department.

§172. Transfer of duties of Department of Labor; special investigations

The duties of the Department of Labor, or Bureau of Labor, "to ascertain, at as early a date as possible, and whenever industrial changes shall make it essential, the cost of producing articles at the time dutiable in the United States, in leading countries where such articles are produced, by fully specified units of production, and under a classification showing the different elements of cost, or approximate cost, of such articles of production, including the wages paid in such industries per day, week, month, or year, or by the piece; and hours employed per day; and the profits of manufacturers and producers of such articles; and the comparative cost of living, and the kind of living; what articles are controlled by trusts or other combinations of capital, business operations, or labor, and what effect said trusts, or other combinations of capital, business operations, or labor have on production and prices", are, as of August 23, 1912, transferred to and shall be discharged by the Bureau of Foreign and Domestic Commerce, and it shall be also the duty of said Bureau of Foreign and Domestic Commerce to make such special investigation and report on particular subjects when required to do so by the President or either House of Congress.

(Aug. 23, 1912, ch. 350, §1, 37 Stat. 407.)

EDITORIAL NOTES

REFERENCES IN TEXT

The quoted language of this section was originally enacted by act June 13, 1888, ch. 389, §7, 25 Stat. 183, which charged the duties to the Commissioner of Labor.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. Through internal reorganizations, functions of Bureau of Foreign and Domestic Commerce have been reassigned to other offices of Department of Commerce.

§§173, 174. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section 173, R.S. §336; acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37, Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Jan. 25, 1919, ch. 10, 40 Stat. 1055; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required annual reports on statistics of commerce and navigation. See section 301 et seq. of Title 13, Census.

Section 174, R.S. §337; acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256; Aug. 31, 1961, Pub. L. 87–191, §2, 75 Stat. 419, prescribed regulations required to be observed by collectors of customs. See section 301 et seq. of Title 13, Census.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, except that the last sentence of par. Fifth of section 174 of this title shall be repealed Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

Section 3 of Pub. L. 87–826 provided in part that any rights or liabilities existing under sections 173, 174, 177, 179, 181, 184 to 187, and 193 of this title, sections 92 and 95 of former Title 46, Shipping, and section 1486 of Title 48, Territories and Insular Possessions, and any proceedings instituted under or growing out of, any of such sections or parts thereof, shall not be affected by the repeal of such sections.

§175. Additional duties of Bureau

It shall be the province and duty of the Bureau of Foreign and Domestic Commerce, under the direction of the Secretary of Commerce, to foster, promote, and develop the various manufacturing industries of the United States, and markets for the same at home and abroad, domestic and foreign, by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary of Commerce or provided by law.

(Feb. 14, 1903, ch. 552, §5, 32 Stat. 827; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Aug. 13, 1946, ch. 957, title XI, §11131(23), 60 Stat. 1037.)

EDITORIAL NOTES

AMENDMENTS

1946—Act Aug. 13, 1946, repealed last sentence relating to duties of consular officers with respect to the

Bureau.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted the "Secretary of Commerce" for "Secretary of Commerce and Labor".

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act Aug. 13, 1946, effective three months from Aug. 13, 1946, see section 1141 of that act.

TRANSFER OF FUNCTIONS

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

Act Apr. 5, 1906, abolished the grade of commercial agent and commercial agent's function of helping to gather foreign trade information, reference to which formerly appeared in the last sentence of this section. Such last sentence was subsequently repealed by Act Aug. 13, 1946.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§176. Collection of commercial statistics

A purpose of the Bureau of Foreign and Domestic Commerce is the collection, arrangement, and classification of such statistical information as may be procured, showing, or tending to show, each year the condition of the manufactures, domestic trade, currency, and banks of the several States and Territories.

(R.S. §335; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407.)

EDITORIAL NOTES

CODIFICATION

R.S. §335 derived from Res. June 15, 1844, No. 16, 5 Stat. 719.

AMENDMENTS

1877—Act Feb. 27, 1877, struck out "agriculture" before "manufactures".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§176a. Confidential nature of information furnished Bureau

Any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied. Except as provided in subchapter III of chapter 35 of title 44, the Director of the Bureau of Foreign and Domestic Commerce shall not permit anyone other than the sworn employees of the Bureau to examine such individual reports, nor shall he permit any statistics of domestic commerce to be published in such manner as to reveal the identity of the individual, corporation, or firm furnishing such data.

(Jan. 27, 1938, ch. 11, §1, 52 Stat. 8; Pub. L. 107–347, title V, §526(a), Dec. 17, 2002, 116 Stat. 2969; Pub. L. 115–435, title III, §302(c)(4), Jan. 14, 2019, 132 Stat. 5553.)

EDITORIAL NOTES

AMENDMENTS

2019—Pub. L. 115–435 substituted "subchapter III of chapter 35 of title 44" for "the Confidential Information Protection and Statistical Efficiency Act of 2002".

2002—Pub. L. 107–347 substituted "Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, the" for "The".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 115–435 effective 180 days after Jan. 14, 2019, see section 403 of Pub. L. 115–435, set out as a note under section 306 of Title 5, Government Organization and Employees.

TRANSITIONAL AND SAVINGS PROVISIONS

For transitional and savings provisions related to the amendment of this section and other provisions of law by title III of Pub. L. 115–435, see section 302(d) of Pub. L. 115–435, set out as a note under section 3561 of Title 44, Public Printing and Documents.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§176b. Repealed. June 25, 1948, ch. 645, §21, 62 Stat. 862

Section, act Jan. 27, 1938, ch. 11, §2, 52 Stat. 8, related to disclosure by employee of information. See section 1905 of Title 18, Crimes and Criminal Procedure.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Section 20 of act June 25, 1948, provided that the repeal of this section shall be effective Sept. 1, 1948.

§177. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, acts July 16, 1892, ch. 196, §1, 27 Stat. 197; Mar. 3, 1893, ch. 211, §1, 27 Stat. 689; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, related to returns of exports to foreign countries leaving the United States by rail. See section 301 et seq. of Title 13, Census.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§178. Collection of statistics of foreign and interstate commerce and transportation

It shall be the duty of the officer in charge of the Bureau of Foreign and Domestic Commerce to gather and collate statistics and facts relating to commerce with foreign nations and among the several States, the railroad systems of this and other countries, the construction and operation of railroads, the actual cost of such construction and operation of railroads, the actual cost of transporting freight and passengers on railroads, and on canals, rivers, and other navigable waters of the United States, the charges imposed for such transportation of freight and passengers, and the tonnage transported.

(Mar. 3, 1875, ch. 129, §1, 18 Stat. 352; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; May 29, 1928, ch. 901, §1(105), 45 Stat. 994.)

EDITORIAL NOTES

AMENDMENTS

1928—Act May 29, 1928, discontinued the report of Bureau of Foreign and Domestic Commerce to Congress on commercial relations of the United States.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§179. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, R.S. §339; acts Mar. 3, 1875, ch. 129, §1, 18 Stat. 352; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required quarterly reports of exports and imports. See section 301 et seq. of Title 13, Census.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§180. Repealed. Feb. 28, 1933, ch. 131, §1, 47 Stat. 1349

Section, R.S. §340, related to statements of vessels registered.

§181. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, R.S. §341; acts Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required preparation of an annual statement of merchandise. See section 301 et seq. of Title 13, Census.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§182. Statistics of manufactures

The Director of the Bureau of Foreign and Domestic Commerce shall collect, digest, and arrange, for the use of Congress, the statistics of the manufactures of the United States, their localities, sources of raw material, markets, exchanges with the producing regions of the country, transportation of products, wages, and such other conditions as are found to affect their prosperity.

(R.S. §342; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 1, 1919, ch. 86, 40 Stat. 1256.)

EDITORIAL NOTES

CODIFICATION

R.S. §342 derived from act July 28, 1866, ch. 298, §13, 14 Stat. 330.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 1, 1919, substituted "Director" for "Chief".

TRANSFER OF FUNCTIONS

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§183. Report of statistics

The Secretary of Commerce shall make a report to Congress on the first Monday of January in

each year, containing the results of the information collected during the preceding year, by the Bureau of Foreign and Domestic Commerce, upon the condition of the manufactures, domestic trade, currency, and banks of the several States and Territories.

(R.S. §259; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Feb. 14, 1903, ch. 552, §9, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

EDITORIAL NOTES

CODIFICATION

R.S. §259 derived from acts Sept. 24, 1789, ch. 20, §35, 1 Stat. 92; June 25, 1868, ch. 71, §5, 15 Stat. 75; June 22, 1870, ch. 150, §5, 16 Stat. 162.

AMENDMENTS

1877—Act Feb. 27, 1877, struck out "agriculture" before "manufactures".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Aug. 23, 1912, transferred certain duties of Department or Bureau of Labor to Bureau of Foreign and Domestic Commerce.

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of Bureau of Foreign and Domestic Commerce, see note set out under section 172 of this title.

§§184 to 187. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section 184, R.S. §263; acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required printing of an annual report on commerce on navigation. See section 301 et seq. of Title 13, Census.

Section 185, R.S. §251 (part); acts Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, required Secretary of Commerce to prescribe forms of annual statements to be submitted to Congress showing the actual state of commerce and navigation between the United States and foreign countries, or coastwise between the collection districts of the United States. See section 301 et seq. of Title 13.

Section 186, R.S. §338, required annual report of statistics of commerce and navigation to state kinds, quantities, and value of merchandise entered and cleared coastwise into and from collection districts of the United States. See section 301 et seq. of Title 13.

Section 187, R.S. §§265, 3812; acts Jan. 12, 1895, ch. 23, §17, 28 Stat. 603; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, related to printing of statement of exports and imports. See section 301 et seq. of Title 13.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87–826, set out as a note under sections 173 and 174 of this title.

§188. Publication of commercial information

The Secretary of Commerce shall publish official notifications, from time to time, of such commercial information communicated to him by diplomatic and consular officers, as he may deem important to the public interests, in such newspapers, not to exceed three in number, as he may select.

(R.S. §211; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

EDITORIAL NOTES

CODIFICATION

R.S. §211 derived from act Aug. 18, 1856, ch. 127, §2, 11 Stat. 60.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§§189, 189a. Repealed. Pub. L. 91–412, §3(b), (c), Sept. 25, 1970, 84 Stat. 864

Section 189, act May 15, 1936, ch. 405, §1, 49 Stat. 1335, which authorized Secretary of Commerce to charge for lists of foreign buyers, special statistical services, special commodity news bulletins, and World Trade Directory reports and to deposit collections therefore in the Treasury as miscellaneous receipts, is now covered by sections 1525 and 1526 of this title. Similar provisions were contained in the following acts:

Mar. 22, 1935, ch. 39, 49 Stat. 89.
Apr. 7, 1934, ch. 104, 48 Stat. 550.
Mar. 1, 1933, ch. 144, 47 Stat. 1392.
July 1, 1932, ch. 361, 47 Stat. 501.
June 30, 1932, ch. 314, pt. II, title III, §310, 47 Stat. 410.
Feb. 23, 1931, ch. 280, 46 Stat. 1333.
Apr. 18, 1930, ch. 184, 46 Stat. 197.
Jan. 25, 1929, ch. 102, 45 Stat. 1118.
Feb. 15, 1928, ch. 57, 45 Stat. 87.
Feb. 24, 1927, ch. 189, 44 Stat. 1203.
Apr. 29, 1926, ch. 195, 44 Stat. 353.
Mar. 3, 1881, ch. 130, 21 Stat. 391.
June 16, 1880, ch. 235, 21 Stat. 271.

Section 189a, act May 27, 1935, ch. 148, §1, 49 Stat. 292, which authorized Department of Commerce to make special statistical studies (foreign trade, domestic trade, and other economic matters), to prepare from its records special statistical compilations, and to furnish transcripts (studies, tables, and other records), upon payment of actual cost by requesting person, firm, or corporations, is now covered by section 1525 of this title.

§190. Discussions in commercial reports of partisan questions

No part of the consular and other commercial reports of the Department of Commerce, including circular letters to chambers of commerce, discussing partisan political, religious, or moral questions shall be published.

(Feb. 25, 1885, ch. 150, 23 Stat. 324; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Department of Commerce" for "Department of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§191. Terms of measure, weight, and money in commercial reports

All terms of measure, weight, and money in the diplomatic, consular, and other commercial reports prepared, printed, published, and distributed by the Department of Commerce shall be reduced to and expressed in terms of measure, weight, and coin of the United States, as well as in the foreign terms.

(Feb. 9, 1903, ch. 530, 32 Stat. 813; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Department of Commerce" for "Department of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred Bureau of Statistics from Treasury Department to Department of Commerce and Labor.

§§192, 192a. Repealed. Pub. L. 91–412, §3(a), (b), Sept. 25, 1970, 84 Stat. 864

Section 192, acts Mar. 1, 1919, ch. 86, §1, 40 Stat. 1256; May 27, 1935, ch. 148, §2, 49 Stat. 293, which provided for deposit of moneys received for special statistical studies, compilations, and transcripts in a special account for payment of ordinary expenses incidental to the work and services of nongovernmental individuals and had originally provided for covering into the Treasury as miscellaneous receipts moneys received in payment of photographic and other mechanical reproduction of special statistical compilations from the records, is now covered by section 1526 of this title.

Section 192a, acts May 27, 1935, ch. 148, §3, 49 Stat. 293; Aug. 7, 1946, ch. 770, §1(4), 60 Stat. 866, required Secretary of Commerce to prescribe rules and regulations governing special statistical studies.

§193. Repealed. Pub. L. 87–826, §3, Oct. 15, 1962, 76 Stat. 953

Section, act Jan. 5, 1923, ch. 23, §2, 42 Stat. 1110, related to statements and reports for collectors of customs and Treasury Department. See section 301 et seq. of Title 13, Census.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87–826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISION

See section 3 of Pub. L. 87-826, set out as a note under sections 173 and 174 of this title.

§§194, 195. Omitted

EDITORIAL NOTES

CODIFICATION

Section 194, act Jan. 5, 1923, ch. 23, §1, 42 Stat. 1109, which transferred to the Department of Commerce from the Department of the Treasury the control and expense of operation of the office known as the Bureau of Customs Statistics under the jurisdiction of the Department of the Treasury, on Jan. 5, 1923, located in the customhouse, City of New York, State of New York, including all officers, clerks, and other employees of that bureau, official records, papers, mechanical and office equipment, furniture, and supplies in use on that date and which authorized the Secretary of Commerce to consolidate the Bureau of Customs Statistics with the Division of Statistics of the Bureau of Foreign and Domestic Commerce into one office, located in either Washington or New York, or partly in either place, in the discretion of the Secretary of Commerce, with the statistical bureau authorized to be located in New York under the jurisdiction and control of the Department of Commerce to continue to occupy the premises in the New York customhouse which were on Jan. 5, 1923, occupied by the Bureau of Customs Statistics, and with additional space as needed to be assigned in the same building for its use by the Secretary of the Treasury upon request of the Secretary of Commerce, has been omitted as executed. Pursuant to the authority vested in the Secretary of Commerce by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, the Secretary has reassigned the functions of the Division of Statistics of the Bureau of Foreign and Domestic Commerce to other offices of the Department of Commerce.

Section 195, acts Apr. 18, 1930, ch. 184, 46 Stat. 198; Feb. 23, 1931, ch. 280, 46 Stat. 1334, which provided for the payment of transportation expenses of employees, is covered by section 5701 et seq. of Title 5, Government Organization and Employees.

§196. Payments for rent of offices in foreign countries

Section 3324(a) and (b) of title 31 shall not apply to advance payments for rent of offices in foreign countries by the Bureau of Foreign and Domestic Commerce.

(Mar. 4, 1925, ch. 556, §1, 43 Stat. 1327.)

EDITORIAL NOTES

CODIFICATION

"Section 3324(a) and (b) of title 31" substituted in text for "section 3648 of the Revised Statutes" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 531 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, §1, Sept. 13, 1982, 96 Stat. 877.

Section is from the Second Deficiency Act for the fiscal year 1925.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Commerce and functions of all agencies and employees of such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. Through internal reorganization, functions of former Bureau of Foreign and Domestic Commerce, referred to in text, have been reassigned to other offices of Department of Commerce.