

# TITLE 15—COMMERCE AND TRADE

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**CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF  
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#### **EDITORIAL NOTES**

#### **HISTORICAL NOTE**

This chapter includes among other statutory provisions the Sherman Act, comprising sections 1 to 7 of this title, the Clayton Act, comprising sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and sections 52 and 53 of Title 29, Labor, the Wilson Tariff Act, comprising sections 8 and 9 of this title, the Robinson-Patman Price Discrimination Act, comprising sections 13, 13a, 13b, and 21a of this title, the "Expediting Act", sections 28 and 29 of this title, and the "Hart-Scott-Rodino Antitrust Improvements Act of 1976", comprising sections 15c to 15h, 18a, and 66 of this title. For complete classification of the Hart-Scott-Rodino Act, see Short Title note under section 1 of this title.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CONGRESSIONAL INVESTIGATION OF MONOPOLY**

Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, created a Temporary National Economic Committee which was authorized to make a full investigation on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services. The time for submitting the final report under Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, as amended Apr. 26, 1939, ch. 104, §§1, 2, 53 Stat. 624, was extended to Apr. 3, 1941, by Joint Res. Dec. 16, 1940, ch. 932, 54 Stat. 1225. The committee's report was presented to Congress on Mar. 31, 1941, and was published in Senate Document No. 35.

#### **EXECUTIVE DOCUMENTS**

#### **EXECUTIVE ORDER NO. 12022**

Ex. Ord. No. 12022, Dec. 1, 1977, 42 F.R. 61441, as amended by Ex. Ord. No. 12052, Apr. 7, 1978, 43 F.R. 15133, which related to the National Commission for the Review of Antitrust Laws and Procedures, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

### **§1. Trusts, etc., in restraint of trade illegal; penalty**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955,

ch. 281, 69 Stat. 282; Pub. L. 93–528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 94–145, §2, Dec. 12, 1975, 89 Stat. 801; Pub. L. 101–588, §4(a), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108–237, title II, §215(a), June 22, 2004, 118 Stat. 668.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2004**—Pub. L. 108–237 substituted "\$100,000,000" for "\$10,000,000", "\$1,000,000" for "\$350,000", and "10" for "three".

**1990**—Pub. L. 101–588 substituted "\$10,000,000" for "one million dollars" and "\$350,000" for "one hundred thousand dollars".

**1975**—Pub. L. 94–145 struck out from first sentence two provisos granting anti-trust exemption to State fair trade laws.

**1974**—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

**1955**—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

**1937**—Act Aug. 17, 1937, inserted two provisos.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2001 AMENDMENT**

Pub. L. 107–72, §4, Nov. 20, 2001, 115 Stat. 650, provided that: "This Act [enacting and amending provisions set out as notes under this section] and the amendments made by this Act shall take effect on September 30, 2001."

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Pub. L. 94–145, §4, Dec. 12, 1974, 89 Stat. 801, provided that: "The amendments made by sections 2 and 3 of this Act [amending this section and section 45 of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

### **SHORT TITLE OF 2022 AMENDMENT**

Pub. L. 117–328, div. GG, §101, Dec. 29, 2022, 136 Stat. 5967, provided that: "This division [enacting section 18b of this title, amending section 1407 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as a note under section 18b of this title, and amending provisions set out as a note under section 18a of this title] may be cited as the 'Merger Filing Fee Modernization Act of 2022'."

[Another section 101 of div. GG of Pub. L. 117–328 amended provisions set out as a note under section 18a of this title.]

### **SHORT TITLE OF 2020 AMENDMENT**

Pub. L. 116–257, §1, Dec. 23, 2020, 134 Stat. 1147, provided that: "This Act [enacting section 7a–3 of this title] may be cited as the 'Criminal Antitrust Anti-Retaliation Act of 2019'."

Pub. L. 116–159, div. D, title III, §4301, Oct. 1, 2020, 134 Stat. 742, provided that: "This title [enacting provisions set out as notes under section 7a of this title and amending and repealing provisions set out as notes under this section] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Permanent Extension Act'."

### **SHORT TITLE OF 2015 AMENDMENT**

Pub. L. 114–44, §1, Aug. 6, 2015, 129 Stat. 472, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Need-Based Educational Aid Act of 2015'."

### **SHORT TITLE OF 2009 AMENDMENT**

Pub. L. 111–30, §1, June 19, 2009, 123 Stat. 1775, provided that: "This Act [enacting and amending provisions set out as notes under this section] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act'."

### **SHORT TITLE OF 2008 AMENDMENT**

Pub. L. 110–327, §1, Sept. 30, 2008, 122 Stat. 3566, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Need-Based Educational Aid Act of 2008'."

#### **SHORT TITLE OF 2007 AMENDMENT**

Pub. L. 110–6, §1, Feb. 26, 2007, 121 Stat. 61, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Antitrust Modernization Commission Extension Act of 2007'."

#### **SHORT TITLE OF 2004 AMENDMENT**

Pub. L. 108–237, title II, §201, June 22, 2004, 118 Stat. 665, provided that: "This title [amending this section and sections 2, 3, and 16 of this title and enacting provisions set out as notes under this section and section 16 of this title] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Act of 2004'."

#### **SHORT TITLE OF 2002 AMENDMENT**

Pub. L. 107–273, div. C, title IV, §14101, Nov. 2, 2002, 116 Stat. 1921, provided that: "This title [amending sections 3, 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 3 of this title, amending provisions set out as notes under this section and section 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] may be cited as the 'Antitrust Technical Corrections Act of 2002'."

#### **SHORT TITLE OF 2001 AMENDMENT**

Pub. L. 107–72, §1, Nov. 20, 2001, 115 Stat. 648, provided that: "This Act [enacting and amending provisions set out as notes under this section] may be cited as the 'Need-Based Educational Aid Act of 2001'."

#### **SHORT TITLE OF 1998 AMENDMENT**

Pub. L. 105–297, §1, Oct. 27, 1998, 112 Stat. 2824, provided that: "This Act [enacting section 26b of this title and provisions set out as a note under section 26b of this title] may be cited as the 'Curt Flood Act of 1998'."

#### **SHORT TITLE OF 1997 AMENDMENTS**

Pub. L. 105–43, §1, Sept. 17, 1997, 111 Stat. 1140, provided that: "This Act [enacting and amending provisions set out as notes below] may be cited as the 'Need-Based Educational Aid Antitrust Protection Act of 1997'."

Pub. L. 105–26, §1, July 3, 1997, 111 Stat. 241, provided that: "This Act [amending sections 37 and 37a of this title and enacting provisions set out as notes under section 37 of this title] may be cited as the 'Charitable Donation Antitrust Immunity Act of 1997'."

#### **SHORT TITLE OF 1995 AMENDMENT**

Pub. L. 104–63, §1, Dec. 8, 1995, 109 Stat. 687, provided that: "This Act [enacting sections 37 and 37a of this title and provisions set out as a note under section 37 of this title] may be cited as the 'Charitable Gift Annuity Antitrust Relief Act of 1995'."

#### **SHORT TITLE OF 1990 AMENDMENT**

Pub. L. 101–588, §1, Nov. 16, 1990, 104 Stat. 2879, provided: "That this Act [amending this section and sections 2, 3, 15a, and 19 of this title and repealing section 20 of this title] may be cited as the 'Antitrust Amendments Act of 1990'."

#### **SHORT TITLE OF 1984 AMENDMENT**

Pub. L. 98–544, §1, Oct. 24, 1984, 98 Stat. 2750, provided: "That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the 'Local Government Antitrust Act of 1984'."

#### **SHORT TITLE OF 1982 AMENDMENT**

Pub. L. 97–290, title IV, §401, Oct. 8, 1982, 96 Stat. 1246, provided that: "This title [enacting section 6a of this title and amending section 45 of this title] may be cited as the 'Foreign Trade Antitrust Improvements Act of 1982'."

#### **SHORT TITLE OF 1980 AMENDMENT**

Pub. L. 96–493, §1, Dec. 2, 1980, 94 Stat. 2568, provided: "That this Act [enacting section 26a of this title] may be cited as the 'Gasohol Competition Act of 1980'."

#### **SHORT TITLE OF 1976 AMENDMENT**

Pub. L. 94–435, §1, Sept. 30, 1976, 90 Stat. 1383, provided: "That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8, 15c, 18a, and 1311 of this title] may be cited as the 'Hart-Scott-Rodino Antitrust Improvements Act of 1976'."

#### **SHORT TITLE OF 1975 AMENDMENT**

Pub. L. 94–145, §1, Dec. 12, 1975, 89 Stat. 801, provided: "That this Act [amending this section and section 45 of this title and enacting provisions set out as a note under this section] may be cited as the 'Consumer Goods Pricing Act of 1975'."

#### **SHORT TITLE OF 1974 AMENDMENT**

Pub. L. 93–528, §1, Dec. 21, 1974, 88 Stat. 1706, provided: "That this Act [amending this section and section 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telecommunications, and sections 43, 44, and 45 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

#### **SHORT TITLE**

Pub. L. 94–435, title III, §305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: "That this Act [this section and sections 2 to 7 of this title] may be cited as the 'Sherman Act'."

#### **ANTITRUST ENFORCEMENT ENHANCEMENTS AND COOPERATION INCENTIVES**

Pub. L. 108–237, title II, §211, June 22, 2004, 118 Stat. 666, as amended by Pub. L. 111–30, §2, June 19, 2009, 123 Stat. 1775; Pub. L. 111–190, §1, June 9, 2010, 124 Stat. 1275, which provided a sunset date for sections 211 to 214 of Pub. L. 108–237, with exceptions, was repealed by Pub. L. 116–159, div. D, title III, §4303(a), Oct. 1, 2020, 134 Stat. 742, with continuity provision for markers and agreements existing on or before June 22, 2020.

Pub. L. 108–237, title II, §212, June 22, 2004, 118 Stat. 666, as amended by Pub. L. 111–190, §2, June 9, 2010, 124 Stat. 1275; Pub. L. 116–159, div. D, title III, §4303(b)(2), Oct. 1, 2020, 134 Stat. 742, which defined terms for sections 211 to 215 of Pub. L. 108–237, was transferred to section 7a of this title.

Pub. L. 108–237, title II, §213, June 22, 2004, 118 Stat. 666, as amended by Pub. L. 111–190, §3, June 9, 2010, 124 Stat. 1275, which provided limitation on recovery, was transferred to section 7a–1 of this title.

Pub. L. 108–237, title II, §214, June 22, 2004, 118 Stat. 667, as amended by Pub. L. 111–190, §4, June 9, 2010, 124 Stat. 1276, which provided rights, authorities, and liabilities not affected by sections 211 to 215 of Pub. L. 108–237, was transferred to section 7a–2 of this title.

#### **ANTITRUST MODERNIZATION COMMISSION**

Pub. L. 107–273, div. C, title I, subtitle D, Nov. 2, 2002, 116 Stat. 1856, as amended by Pub. L. 110–6, §2, Feb. 26, 2007, 121 Stat. 61, provided that:

"SEC. 11051. SHORT TITLE.

"This subtitle may be cited as the 'Antitrust Modernization Commission Act of 2002'.

"SEC. 11052. ESTABLISHMENT.

"There is established the Antitrust Modernization Commission (in this subtitle referred to as the 'Commission').

"SEC. 11053. DUTIES OF THE COMMISSION.

"The duties of the Commission are—

"(1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;

"(2) to solicit views of all parties concerned with the operation of the antitrust laws;

"(3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and

"(4) to prepare and to submit to Congress and the President a report in accordance with section 11058.



"SEC. 11054. MEMBERSHIP.

"(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed as follows:

"(1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.

"(2) Two members shall be appointed by the majority leader of the Senate.

"(3) Two members shall be appointed by the minority leader of the Senate.

"(4) Two members shall be appointed by the Speaker of the House of Representatives.

"(5) Two members shall be appointed by the minority leader of the House of Representatives.

"(b) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall be ineligible for appointment to the Commission.

"(c) TERM OF APPOINTMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

"(2) EARLY TERMINATION OF APPOINTMENT.—If a member of the Commission who is appointed to the Commission as—

"(A) an officer or employee of a government ceases to be an officer or employee of such government; or

"(B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;

then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.

"(d) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

"(e) APPOINTMENT DEADLINE.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act [Nov. 2, 2002].

"(f) MEETINGS.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.

"(g) VACANCY.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.

"(h) CONSULTATION BEFORE APPOINTMENT.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall consult with each other to ensure fair and equitable representation of various points of view in the Commission.

"(i) CHAIRPERSON; VICE CHAIRPERSON.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.

"SEC. 11055. COMPENSATION OF THE COMMISSION.

"(a) PAY.—

"(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

"(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

"(b) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

"SEC. 11056. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

"(a) STAFF.—

"(1) APPOINTMENT.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to

perform its duties. The appointment of an executive director shall be subject to approval by the Commission.

"(2) COMPENSATION.—The chairperson of the Commission may fix the compensation of the executive director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.

"(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109(b) of title 5, United States Code.

**"SEC. 11057. POWERS OF THE COMMISSION.**

"(a) HEARINGS AND MEETINGS.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.

"(b) OFFICIAL DATA.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

"(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

"(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(f) GIFTS, BEQUESTS, AND DEVICES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

**"SEC. 11058. REPORT.**

"Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.

**"SEC. 11059. TERMINATION OF COMMISSION.**

"The Commission shall cease to exist 60 days after the date on which the report required by section 11058 is submitted.

**"SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.**

"There is authorized to be appropriated \$4,000,000 to carry out this subtitle."

**YEAR 2000 INFORMATION AND READINESS DISCLOSURE**

Pub. L. 105–271, Oct. 19, 1998, 112 Stat. 2386, as amended by Pub. L. 107–273, div. C, title IV, §14102(e), Nov. 2, 2002, 116 Stat. 1922, known as the Year 2000 Information and Readiness Disclosure Act, provided for the free disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

**APPLICATION OF ANTITRUST LAWS TO AWARD OF NEED-BASED EDUCATIONAL AID**

Pub. L. 107–72, §3, Nov. 20, 2001, 115 Stat. 648, provided that:

"(a) STUDY.—

"(1) IN GENERAL.—The Comptroller General shall conduct a study of the effect of the antitrust exemption on institutional student aid under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) [Pub. L. 103–382, see below].

"(2) CONSULTATION.—The Comptroller General shall have final authority to determine the content of the study under paragraph (1), but in determining the content of the study, the Comptroller General shall consult with—

"(A) the institutions of higher education participating under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) (referred to in this Act [see Short Title of 2001 Amendment note above] as the 'participating institutions');

"(B) the Antitrust Division of the Department of Justice; and

"(C) other persons that the Comptroller General determines are appropriate.

"(3) MATTERS STUDIED.—

"(A) IN GENERAL.—The study under paragraph (1) shall—

"(i) examine the needs analysis methodologies used by participating institutions;

"(ii) identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions, including—

"(I) the percentage of first-year students receiving institutional grant aid;

"(II) the mean and median grant eligibility and institutional grant aid to first-year students; and

"(III) the mean and median parental and student contributions to undergraduate costs of attendance for first year students receiving institutional grant aid;

"(iii) to the extent useful in determining the effect of the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note), examine—

"(I) comparison data, identified in clauses (i) and (ii), from institutions of higher education that do not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note); and

"(II) other baseline trend data from national benchmarks; and

"(iv) examine any other issues that the Comptroller General determines are appropriate, including other types of aid affected by section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note).

"(B) ASSESSMENT.—

"(i) IN GENERAL.—The study under paragraph (1) shall assess what effect the antitrust exemption on institutional student aid has had on institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance.

"(ii) CHANGES OVER TIME.—The assessment under clause (i) shall consider any changes in institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance over time for institutions of higher education, including consideration of—

"(I) the time period prior to adoption of the consensus methodologies at participating institutions; and

"(II) the data examined pursuant to subparagraph (A)(iii).

"(b) REPORT.—

"(1) IN GENERAL.—Not later than September 30, 2006, the Comptroller General shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains the findings and conclusions of the Comptroller General regarding the matters studied under subsection (a).

"(2) IDENTIFYING INDIVIDUAL INSTITUTIONS.—The Comptroller General shall not identify an individual institution of higher education in information submitted in the report under paragraph (1) unless the information on the institution is available to the public.

"(c) RECORDKEEPING REQUIREMENT.—

"(1) IN GENERAL.—For the purpose of completing the study under subsection (a)(1), a participating institution shall—

"(A) collect and maintain for each academic year until the study under subsection (a)(1) is completed—

"(i) student-level data that is sufficient, in the judgment of the Comptroller General, to permit the analysis of expected family contributions, identified need, and undergraduate grant aid awards; and

"(ii) information on formulas used by the institution to determine need; and

"(B) submit the data and information under paragraph (1) to the Comptroller General at such time as the Comptroller General may reasonably require.

"(2) NON-PARTICIPATING INSTITUTIONS.—Nothing in this subsection shall be construed to require an institution of higher education that does not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) to collect and maintain data under this subsection."

Pub. L. 103–382, title V, §568(a)–(d), Oct. 20, 1994, 108 Stat. 4060, 4061, as amended by Pub. L. 105–43, §2(a), Sept. 17, 1997, 111 Stat. 1140; Pub. L. 105–244, title I, §102(a)(3), Oct. 7, 1998, 112 Stat. 1618; Pub. L. 107–72, §2, Nov. 20, 2001, 115 Stat. 648; Pub. L. 110–327, §2, Sept. 30, 2008, 122 Stat. 3566; Pub. L. 114–44, §2, Aug. 6, 2015, 129 Stat. 472, provided that:

"(a) EXEMPTION.—It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree—

"(1) to award such students financial aid only on the basis of demonstrated financial need for such aid;

"(2) to use common principles of analysis for determining the need of such students for financial aid if the agreement to use such principles does not restrict financial aid officers at such institutions in their exercising independent professional judgment with respect to individual applicants for such financial aid; or

"(3) to use a common aid application form for need-based financial aid for such students if the agreement to use such form does not restrict such institutions in their requesting from such students, or in their using, data in addition to the data requested on such form.

"(b) LIMITATIONS.—Subsection (a) shall not apply with respect to—

"(1) any financial aid or assistance authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.); or

"(2) any contract, combination, or conspiracy with respect to the amount or terms of any prospective financial aid award to a specific individual.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'alien' has the meaning given such term in section 101(3) [101(a)(3)] of the Immigration and Nationality Act (8 U.S.C. 1101(3) [1101(a)(3)]);

"(2) the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition;

"(3) the term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001];

"(4) the term 'lawfully admitted for permanent residence' has the meaning given such term in section 101(20) [101(a)(20)] of the Immigration and Nationality Act (8 U.S.C. 1101(20) [1101(a)(20)]);

"(5) the term 'national of the United States' has the meaning given such term in section 101(22) [101(a)(22)] of the Immigration and Nationality Act (8 U.S.C. 1101(22) [1101(a)(22)]);

"(6) the term 'on a need-blind basis' means without regard to the financial circumstances of the student involved or the student's family; and

"(7) the term 'student' means, with respect to an institution of higher education, a national of the United States or an alien admitted for permanent residence who is admitted to attend an undergraduate program at such institution on a full-time basis.

"(d) EXPIRATION.—Subsection (a) shall expire on September 30, 2022."

[Pub. L. 105–43, §2(b), Sept. 17, 1997, 111 Stat. 1140, provided that: "The amendments made by subsection (a) [amending section 568(a)–(d) of Pub. L. 103–382, set out above] shall take effect immediately before September 30, 1997."]

## EXECUTIVE DOCUMENTS

### EX. ORD. NO. 14036. PROMOTING COMPETITION IN THE AMERICAN ECONOMY

Ex. Ord. No. 14036, July 9, 2021, 86 F.R. 36987, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the interests of American workers, businesses, and consumers, it is hereby ordered as follows:

SECTION 1. *Policy.* A fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.

The American promise of a broad and sustained prosperity depends on an open and competitive economy. For workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage. For small businesses and farmers, it creates more choices among suppliers and major buyers, leading to more take-home income, which they can reinvest in their enterprises. For

entrepreneurs, it provides space to experiment, innovate, and pursue the new ideas that have for centuries powered the American economy and improved our quality of life. And for consumers, it means more choices, better service, and lower prices.

Robust competition is critical to preserving America's role as the world's leading economy.

Yet over the last several decades, as industries have consolidated, competition has weakened in too many markets, denying Americans the benefits of an open economy and widening racial, income, and wealth inequality. Federal Government inaction has contributed to these problems, with workers, farmers, small businesses, and consumers paying the price.

Consolidation has increased the power of corporate employers, making it harder for workers to bargain for higher wages and better work conditions. Powerful companies require workers to sign non-compete agreements that restrict their ability to change jobs. And, while many occupational licenses are critical to increasing wages for workers and especially workers of color, some overly restrictive occupational licensing requirements can impede workers' ability to find jobs and to move between States.

Consolidation in the agricultural industry is making it too hard for small family farms to survive. Farmers are squeezed between concentrated market power in the agricultural input industries—seed, fertilizer, feed, and equipment suppliers—and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

The American information technology sector has long been an engine of innovation and growth, but today a small number of dominant internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage. Too many small businesses across the economy depend on those platforms and a few online marketplaces for their survival. And too many local newspapers have shuttered or downsized, in part due to the internet platforms' dominance in advertising markets.

Americans are paying too much for prescription drugs and healthcare services—far more than the prices paid in other countries. Hospital consolidation has left many areas, particularly rural communities, with inadequate or more expensive healthcare options. And too often, patent and other laws have been misused to inhibit or delay—for years and even decades—competition from generic drugs and biosimilars, denying Americans access to lower-cost drugs.

In the telecommunications sector, Americans likewise pay too much for broadband, cable television, and other communications services, in part because of a lack of adequate competition. In the financial-services sector, consumers pay steep and often hidden fees because of industry consolidation. Similarly, the global container shipping industry has consolidated into a small number of dominant foreign-owned lines and alliances, which can disadvantage American exporters.

The problem of economic consolidation now spans these sectors and many others, endangering our ability to rebuild and emerge from the coronavirus disease 2019 (COVID-19) pandemic with a vibrant, innovative, and growing economy. Meanwhile, the United States faces new challenges to its economic standing in the world, including unfair competitive pressures from foreign monopolies and firms that are state-owned or state-sponsored, or whose market power is directly supported by foreign governments.

We must act now to reverse these dangerous trends, which constrain the growth and dynamism of our economy, impair the creation of high-quality jobs, and threaten America's economic standing in the world.

This order affirms that it is the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony—especially as these issues arise in labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.

It is also the policy of my Administration to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms, especially as they stem from serial mergers, the acquisition of nascent competitors, the aggregation of data, unfair competition in attention markets, the surveillance of users, and the presence of network effects.

Whereas decades of industry consolidation have often led to excessive market concentration, this order reaffirms that the United States retains the authority to challenge transactions whose previous consummation was in violation of the Sherman Antitrust Act (26 Stat. 209, 15 U.S.C. 1 *et seq.*) (Sherman Act), the Clayton Antitrust Act (Public Law 63-212, 38 Stat. 730, 15 U.S.C. 12 *et seq.*) (Clayton Act), or other laws. *See* 15 U.S.C. 18; *Standard Oil Co. v. United States*, 221 U.S. 1 (1911).

This order reasserts as United States policy that the answer to the rising power of foreign monopolies and cartels is not the tolerance of domestic monopolization, but rather the promotion of competition and

innovation by firms small and large, at home and worldwide.

It is also the policy of my Administration to support aggressive legislative reforms that would lower prescription drug prices, including by allowing Medicare to negotiate drug prices, by imposing inflation caps, and through other related reforms. It is further the policy of my Administration to support the enactment of a public health insurance option.

My Administration further reaffirms the policy stated in Executive Order 13725 of April 15, 2016 (Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy) [5 U.S.C. 601 note], and the Federal Government's commitment to the principles that led to the passage of the Sherman Act, the Clayton Act, the Packers and Stockyards Act, 1921 (Public Law 67–51, 42 Stat. 159, 7 U.S.C. 181 *et seq.*) (Packers and Stockyards Act), the Celler-Kefauver Antimerger Act (Public Law 81–899, 64 Stat. 1125), the Bank Merger Act (Public Law 86–463, 74 Stat. 129, 12 U.S.C. 1828), and the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat. 56), among others.

SEC. 2. *The Statutory Basis of a Whole-of-Government Competition Policy.* (a) The antitrust laws, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act (Public Law 63–203, 38 Stat. 717, 15 U.S.C. 41 *et seq.*), are a first line of defense against the monopolization of the American economy.

(b) The antitrust laws reflect an underlying policy favoring competition that transcends those particular enactments. As the Supreme Court has stated, for instance, the Sherman Act "rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions." *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

(c) Consistent with these broader policies, and in addition to the traditional antitrust laws, the Congress has also enacted industry-specific fair competition and anti-monopolization laws that often provide additional protections. Such enactments include the Packers and Stockyards Act, the Federal Alcohol Administration Act (Public Law 74–401, 49 Stat. 977, 27 U.S.C. 201 *et seq.*), the Bank Merger Act, the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417, 98 Stat. 1585), the Shipping Act of 1984 (Public Law 98–237, 98 Stat. 67, 46 U.S.C. 40101 *et seq.*) (Shipping Act), the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803), the Telecommunications Act of 1996, the Fairness to Contact Lens Consumers Act (Public Law 108–164, 117 Stat. 2024, 15 U.S.C. 7601 *et seq.*), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203, 124 Stat. 1376) (Dodd-Frank Act).

(d) These statutes independently charge a number of executive departments and agencies (agencies) to protect conditions of fair competition in one or more ways, including by:

- (i) policing unfair, deceptive, and abusive business practices;
- (ii) resisting consolidation and promoting competition within industries through the independent oversight of mergers, acquisitions, and joint ventures;
- (iii) promulgating rules that promote competition, including the market entry of new competitors; and
- (iv) promoting market transparency through compelled disclosure of information.

(e) The agencies that administer such or similar authorities include the Department of the Treasury, the Department of Agriculture, the Department of Health and Human Services, the Department of Transportation, the Federal Reserve System, the Federal Trade Commission (FTC), the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Federal Communications Commission, the Federal Maritime Commission, the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, the Consumer Financial Protection Bureau, and the Surface Transportation Board.

(f) Agencies can influence the conditions of competition through their exercise of regulatory authority or through the procurement process. *See* 41 U.S.C. 1705.

(g) This order recognizes that a whole-of-government approach is necessary to address overconcentration, monopolization, and unfair competition in the American economy. Such an approach is supported by existing statutory mandates. Agencies can and should further the policies set forth in section 1 of this order by, among other things, adopting pro-competitive regulations and approaches to procurement and spending, and by rescinding regulations that create unnecessary barriers to entry that stifle competition.

SEC. 3. *Agency Cooperation in Oversight, Investigation, and Remedies.* (a) The Congress frequently has created overlapping agency jurisdiction in the policing of anticompetitive conduct and the oversight of mergers. It is the policy of my Administration that, when agencies have overlapping jurisdiction, they should endeavor to cooperate fully in the exercise of their oversight authority, to benefit from the respective expertise of the agencies and to improve Government efficiency.

(b) Where there is overlapping jurisdiction over particular cases, conduct, transactions, or industries, agencies are encouraged to coordinate their efforts, as appropriate and consistent with applicable law, with

respect to:

- (i) the investigation of conduct potentially harmful to competition;
- (ii) the oversight of proposed mergers, acquisitions, and joint ventures; and
- (iii) the design, execution, and oversight of remedies.

(c) The means of cooperation in cases of overlapping jurisdiction should include, as appropriate and consistent with applicable law:

- (i) sharing relevant information and industry data;
- (ii) in the case of major transactions, soliciting and giving significant consideration to the views of the Attorney General or the Chair of the FTC, as applicable; and
- (iii) cooperating with any concurrent Department of Justice or FTC oversight activities under the Sherman Act or Clayton Act.

(d) Nothing in subsections (a) through (c) of this section shall be construed to suggest that the statutory standard applied by an agency, or its independent assessment under that standard, should be displaced or substituted by the judgment of the Attorney General or the Chair of the FTC. When their views are solicited, the Attorney General and the Chair of the FTC are encouraged to provide a response to the agency in time for the agency to consider it in advance of any statutory deadline for agency action.

SEC. 4. *The White House Competition Council.* (a) There is established a White House Competition Council (Council) within the Executive Office of the President.

(b) The Council shall coordinate, promote, and advance Federal Government efforts to address overconcentration, monopolization, and unfair competition in or directly affecting the American economy, including efforts to:

- (i) implement the administrative actions identified in this order;
- (ii) develop procedures and best practices for agency cooperation and coordination on matters of overlapping jurisdiction, as described in section 3 of this order;
- (iii) identify and advance any additional administrative actions necessary to further the policies set forth in section 1 of this order; and
- (iv) identify any potential legislative changes necessary to further the policies set forth in section 1 of this order.

(c) The Council shall work across agencies to provide a coordinated response to overconcentration, monopolization, and unfair competition in or directly affecting the American economy. The Council shall also work with each agency to ensure that agency operations are conducted in a manner that promotes fair competition, as appropriate and consistent with applicable law.

(d) The Council shall not discuss any current or anticipated enforcement actions.

(e) The Council shall be led by the Assistant to the President for Economic Policy and Director of the National Economic Council, who shall serve as Chair of the Council.

(f) In addition to the Chair, the Council shall consist of the following members:

- (i) the Secretary of the Treasury;
- (ii) the Secretary of Defense;
- (iii) the Attorney General;
- (iv) the Secretary of Agriculture;
- (v) the Secretary of Commerce;
- (vi) the Secretary of Labor;
- (vii) the Secretary of Health and Human Services;
- (viii) the Secretary of Transportation;
- (ix) the Administrator of the Office of Information and Regulatory Affairs; and
- (x) the heads of such other agencies and offices as the Chair may from time to time invite to participate.

(g) The Chair shall invite the participation of the Chair of the FTC, the Chair of the Federal Communications Commission, the Chair of the Federal Maritime Commission, the Director of the Consumer Financial Protection Bureau, and the Chair of the Surface Transportation Board, to the extent consistent with their respective statutory authorities and obligations.

(h) Members of the Council shall designate, not later than 30 days after the date of this order [July 9, 2021], a senior official within their respective agency or office who shall coordinate with the Council and who shall be responsible for overseeing the agency's or office's efforts to address overconcentration, monopolization, and unfair competition. The Chair may coordinate subgroups consisting exclusively of Council members or their designees, as appropriate.

(i) The Council shall meet on a semi-annual basis unless the Chair determines that a meeting is unnecessary.

(j) Each agency shall bear its own expenses for participating in the Council.

SEC. 5. *Further Agency Responsibilities.* (a) The heads of all agencies shall consider using their authorities to further the policies set forth in section 1 of this order, with particular attention to:

(i) the influence of any of their respective regulations, particularly any licensing regulations, on concentration and competition in the industries under their jurisdiction; and

(ii) the potential for their procurement or other spending to improve the competitiveness of small businesses and businesses with fair labor practices.

(b) The Attorney General, the Chair of the FTC, and the heads of other agencies with authority to enforce the Clayton Act are encouraged to enforce the antitrust laws fairly and vigorously.

(c) To address the consolidation of industry in many markets across the economy, as described in section 1 of this order, the Attorney General and the Chair of the FTC are encouraged to review the horizontal and vertical merger guidelines and consider whether to revise those guidelines.

(d) To avoid the potential for anticompetitive extension of market power beyond the scope of granted patents, and to protect standard-setting processes from abuse, the Attorney General and the Secretary of Commerce are encouraged to consider whether to revise their position on the intersection of the intellectual property and antitrust laws, including by considering whether to revise the Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments issued jointly by the Department of Justice, the United States Patent and Trademark Office, and the National Institute of Standards and Technology on December 19, 2019.

(e) To ensure Americans have choices among financial institutions and to guard against excessive market power, the Attorney General, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, is encouraged to review current practices and adopt a plan, not later than 180 days after the date of this order, for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956 (Public Law 84-511, 70 Stat. 133, 12 U.S.C. 1841 *et seq.*) that is in accordance with the factors enumerated in 12 U.S.C. 1828(c) and 1842(c).

(f) To better protect workers from wage collusion, the Attorney General and the Chair of the FTC are encouraged to consider whether to revise the Antitrust Guidance for Human Resource Professionals of October 2016.

(g) To address agreements that may unduly limit workers' ability to change jobs, the Chair of the FTC is encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.

(h) To address persistent and recurrent practices that inhibit competition, the Chair of the FTC, in the Chair's discretion, is also encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority, as appropriate and consistent with applicable law, in areas such as:

(i) unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy;

(ii) unfair anticompetitive restrictions on third-party repair or self-repair of items, such as the restrictions imposed by powerful manufacturers that prevent farmers from repairing their own equipment;

(iii) unfair anticompetitive conduct or agreements in the prescription drug industries, such as agreements to delay the market entry of generic drugs or biosimilars;

(iv) unfair competition in major Internet marketplaces;

(v) unfair occupational licensing restrictions;

(vi) unfair tying practices or exclusionary practices in the brokerage or listing of real estate; and

(vii) any other unfair industry-specific practices that substantially inhibit competition.

(i) The Secretary of Agriculture shall:

(i) to address the unfair treatment of farmers and improve conditions of competition in the markets for their products, consider initiating a rulemaking or rulemakings under the Packers and Stockyards Act to strengthen the Department of Agriculture's regulations concerning unfair, unjustly discriminatory, or deceptive practices and undue or unreasonable preferences, advantages, prejudices, or disadvantages, with the purpose of furthering the vigorous implementation of the law established by the Congress in 1921 and fortified by amendments. In such rulemaking or rulemakings, the Secretary of Agriculture shall consider, among other things:

(A) providing clear rules that identify recurrent practices in the livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive and therefore violate the Packers and Stockyards Act;

(B) reinforcing the long-standing Department of Agriculture interpretation that it is unnecessary under the Packers and Stockyards Act to demonstrate industry-wide harm to establish a violation of the Act and that the "unfair, unjustly discriminatory, or deceptive" treatment of one farmer, the giving to one farmer of



an "undue or unreasonable preference or advantage," or the subjection of one farmer to an "undue or unreasonable prejudice or disadvantage in any respect" violates the Act;

(C) prohibiting unfair practices related to grower ranking systems—systems in which the poultry companies, contractors, or dealers exercise extraordinary control over numerous inputs that determine the amount farmers are paid and require farmers to assume the risk of factors outside their control, leaving them more economically vulnerable;

(D) updating the appropriate definitions or set of criteria, or application thereof, for undue or unreasonable preferences, advantages, prejudices, or disadvantages under the Packers and Stockyards Act; and

(E) adopting, to the greatest extent possible and as appropriate and consistent with applicable law, appropriate anti-retaliation protections, so that farmers may assert their rights without fear of retribution;

(ii) to ensure consumers have accurate, transparent labels that enable them to choose products made in the United States, consider initiating a rulemaking to define the conditions under which the labeling of meat products can bear voluntary statements indicating that the product is of United States origin, such as "Product of USA";

(iii) to ensure that farmers have greater opportunities to access markets and receive a fair return for their products, not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, with a plan to promote competition in the agricultural industries and to support value-added agriculture and alternative food distribution systems through such means as:

(A) the creation or expansion of useful information for farmers, such as model contracts, to lower transaction costs and help farmers negotiate fair deals;

(B) measures to encourage improvements in transparency and standards so that consumers may choose to purchase products that support fair treatment of farmers and agricultural workers and sustainable agricultural practices;

(C) measures to enhance price discovery, increase transparency, and improve the functioning of the cattle and other livestock markets;

(D) enhanced tools, including any new legislative authorities needed, to protect whistleblowers, monitor agricultural markets, and enforce relevant laws;

(E) any investments or other support that could bolster competition within highly concentrated agricultural markets; and

(F) any other means that the Secretary of Agriculture deems appropriate;

(iv) to improve farmers' and smaller food processors' access to retail markets, not later than 300 days after the date of this order, in consultation with the Chair of the FTC, submit a report to the Chair of the White House Competition Council, on the effect of retail concentration and retailers' practices on the conditions of competition in the food industries, including any practices that may violate the Federal Trade Commission Act, the Robinson-Patman Act (Public Law 74–692, 49 Stat. 1526, 15 U.S.C. 13 *et seq.*), or other relevant laws, and on grants, loans, and other support that may enhance access to retail markets by local and regional food enterprises; and

(v) to help ensure that the intellectual property system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets beyond that reasonably contemplated by the Patent Act (*see* 35 U.S.C. 100 *et seq.* and 7 U.S.C. 2321 *et seq.*), in consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, submit a report to the Chair of the White House Competition Council, enumerating and describing any relevant concerns of the Department of Agriculture and strategies for addressing those concerns across intellectual property, antitrust, and other relevant laws.

(j) To protect the vibrancy of the American markets for beer, wine, and spirits, and to improve market access for smaller, independent, and new operations, the Secretary of the Treasury, in consultation with the Attorney General and the Chair of the FTC, not later than 120 days after the date of this order, shall submit a report to the Chair of the White House Competition Council, assessing the current market structure and conditions of competition, including an assessment of any threats to competition and barriers to new entrants, including:

(i) any unlawful trade practices in the beer, wine, and spirits markets, such as certain exclusionary, discriminatory, or anticompetitive distribution practices, that hinder smaller and independent businesses or new entrants from distributing their products;

(ii) patterns of consolidation in production, distribution, or retail beer, wine, and spirits markets; and

(iii) any unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose.

(k) To follow up on the foregoing assessment, the Secretary of the Treasury, through the Administrator of the Alcohol and Tobacco Tax and Trade Bureau, shall, not later than 240 days after the date of this order, consider:

(i) initiating a rulemaking to update the Alcohol and Tobacco Tax and Trade Bureau's trade practice regulations;

(ii) rescinding or revising any regulations of the beer, wine, and spirits industries that may unnecessarily inhibit competition; and

(iii) reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries.

(l) To promote competition, lower prices, and a vibrant and innovative telecommunications ecosystem, the Chair of the Federal Communications Commission is encouraged to work with the rest of the Commission, as appropriate and consistent with applicable law, to consider:

(i) adopting through appropriate rulemaking "Net Neutrality" rules similar to those previously adopted under title II of the Communications Act of 1934 (Public Law 73-416, 48 Stat. 1064, 47 U.S.C. 151 *et seq.*), as amended by the Telecommunications Act of 1996, in "Protecting and Promoting the Open internet," 80 Fed.Reg. 19738 (Apr. 13, 2015);

(ii) conducting future spectrum auctions under rules that are designed to help avoid excessive concentration of spectrum license holdings in the United States, so as to prevent spectrum stockpiling, warehousing of spectrum by licensees, or the creation of barriers to entry, and to improve the conditions of competition in industries that depend upon radio spectrum, including mobile communications and radio-based broadband services;

(iii) providing support for the continued development and adoption of 5G Open Radio Access Network (O-RAN) protocols and software, continuing to attend meetings of voluntary and consensus-based standards development organizations, so as to promote or encourage a fair and representative standard-setting process, and undertaking any other measures that might promote increased openness, innovation, and competition in the markets for 5G equipment;

(iv) prohibiting unjust or unreasonable early termination fees for end-user communications contracts, enabling consumers to more easily switch providers;

(v) initiating a rulemaking that requires broadband service providers to display a broadband consumer label, such as that as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16-357), so as to give consumers clear, concise, and accurate information regarding provider prices and fees, performance, and network practices;

(vi) initiating a rulemaking to require broadband service providers to regularly report broadband price and subscription rates to the Federal Communications Commission for the purpose of disseminating that information to the public in a useful manner, to improve price transparency and market functioning; and

(vii) initiating a rulemaking to prevent landlords and cable and Internet service providers from inhibiting tenants' choices among providers.

(m) The Secretary of Transportation shall:

(i) to better protect consumers and improve competition, and as appropriate and consistent with applicable law:

(A) not later than 30 days after the date of this order, appoint or reappoint members of the Advisory Committee for Aviation Consumer Protection to ensure fair representation of consumers, State and local interests, airlines, and airports with respect to the evaluation of aviation consumer protection programs and convene a meeting of the Committee as soon as practicable;

(B) promote enhanced transparency and consumer safeguards, as appropriate and consistent with applicable law, including through potential rulemaking, enforcement actions, or guidance documents, with the aims of:

(1) enhancing consumer access to airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines; and

(2) ensuring that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition;

(C) not later than 45 days after the date of this order, submit a report to the Chair of the White House Competition Council, on the progress of the Department of Transportation's investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID-19 pandemic;

(D) not later than 45 days after the date of this order, publish for notice and comment a proposed rule requiring airlines to refund baggage fees when a passenger's luggage is substantially delayed and other

ancillary fees when passengers pay for a service that is not provided;

(E) not later than 60 days after the date of this order, start development of proposed amendments to the Department of Transportation's definitions of "unfair" and "deceptive" in 49 U.S.C. 41712; and

(F) not later than 90 days after the date of this order, consider initiating a rulemaking to ensure that consumers have ancillary fee information, including "baggage fees," "change fees," and "cancellation fees," at the time of ticket purchase;

(ii) to provide consumers with more flight options at better prices and with improved service, and to extend opportunities for competition and market entry as the industry evolves:

(A) not later than 30 days after the date of this order, convene a working group within the Department of Transportation to evaluate the effectiveness of existing commercial aviation programs, consumer protections, and rules of the Federal Aviation Administration;

(B) consult with the Attorney General regarding means of enhancing effective coordination between the Department of Justice and the Department of Transportation to ensure competition in air transportation and the ability of new entrants to gain access; and

(C) consider measures to support airport development and increased capacity and improve airport congestion management, gate access, implementation of airport competition plans pursuant to 49 U.S.C. 47106(f), and "slot" administration;

(iii) given the emergence of new aerospace-based transportation technologies, such as low-altitude unmanned aircraft system deliveries, advanced air mobility, and high-altitude long endurance operations, that have great potential for American travelers and consumers, yet also the danger of early monopolization or new air traffic control problems, ensure that the Department of Transportation takes action with respect to these technologies to:

(A) facilitate innovation that fosters United States market leadership and market entry to promote competition and economic opportunity and to resist monopolization, while also ensuring safety, providing security and privacy, protecting the environment, and promoting equity; and

(B) provide vigilant oversight over market participants.

(n) To further competition in the rail industry and to provide accessible remedies for shippers, the Chair of the Surface Transportation Board (Chair) is encouraged to work with the rest of the Board to:

(i) consider commencing or continuing a rulemaking to strengthen regulations pertaining to reciprocal switching agreements pursuant to 49 U.S.C. 11102(c), if the Chair determines such rulemaking to be in the public interest or necessary to provide competitive rail service;

(ii) consider rulemakings pertaining to any other relevant matter of competitive access, including bottleneck rates, interchange commitments, or other matters, consistent with the policies set forth in section 1 of this order;

(iii) to ensure that passenger rail service is not subject to unwarranted delays and interruptions in service due to host railroads' failure to comply with the required preference for passenger rail, vigorously enforce new on-time performance requirements adopted pursuant to the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110-423, 122 Stat. 4907) that will take effect on July 1, 2021, and further the work of the passenger rail working group formed to ensure that the Surface Transportation Board will fully meet its obligations; and

(iv) in the process of determining whether a merger, acquisition, or other transaction involving rail carriers is consistent with the public interest under 49 U.S.C. 11323-25, consider a carrier's fulfillment of its responsibilities under 49 U.S.C. 24308 (relating to Amtrak's statutory rights).

(o) The Chair of the Federal Maritime Commission is encouraged to work with the rest of the Commission to:

(i) vigorously enforce the prohibition of unjust and unreasonable practices in the context of detention and demurrage pursuant to the Shipping Act, as clarified in "Interpretive Rule on Demurrage and Detention Under the Shipping Act," 85 Fed. [sic] Reg. 29638 (May 18, 2020);

(ii) request from the National Shipper Advisory Committee recommendations for improving detention and demurrage practices and enforcement of related Shipping Act prohibitions; and

(iii) consider further rulemaking to improve detention and demurrage practices and enforcement of related Shipping Act prohibitions.

(p) The Secretary of Health and Human Services shall:

(i) to promote the wide availability of low-cost hearing aids, not later than 120 days after the date of this order, publish for notice and comment a proposed rule on over-the-counter hearing-aids, as called for by section 709 of the FDA Reauthorization Act of 2017 (Public Law 115-52, 131 Stat. 1005);

(ii) support existing price transparency initiatives for hospitals, other providers, and insurers along with any new price transparency initiatives or changes made necessary by the No Surprises Act (Public Law 116-260,

134 Stat. 2758) or any other statutes;

(iii) to ensure that Americans can choose health insurance plans that meet their needs and compare plan offerings, implement standardized options in the national Health Insurance Marketplace and any other appropriate mechanisms to improve competition and consumer choice;

(iv) not later than 45 days after the date of this order, submit a report to the Assistant to the President for Domestic Policy and Director of the Domestic Policy Council and to the Chair of the White House Competition Council, with a plan to continue the effort to combat excessive pricing of prescription drugs and enhance domestic pharmaceutical supply chains, to reduce the prices paid by the Federal Government for such drugs, and to address the recurrent problem of price gouging;

(v) to lower the prices of and improve access to prescription drugs and biologics, continue to promote generic drug and biosimilar competition, as contemplated by the Drug Competition Action Plan of 2017 and Biosimilar Action Plan of 2018 of the Food and Drug Administration (FDA), including by:

(A) continuing to clarify and improve the approval framework for generic drugs and biosimilars to make generic drug and biosimilar approval more transparent, efficient, and predictable, including improving and clarifying the standards for interchangeability of biological products;

(B) as authorized by the Advancing Education on Biosimilars Act of 2021 (Public Law 117–8, 135 Stat. 254, 42 U.S.C. 263–1), supporting biosimilar product adoption by providing effective educational materials and communications to improve understanding of biosimilar and interchangeable products among healthcare providers, patients, and caregivers;

(C) to facilitate the development and approval of biosimilar and interchangeable products, continuing to update the FDA's biologics regulations to clarify existing requirements and procedures related to the review and submission of Biologics License Applications by advancing the "Biologics Regulation Modernization" rulemaking (RIN 0910–A114); and

(D) with the Chair of the FTC, identifying and addressing any efforts to impede generic drug and biosimilar competition, including but not limited to false, misleading, or otherwise deceptive statements about generic drug and biosimilar products and their safety or effectiveness;

(vi) to help ensure that the patent system, while incentivizing innovation, does not also unjustifiably delay generic drug and biosimilar competition beyond that reasonably contemplated by applicable law, not later than 45 days after the date of this order, through the Commissioner of Food and Drugs, write a letter to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office enumerating and describing any relevant concerns of the FDA;

(vii) to support the market entry of lower-cost generic drugs and biosimilars, continue the implementation of the law widely known as the CREATES Act of 2019 (Public Law 116–94, 133 Stat. 3130), by:

(A) promptly issuing Covered Product Authorizations (CPAs) to assist product developers with obtaining brand-drug samples; and

(B) issuing guidance to provide additional information for industry about CPAs; and

(viii) through the Administrator of the Centers for Medicare and Medicaid Services, prepare for Medicare and Medicaid coverage of interchangeable biological products, and for payment models to support increased utilization of generic drugs and biosimilars.

(q) To reduce the cost of covered products to the American consumer without imposing additional risk to public health and safety, the Commissioner of Food and Drugs shall work with States and Indian Tribes that propose to develop section 804 Importation Programs in accordance with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173, 117 Stat. 2066), and the FDA's implementing regulations.

(r) The Secretary of Commerce shall:

(i) acting through the Director of the National Institute of Standards and Technology (NIST), consider initiating a rulemaking to require agencies to report to NIST, on an annual basis, their contractors' utilization activities, as reported to the agencies under 35 U.S.C. 202(c)(5);

(ii) acting through the Director of NIST, consistent with the policies set forth in section 1 of this order, consider not finalizing any provisions on march-in rights and product pricing in the proposed rule "Rights to Federally Funded Inventions and Licensing of Government Owned Inventions," 86 Fed. Reg. 35 (Jan. 4, 2021); and

(iii) not later than 1 year after the date of this order, in consultation with the Attorney General and the Chair of the Federal Trade Commission, conduct a study, including by conducting an open and transparent stakeholder consultation process, of the mobile application ecosystem, and submit a report to the Chair of the White House Competition Council, regarding findings and recommendations for improving competition, reducing barriers to entry, and maximizing user benefit with respect to the ecosystem.

(s) The Secretary of Defense shall:

(i) ensure that the Department of Defense's assessment of the economic forces and structures shaping the capacity of the national security innovation base pursuant to section 889(a) and (b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, 134 Stat. 3388) is consistent with the policy set forth in section 1 of this order;

(ii) not later than 180 days after the date of this order, submit to the Chair of the White House Competition Council, a review of the state of competition within the defense industrial base, including areas where a lack of competition may be of concern and any recommendations for improving the solicitation process, consistent with the goal of the Competition in Contracting Act of 1984 (Public Law 98-369, 98 Stat. 1175); and

(iii) not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, on a plan for avoiding contract terms in procurement agreements that make it challenging or impossible for the Department of Defense or service members to repair their own equipment, particularly in the field.

(t) The Director of the Consumer Financial Protection Bureau, consistent with the pro-competition objectives stated in section 1021 of the Dodd-Frank Act [12 U.S.C. 5511], is encouraged to consider:

(i) commencing or continuing a rulemaking under section 1033 of the Dodd-Frank Act [12 U.S.C. 5533] to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products; and

(ii) enforcing the prohibition on unfair, deceptive, or abusive acts or practices in consumer financial products or services pursuant to section 1031 of the Dodd-Frank Act [12 U.S.C. 5531] so as to ensure that actors engaged in unlawful activities do not distort the proper functioning of the competitive process or obtain an unfair advantage over competitors who follow the law.

(u) The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, shall incorporate into its recommendations for modernizing and improving regulatory review required by my Memorandum of January 20, 2021 (Modernizing Regulatory Review) [86 F.R. 7223], the policies set forth in section 1 of this order, including consideration of whether the effects on competition and the potential for creation of barriers to entry should be included in regulatory impact analyses.

(v) The Secretary of the Treasury shall:

(i) direct the Office of Economic Policy, in consultation with the Attorney General, the Secretary of Labor, and the Chair of the FTC, to submit a report to the Chair of the White House Competition Council, not later than 180 days after the date of this order, on the effects of lack of competition on labor markets; and

(ii) submit a report to the Chair of the White House Competition Council, not later than 270 days after the date of this order, assessing the effects on competition of large technology firms' and other non-bank companies' entry into consumer finance markets.

SEC. 6. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Where not already specified, independent agencies are encouraged to comply with the requirements of this order.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

## **§2. Monopolizing trade a felony; penalty**

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93-528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 101-588, §4(b), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108-237,

title II, §215(b), June 22, 2004, 118 Stat. 668.)

## EDITORIAL NOTES

### AMENDMENTS

**2004**—Pub. L. 108–237 substituted "\$100,000,000" for "\$10,000,000", "\$1,000,000" for "\$350,000", and "10" for "three".

**1990**—Pub. L. 101–588 substituted "\$10,000,000" for "one million dollars" and "\$350,000" for "one hundred thousand dollars".

**1974**—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

**1955**—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

### **§3. Trusts in Territories or District of Columbia illegal; combination a felony**

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93–528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 101–588, §4(c), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 107–273, div. C, title IV, §14102(b), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 108–237, title II, §215(c), June 22, 2004, 118 Stat. 668.)

## EDITORIAL NOTES

### AMENDMENTS

**2004**—Pub. L. 108–237, which directed the substitution of "\$100,000,000" for "\$10,000,000", "\$1,000,000" for "\$350,000", and "10" for "three", was executed by making each substitution in both subsecs. (a) and (b) to reflect the probable intent of Congress.

**2002**—Pub. L. 107–273 designated existing provisions as subsec. (a) and added subsec. (b).

**1990**—Pub. L. 101–588 substituted "\$10,000,000" for "one million dollars" and "\$350,000" for "one hundred thousand dollars".

**1974**—Pub. L. 93–528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

**1955**—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title IV, §14103, Nov. 2, 2002, 116 Stat. 1922, provided that:

"(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [probably means this title, amending this section and sections 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 1 of this title, amending provisions set out as notes under sections 1 and 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] and the amendments made by this subtitle shall take effect on the date of enactment of this Act [Nov. 2, 2002].

"(b) APPLICATION TO CASES.—(1) Section 14102(f) [repealing section 30 of this title] shall apply to cases pending on or after the date of the enactment of this Act.

"(2) The amendments made by subsections (a), (b), and (c) of section 14102 [amending this section and sections 12 and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing section 31 of this title, amending provisions set out as a note under section 8 of this title, and repealing provisions set out as a note under section 15 of this title] shall apply only with respect to cases commenced on or after the date of enactment of this Act."

## §4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, §4, 26 Stat. 209; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

### EDITORIAL NOTES

#### CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

## §5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, §5, 26 Stat. 210.)

## **§6. Forfeiture of property in transit**

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law. (July 2, 1890, ch. 647, §6, 26 Stat. 210.)

## **§6a. Conduct involving trade or commerce with foreign nations**

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

(July 2, 1890, ch. 647, §7, as added Pub. L. 97–290, title IV, §402, Oct. 8, 1982, 96 Stat. 1246.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

A prior section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, related to suits by persons injured by acts in violation of sections 1 to 7 of this title and was classified as a note under section 15 of this title, prior to repeal by act July 7, 1955, ch. 283, §3, 69 Stat. 283, effective six months after July 7, 1955.

## **§7. "Person" or "persons" defined**

The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, §8, 26 Stat. 210.)

## **§7a. Definitions**

In sections 7a to 7a–3 of this title:

### **(1) Antitrust Division**

The term "Antitrust Division" means the United States Department of Justice Antitrust Division.

### **(2) Antitrust leniency agreement**

The term "antitrust leniency agreement," or "agreement," means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the



Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

**(3) Antitrust leniency applicant**

The term "antitrust leniency applicant," or "applicant," means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

**(4) Claimant**

The term "claimant" means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of this title or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

**(5) Cooperating individual**

The term "cooperating individual" means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

**(6) Person**

The term "person" has the meaning given it in subsection (a) of section 12 of this title.

(Pub. L. 108–237, title II, §212, June 22, 2004, 118 Stat. 666; Pub. L. 111–190, §2, June 9, 2010, 124 Stat. 1275; Pub. L. 116–159, div. D, title III, §4303(b)(2), Oct. 1, 2020, 134 Stat. 742.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Sections 7a to 7a–3 of this title, referred to in text, was in the original "this subtitle", meaning subtitle A (§§211–216) of title II of Pub. L. 108–237, June 22, 2004, 118 Stat. 666, which enacted this section and sections 7a–1 to 7a–3 of this title, amended sections 1, 2, and 3 of this title, and enacted provisions formerly set out in a note under section 1 of this title. For complete classification of subtitle A to the Code, see Tables.

**CODIFICATION**

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

**AMENDMENTS**

**2020**—Pars. (6), (7). Pub. L. 116–159 redesignated par. (7) as (6) and struck out former par. (6). Prior to amendment, text of par. (6) read as follows: "The term 'marker' means an assurance given by the Antitrust Division to a candidate for corporate leniency that no other company will be considered for leniency, for some finite period of time, while the candidate is given an opportunity to perfect its leniency application."

**2010**—Pars. (6), (7). Pub. L. 111–190 added par. (6) and redesignated former par. (6) as (7).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**FINDINGS; PURPOSE OF 2020 AMENDMENT**

Pub. L. 116–159, div. D, title III, §4302, Oct. 1, 2020, 134 Stat. 742, provided that:

"(a) FINDINGS.—Congress finds the following:

"(1) Conspiracies among competitors to fix prices, rig bids, and allocate markets are categorically and irredeemably anticompetitive and contravene the competition policy of the United States.

"(2) Cooperation incentives are important to the efforts of the Antitrust Division of the Department of Justice to prosecute and deter the offenses described in paragraph (1).

"(b) PURPOSE.—The purpose of this Act [probably means title III of div. D (§4301 et seq.) of Pub. L. 116–159, see Tables for classification], and the amendments made by this Act, is to strengthen public and private antitrust enforcement by providing incentives for antitrust violators to cooperate fully with government prosecutors and private litigants through the repeal of the sunset provision of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [section 211 of Pub. L. 108–237] ([former] 15 U.S.C. 1 note)."

## TECHNICAL AND CONFORMING AMENDMENTS

Pub. L. 116–159, div. D, title III, §4303(b)(1), Oct. 1, 2020, 134 Stat. 742, provided that:

"(1) REVIVAL AND RESTORATION.—

"(A) IN GENERAL.—Sections 212, 213, and 214 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [title II of Pub. L. 108–237] ([former] 15 U.S.C. 1 note [now 15 U.S.C. 7a, 7a–1, 7a–2, respectively]) as in effect on June 21, 2020, and as amended by the laws described in subparagraph (B), are revived and restored.

"(B) LAWS.—The laws described in this subparagraph are:

"(i) Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act (Public Law 111–30; 123 Stat. 1775) [amending former section 211 of Pub. L. 108–237].

"(ii) The Act entitled 'An Act to amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes', approved June 9, 2010 (Public Law 111–90 [sic, probably should be "111–190"]; 124 Stat. 1275) [amending this section, sections 7a–1 and 7a–2 of this title, and former section 211 of Pub. L. 108–237]."

## APPLICABILITY OF 2020 AMENDMENT

Pub. L. 116–159, div. D, title III, §4303(c), Oct. 1, 2020, 134 Stat. 742, provided that:

"(1) MARKERS AND AGREEMENTS BEFORE SUNSET.—Notwithstanding the repeal under subsection (a) [repealing section 211 of Pub. L. 108–237], section 211(b) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [Pub. L. 108–237] ([former] 15 U.S.C. 1 note), as in effect on the day before the date of enactment of this Act [Oct. 1, 2020], shall continue to apply to any person who received a marker or entered into an antitrust leniency agreement on or before June 22, 2020.

"(2) MARKERS AND AGREEMENTS AFTER SUNSET.—The repeal under subsection (a) shall apply to any person who received a marker or entered into an antitrust leniency agreement on or after June 23, 2020."

## §7a–1. Limitation on recovery

### (a) In general

Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of this title, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

### (b) Requirements

Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

(3)(A) in the case of a cooperating individual—

(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

**(c) Timeliness**

The court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's or cooperating individual's cooperation with the claimant.

**(d) Cooperation after expiration of stay or protective order**

If the Antitrust Division does obtain a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement, once the stay or protective order, or a portion thereof, expires or is terminated, the antitrust leniency applicant and cooperating individuals shall provide without unreasonable delay any cooperation described in paragraphs (1) and (2) of subsection (b) that was prohibited by the expired or terminated stay or protective order, or the expired or terminated portion thereof, in order for the cooperation to be deemed satisfactory under such paragraphs.

**(e) Continuation**

Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 15, 15a, and 15c of this title relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

(Pub. L. 108–237, title II, §213, June 22, 2004, 118 Stat. 666; Pub. L. 111–190, §3, June 9, 2010, 124 Stat. 1275.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

**AMENDMENTS**

**2010**—Subsec. (c). Pub. L. 111–190, §3(a), amended subsec. (c) generally. Prior to amendment, text read as follows: "If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of this title or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant."

Subsecs. (d), (e). Pub. L. 111–190, §3(b), added subsec. (d) and redesignated former subsec. (d) as (e).

**§7a–2. Rights, authorities, and liabilities not affected**

Nothing in sections 7a to 7a–3 of this title shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 7a–1(b) of this title from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;

(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or

(3) affect, in any way, the joint and several liability of any party to a civil action described in section 7a–1(a) of this title, other than that of the antitrust leniency applicant and cooperating individuals as provided in section 7a–1(a) of this title.

(Pub. L. 108–237, title II, §214, June 22, 2004, 118 Stat. 667; Pub. L. 111–190, §4, June 9, 2010, 124 Stat. 1276.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Sections 7a to 7a–3 of this title, referred to in text, was in the original "this subtitle", meaning subtitle A (§§211–216) of title II of Pub. L. 108–237, June 22, 2004, 118 Stat. 666, which enacted this section and sections 7a, 7a–1, and 7a–3 of this title, amended sections 1, 2, and 3 of this title, and enacted provisions formerly set out in a note under section 1 of this title. For complete classification of subtitle A to the Code, see Tables.

### CODIFICATION

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

### AMENDMENTS

**2010**—Par. (1). Pub. L. 111–190, §4(1), made technical amendment to reference in original act which appears in text as reference to section 7a–1(b) of this title.

Par. (3). Pub. L. 111–190, §4(2), made technical amendment to references in original act which appear in two places in text as references to section 7a–1(a) of this title.

## §7a–3. Anti-retaliation protection for whistleblowers

### (a) Whistleblower protections for employees, contractors, subcontractors, and agents

#### (1) In general

No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

#### (2) Limitation on protections

Paragraph (1) shall not apply to any covered individual if—

(A) the covered individual planned and initiated a violation or attempted violation of the antitrust laws;

(B) the covered individual planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

### **(3) Definitions**

In this section:

#### **(A) Antitrust laws**

The term "antitrust laws" means section 1 or 3 of this title.

#### **(B) Covered individual**

The term "covered individual" means an employee, contractor, subcontractor, or agent of an employer.

#### **(C) Employer**

The term "employer" means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

#### **(D) Federal Government**

The term "Federal Government" means—

- (i) a Federal regulatory or law enforcement agency; or
- (ii) any Member of Congress or committee of Congress.

#### **(E) Person**

The term "person" has the same meaning as in subsection (a) of section 12 of this title.

### **(4) Rule of construction**

The term "violation", with respect to the antitrust laws, shall not be construed to include a civil violation of any law that is not also a criminal violation.

### **(b) Enforcement action**

#### **(1) In general**

A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (a) may seek relief under subsection (c) by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

#### **(2) Procedure**

##### **(A) In general**

A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49.

##### **(B) Exception**

Notification made under section 42121(b)(1) of title 49 shall be made to any individual named in the complaint and to the employer.

##### **(C) Burdens of proof**

An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49.

##### **(D) Statute of limitations**

A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than

180 days after the date on which the violation occurs.

**(E) Civil actions to enforce**

If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in section 42121(b) of title 49, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

**(c) Remedies**

**(1) In general**

A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

**(2) Compensatory damages**

Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney's fees.

**(d) Rights retained by whistleblowers**

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement. (Pub. L. 108–237, title II, §216, as added Pub. L. 116–257, §2, Dec. 23, 2020, 134 Stat. 1147.)

**§8. Trusts in restraint of import trade illegal; penalty**

Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than \$100 and not exceeding \$5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

(Aug. 27, 1894, ch. 349, §73, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1913**—Act Feb. 12, 1913, inserted "as agent or principal".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SHORT TITLE**

Section 77, formerly §78, of act Aug. 27, 1894, as added by Pub. L. 94–435, title III, §305(d), Sept. 30, 1976, 90 Stat. 1397; renumbered §77 and amended Pub. L. 107–273, div. C, title IV, §14102(c)(1)(B), Nov. 2,

2002, 116 Stat. 1921, provided that: "Sections 73, 74, 75, and 76 of this Act [enacting sections 8 to 11 of this title] may be cited as the 'Wilson Tariff Act'."

## **§9. Jurisdiction of courts; duty of United States attorneys; procedure**

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(Aug. 27, 1894, ch. 349, §74, 28 Stat. 570; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

### **EDITORIAL NOTES**

#### **CODIFICATION**

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CHANGE OF NAME**

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

## **§10. Bringing in additional parties**

Whenever it shall appear to the court before which any proceeding under section 9 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(Aug. 27, 1894, ch. 349, §75, 28 Stat. 570.)

## **§11. Forfeiture of property in transit**

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Aug. 27, 1894, ch. 349, §76, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1913**—Act Feb. 12, 1913, substituted "imported into and being within the United States or" for "and".

## §12. Definitions; short title

(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the "Clayton Act".

(Oct. 15, 1914, ch. 323, §1, 38 Stat. 730; Pub. L. 94-435, title III, §305(b), Sept. 30, 1976, 90 Stat. 1397; Pub. L. 107-273, div. C, title IV, §14102(c)(2)(A), Nov. 2, 2002, 116 Stat. 1921.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Words "herein" and "this Act", referred to in the three paragraphs of subsec. (a), mean the Clayton Act. For classification of the Clayton Act to the Code, see last paragraph hereunder.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26 Stat. 209, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

The Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four, referred to in subsec. (a), is act Aug. 27, 1894, ch. 349, 28 Stat. 509, known as the Wilson Tariff Act. Sections seventy-three to seventy-six thereof are set out as sections 8 to 11 of this title.

The Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, which is classified to sections 8 and 11 of this title.

The Clayton Act, referred to in subsec. (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. Sections 9 and 21 to 25 of the act were repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948, and their provisions are now covered by sections 402, 660, 3285 and 3691 of Title 18, Crimes and Criminal Procedure, except that former section 23 of the act is obsolete and not now covered. Sections 17 to 19 of the act were repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948, and their provisions are now covered by rule 65 of the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

## CODIFICATION

The 3d par. of subsec. (a) is also classified to section 53 of Title 29, Labor.

## AMENDMENTS

**2002**—Subsec. (a). Pub. L. 107-273 substituted "seventy-three to seventy-six" for "seventy-three to seventy-seven" in first par.



1976—Pub. L. 94-435 designated existing provisions as subsec. (a) and added subsec. (b).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as a note under section 3 of this title.

## §13. Discrimination in price, services, or facilities

### (a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

### (b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

### (c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary

is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

**(d) Payment for services or facilities for processing or sale**

It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

**(e) Furnishing services or facilities for processing, handling, etc.**

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

**(f) Knowingly inducing or receiving discriminatory price**

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

(Oct. 15, 1914, ch. 323, §2, 38 Stat. 730; June 19, 1936, ch. 592, §1, 49 Stat. 1526.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1936**—Act June 19, 1936, amended section generally.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SHORT TITLE**

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is popularly known as the Robinson-Patman Act, as the Robinson-Patman Antidiscrimination Act, and also as the Robinson-Patman Price Discrimination Act.

**§13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties**

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

(June 19, 1936, ch. 592, §3, 49 Stat. 1528.)

### **§13b. Cooperative association; return of net earnings or surplus**

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association. (June 19, 1936, ch. 592, §4, 49 Stat. 1528.)

#### **EDITORIAL NOTES**

##### **REFERENCES IN TEXT**

This Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

### **§13c. Exemption of non-profit institutions from price discrimination provisions**

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit. (May 26, 1938, ch. 283, 52 Stat. 446.)

#### **EDITORIAL NOTES**

##### **REFERENCES IN TEXT**

The Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, also known as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

### **§14. Sale, etc., on agreement not to use goods of competitor**

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(Oct. 15, 1914, ch. 323, §3, 38 Stat. 731.)

### **§15. Suits by persons injured**

#### **(a) Amount of recovery; prejudgment interest**

Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and

the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

**(b) Amount of damages payable to foreign states and instrumentalities of foreign states**

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

**(c) Definitions**

For purposes of this section—

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28.

(Oct. 15, 1914, ch. 323, §4, 38 Stat. 731; Pub. L. 96–349, §4(a)(1), Sept. 12, 1980, 94 Stat. 1156; Pub. L. 97–393, Dec. 29, 1982, 96 Stat. 1964.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

**PRIOR PROVISIONS**

Section supersedes two former similar sections enacted by act July 2, 1890, ch. 647, §7, 26 Stat. 210, and act Aug. 27, 1894, ch. 349, §77, 28 Stat. 570, each of which were restricted in operation to the particular act cited. Section 7 of act July 2, 1890, was repealed by act July 7, 1955, ch. 283, §3, 69 Stat. 283, effective six months after July 7, 1955. Section 77 of act Aug. 27, 1894, was repealed by Pub. L. 107–273, div. C, title IV, §§14102(c)(1)(A), 14103, Nov. 2, 2002, 116 Stat. 1921, 1922, effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002.

**AMENDMENTS**

**1982**—Pub. L. 97–393 designated existing provisions as subsec. (a), inserted "Except as provided in subsection (b)," , and added subsecs. (b) and (c).

**1980**—Pub. L. 96–349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Pub. L. 96–349, §4(b), Sept. 12, 1980, 94 Stat. 1157, provided that: "The amendments made by this section [amending this section and sections 15a and 15c of this title] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept 12, 1980]."

### **§15a. Suits by United States; amount of recovery; prejudgment interest**

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

(Oct. 15, 1914, ch. 323, §4A, as added July 7, 1955, ch. 283, §1, 69 Stat. 282; amended Pub. L. 96–349, §4(a)(2), Sept. 12, 1980, 94 Stat. 1156; Pub. L. 101–588, §5, Nov. 16, 1990, 104 Stat. 2880.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

### **AMENDMENTS**

**1990**—Pub. L. 101–588 substituted "threefold the" for "actual".

**1980**—Pub. L. 96–349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96–349, set out as a note under section 15 of this title.

### **EFFECTIVE DATE**

Section effective six months after July 7, 1955, see note set out under section 15b of this title.

## **§15b. Limitation of actions**

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

(Oct. 15, 1914, ch. 323, §4B, as added July 7, 1955, ch. 283, §1, 69 Stat. 283; amended Pub. L. 94-435, title III, §302(1), Sept. 30, 1976, 90 Stat. 1396.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The effective date of this Act, referred to in text, probably refers to the effective date of act July 7, 1955, ch. 283, 69 Stat. 282, which was six months after July 7, 1955.

This Act, referred to in text, probably refers to act July 7, 1955.

### **AMENDMENTS**

**1976**—Pub. L. 94-435 substituted "section 15, 15a, or 15c" for "sections 15 or 15a".

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

Act July 7, 1955, ch. 283, §4, 69 Stat. 283, provided: "This Act [enacting this section and section 15a of this title, amending section 16 of this title, and repealing provisions set out as a note under section 15 of this title] shall take effect six months after its enactment [July 7, 1955]."

## **§15c. Actions by State attorneys general**

### **(a) Parens patriae; monetary relief; damages; prejudgment interest**

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in

conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

**(b) Notice; exclusion election; final judgment**

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

**(c) Dismissal or compromise of action**

An action under subsection (a)(1) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

**(d) Attorneys' fees**

In any action under subsection (a)—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(Oct. 15, 1914, ch. 323, §4C, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1394; amended Pub. L. 96-349, §4(a)(3), Sept. 12, 1980, 94 Stat. 1157.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsec. (a)(2), are defined in section 12 of this title.

**AMENDMENTS**

**1980**—Subsec. (a)(2). Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

**EFFECTIVE DATE**

Pub. L. 94-435, title III, §304, Sept. 30, 1976, 90 Stat. 1396, provided that: "The amendments to the Clayton Act made by section 301 of this Act [enacting this section and sections 15d to 15h of this title] shall not apply to any injury sustained prior to the date of enactment of this Act [Sept. 30, 1976]."

**§15d. Measurement of damages**

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and

assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(Oct. 15, 1914, ch. 323, §4D, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

## **§15e. Distribution of damages**

Monetary relief recovered in an action under section 15c(a)(1) of this title shall—

- (1) be distributed in such manner as the district court in its discretion may authorize; or
- (2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(Oct. 15, 1914, ch. 323, §4E, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

## **§15f. Actions by Attorney General**

### **(a) Notification to State attorney general**

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

### **(b) Availability of files and other materials**

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

(Oct. 15, 1914, ch. 323, §4F, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.



## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

### §15g. Definitions

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term "natural persons" does not include proprietorships or partnerships.

(Oct. 15, 1914, ch. 323, §4G, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1396.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

### §15h. Applicability of parens patriae actions

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

(Oct. 15, 1914, ch. 323, §4H, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1396.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

### §16. Judgments

#### (a) Prima facie evidence; collateral estoppel

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of

collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

**(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public**

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

- (1) the nature and purpose of the proceeding;
- (2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;
- (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;
- (4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;
- (5) a description of the procedures available for modification of such proposal; and
- (6) a description and evaluation of alternatives to such proposal actually considered by the United States.

**(c) Publication of summaries in newspapers**

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

- (i) a summary of the terms of the proposal for consent judgment,
- (ii) a summary of the competitive impact statement filed under subsection (b),
- (iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

**(d) Consideration of public comments by Attorney General and publication of response**

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b). The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments. Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication),

authorize an alternative method of public dissemination of the public comments received and the response to those comments.

**(e) Public interest determination**

(1) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court shall consider—

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(2) Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.

**(f) Procedure for public interest determination**

In making its determination under subsection (e), the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

**(g) Filing of written or oral communications with the district court**

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant by any officer, director, employee, or agent of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

**(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement**

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant

under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

### **(i) Suspension of limitations**

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

(Oct. 15, 1914, ch. 323, §5, 38 Stat. 731; July 7, 1955, ch. 283, §2, 69 Stat. 283; Pub. L. 93-528, §2, Dec. 21, 1974, 88 Stat. 1706; Pub. L. 94-435, title III, §302(2), Sept. 30, 1976, 90 Stat. 1396; Pub. L. 96-349, §5(a), Sept. 12, 1980, 94 Stat. 1157; Pub. L. 108-237, title II, §221(b), June 22, 2004, 118 Stat. 668.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The antitrust laws, referred to in subsecs. (a), (b), and (g) to (i), are defined in section 12 of this title.

### **AMENDMENTS**

**2004**—Subsec. (d). Pub. L. 108-237, §221(b)(1), inserted at end "Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments."

Subsec. (e). Pub. L. 108-237, §221(b)(2), designated introductory provisions as par. (1), substituted "court shall" for "court may", added subpars. (A) and (B) and par. (2), and struck out former pars. (1) and (2) which read as follows:

"(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

"(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial."

Subsec. (g). Pub. L. 108-237, §221(b)(3), inserted "by any officer, director, employee, or agent of such defendant" before ", or other person" in first sentence.

**1980**—Subsec. (a). Pub. L. 96-349 made collateral estoppel inapplicable in any action or proceeding brought under the antitrust laws to any finding made by the Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws; struck out "or by the United States under section 15a of this title," after "under said laws"; and deleted from proviso "or to judgments or decrees entered in actions under section 15a of this title" after "testimony has been taken".

**1976**—Pub. L. 94-435 substituted "private or State right of action" for "private right of action" and "section 15 or 15c" for "section 15".

**1974**—Subsecs. (b) to (i). Pub. L. 93-528 added subsecs. (b) to (h) and redesignated former subsec. (b) as (i).

**1955**—Act July 7, 1955, substituted subsec. (a) for first paragraph, to provide that final judgments in actions under the antitrust laws by the United States shall be prima facie evidence in damage suits by the United States as well as in private damage suits, and substituted subsec. (b) for second paragraph, to provide for a one-year suspension of limitations.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Pub. L. 96–349, §5(b), Sept. 12, 1980, 94 Stat. 1157, provided that: "The amendments made by this section [amending this section] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept. 12, 1980]."

### **SUSPENSION OF LIMITATION**

Act Oct. 10, 1942, ch. 589, 56 Stat. 781, as amended June 30, 1945, ch. 213, 59 Stat. 306, provided for the suspension of any existing statutes of limitations relating to violations of antitrust laws now indictable or subject to civil proceedings under any existing statutes, until June 30, 1946.

### **FINDINGS AND PURPOSES OF 2004 AMENDMENT**

Pub. L. 108–237, title II, §221(a), June 22, 2004, 118 Stat. 668, provided that:

"(1) FINDINGS.—Congress finds that—

"(A) the purpose of the Tunney Act [probably means section 2 of Pub. L. 93–528 which amended this section] was to ensure that the entry of antitrust consent judgments is in the public interest; and

"(B) it would misconstrue the meaning and Congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments solely to determining whether entry of those consent judgments would make a 'mockery of the judicial function'.

"(2) PURPOSES.—The purpose of this section [amending this section] is to effectuate the original Congressional intent in enacting the Tunney Act and to ensure that United States settlements of civil antitrust suits are in the public interest."

## **§17. Antitrust laws not applicable to labor organizations**

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, ch. 323, §6, 38 Stat. 731.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

## **§18. Acquisition by one corporation of stock of another**

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using

the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title,<sup>1</sup> the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

(Oct. 15, 1914, ch. 323, §7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 96–349, §6(a), Sept. 12, 1980, 94 Stat. 1157; Pub. L. 98–443, §9(l), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 104–88, title III, §318(1), Dec. 29, 1995, 109 Stat. 949; Pub. L. 104–104, title VI, §601(b)(3), Feb. 8, 1996, 110 Stat. 143.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 79j of this title, referred to in text, was repealed by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

### AMENDMENTS

**1996**—Pub. L. 104–104, in sixth par., struck out "Federal Communications Commission," after "Secretary of Transportation,".

**1995**—Pub. L. 104–88, in sixth par., substituted "Surface Transportation Board" for "Interstate Commerce Commission" and inserted ", Board," after "vesting such power in such Commission".

**1984**—Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board" and "Commission or Secretary" for "Commission, Secretary, or Board" in sixth par.

**1980**—Pub. L. 96–349, substituted "person" for "corporation" wherever appearing in first and second pars.; substituted "persons" for "corporations" in second par. and first sentence of third par.; and inserted "or in any activity affecting commerce" after "commerce" wherever appearing in first, second, and third pars.

**1950**—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–349, §6(b), Sept. 12, 1980, 94 Stat. 1158, provided that: "The amendments made by this section [amending this section] shall apply only with respect to acquisitions made after the date of the enactment of this Act [Sept. 12, 1980]."

### TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

Maritime Administration of Department of Commerce transferred to Department of Transportation, and all related functions of Secretary and other officers and offices of Department of Commerce transferred to Department of Transportation and vested in Secretary of Transportation, by Maritime Act of 1981, Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, which was repealed in part by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710. See section 109 of Title 49, Transportation.

### EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

Executive and administrative functions of Maritime Commission transferred to Chairman of Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, which was repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710, and was formerly set out in the Appendix to Title 5, Government Organization and Employees.

United States Maritime Commission abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, which was superseded in part by Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, repealed in part by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710, and remains only partially set out in the Appendix to Title 5. Reorg. Plan No. 21 of 1950 transferred part of Commission's functions and part of functions of its Chairman, to Federal Maritime Board and Chairman thereof, such Board having been created by that Plan as an agency within Department of Commerce with an independent status in some respects, and transferred remainder of such Commission's functions and functions of its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Maritime Administrator (the head of Maritime Administration, which likewise established by the Plan in Department of Commerce) with provision that Chairman of Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, by section 103 of Reorg. Plan No. 7 of 1961, which was repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710 and formerly set out in the Appendix to Title 5, or to Secretary of Commerce, by section 202 of Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5.

<sup>1</sup> [See References in Text note below.](#)

## §18a. Premerger notification and waiting period

### (a) Filing

Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 19(a)(5) of this title to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

**(b) Waiting period; publication; voting securities**

(1) The waiting period required under subsection (a) shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a), or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.



**(c) Exempt transactions**

The following classes of transactions are exempt from the requirements of this section—

- (1) acquisitions of goods or realty transferred in the ordinary course of business;
- (2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
- (3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;
- (4) transfers to or from a Federal agency or a State or political subdivision thereof;
- (5) transactions specifically exempted from the antitrust laws by Federal statute;
- (6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;
- (7) transactions which require agency approval under section 1467a(e) of title 12, section 1828(c) of title 12, or section 1842 of title 12, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12;
- (8) transactions which require agency approval under section 1843 of title 12 or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12;
- (9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;
- (10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;
- (11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and
- (12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

**(d) Commission rules**

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

- (1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and
- (2) may—
  - (A) define the terms used in this section;
  - (B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and
  - (C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

**(e) Additional information; waiting period extensions**

(1)(A) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file

notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(B)(i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine—

(I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

(II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.

(ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.

(iii) Not later than 90 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

(iv) Not later than 120 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

(v) Not later than 180 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress—

(I) which reforms each agency has adopted under this subparagraph;

(II) which steps each has taken to implement such internal reforms; and

(III) the effects of such reforms.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2).

#### **(f) Preliminary injunctions; hearings**

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

**(g) Civil penalty; compliance; power of court**

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) and as may be extended under subsection (e)(2), the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) and as may have been extended under subsection (e)(2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

**(h) Disclosure exemption**

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

**(i) Construction with other laws**

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

**(j) Omitted**

**(k) Extensions of time**

If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

(Oct. 15, 1914, ch. 323, §7A, as added Pub. L. 94-435, title II, §201, Sept. 30, 1976, 90 Stat. 1390; amended Pub. L. 98-620, title IV, §402(10)(A), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 101-73, title XII, §1214, Aug. 9, 1989, 103 Stat. 529; Pub. L. 106-102, title I, §133(c), Nov. 12, 1999, 113 Stat. 1383; Pub. L. 106-553, §1(a)(2) [title VI, §630(a), (c), (d)], Dec. 21, 2000, 114 Stat. 2762, 2762A-108, 2762A-110.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsecs. (c) and (d), are defined in section 12 of this title.

This Act, referred to in subsec. (i)(1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (i)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Civil Process Act, referred to in subsec. (i)(2), is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, which is classified principally to chapter 34 (§1311 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

### CODIFICATION

December 21, 2000, referred to in subsec. (e)(1)(B), was in the original "the date of the enactment of this Act" which was translated as meaning the date of enactment of Pub. L. 106-553, which enacted subsec. (e)(1)(B), to reflect the probable intent of Congress.

Subsection (j), which required the Federal Trade Commission, with the concurrence of the Assistant Attorney General, to report annually to Congress on the operation of this section, 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 172 of House Document No. 103-7.

### AMENDMENTS

**2000**—Subsec. (a). Pub. L. 106-553, §1(a)(2) [title VI, §630(a)], amended subsec. (a) generally, reenacting introductory provisions, par. (1), and concluding provisions without change, adding par. (2), and striking out former pars. (2) and (3) which read as follows:

"(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 or more are being acquired by any person with total assets or annual net sales of \$10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15,000,000."

Subsec. (e)(1). Pub. L. 106-553, §1(a)(2) [title VI, §630(c)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(2). Pub. L. 106-553, §1(a)(2) [title VI, §630(d)(1)], substituted "30 days" for "20 days".

Subsec. (k). Pub. L. 106-553, §1(a)(2) [title VI, §630(d)(2)], added subsec. (k).

**1999**—Subsec. (c)(7). Pub. L. 106-102, §133(c)(1), inserted before semicolon at end ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12".

Subsec. (c)(8). Pub. L. 106-102, §133(c)(2), inserted before semicolon at end ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12".

**1989**—Subsec. (c)(7). Pub. L. 101-73, §1214(1), inserted reference to section 1467a(e) of title 12.

Subsec. (c)(8). Pub. L. 101-73, §1214(2), struck out reference to section 1726 or 1730a(e) of title 12.

**1984**—Subsec. (f)(2). Pub. L. 98-620 struck out designation "(A)" before "upon the filing", and struck out subpar. (B) which had provided that if the Federal Trade Commission or the Assistant Attorney General certified that he or it believed that the public interest required relief pendente lite pursuant to this subsection, the motion for a preliminary injunction had to be set down for hearing by the district judge so designated at the earliest practicable time, would take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and had to be in every way expedited.

### **EFFECTIVE DATE OF 2000 AMENDMENT**

Pub. L. 106–553, §1(a)(2) [title VI, §630(e)], Dec. 21, 2000, 114 Stat. 2762, 2762A–111, provided that: "This section [amending this section and provisions set out as a note under this section] and the amendments made by this section shall take effect on the 1st day of the 1st month that begins more than 30 days after the date of the enactment of this Act [Dec. 21, 2000]."

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of Title 12, Banks and Banking.

### **EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

### **EFFECTIVE DATE**

Pub. L. 94–435, title II, §202, Sept. 30, 1976, 90 Stat. 1394, provided that: "The amendment made by section 201 of this Act [enacting this section] shall take effect 150 days after the date of enactment of this Act [Sept. 30, 1976], except that subsection (d) of section 7A of the Clayton Act [subsec. (d) of this section] (as added by section 201 of this Act) shall take effect on the date of enactment of this Act."

### **DEPARTMENT OF DEFENSE NOTIFICATION OF CERTAIN TRANSACTIONS**

Pub. L. 118–31, div. A, title VIII, §857, Dec. 22, 2023, 137 Stat. 346, provided that: "The parties to a proposed merger or acquisition that will require a review by the Department of Defense who are required to file the notification and provide supplementary information to the Department of Justice or the Federal Trade Commission under section 7A of the Clayton Act (15 U.S.C. 18a) shall concurrently provide such information to the Department of Defense during the waiting period under section 7A of the Clayton Act (15 U.S.C. 18a)."

### **ASSESSMENT AND COLLECTION OF FILING FEES**

Pub. L. 101–162, title VI, §605, Nov. 21, 1989, 103 Stat. 1031, as amended by Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 217; Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1847; Pub. L. 103–317, title I, Aug. 26, 1994, 108 Stat. 1739; Pub. L. 106–553, §1(a)(2) [title VI, §630(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A–109; Pub. L. 117–328, div. GG, title I, §101, Dec. 29, 2022, 136 Stat. 5967, provided that:

"(a) Five working days after enactment of this Act [Nov. 21, 1989] and thereafter, the Federal Trade Commission shall assess and collect filing fees established in subsection (b) which shall be paid by persons acquiring voting securities or assets who are required to file premerger notifications by the [sic] section 7A of the Clayton Act (15 U.S.C. 18a) and the regulations promulgated thereunder. For purposes of said Act, no notification shall be considered filed until payment of the fee required by this section. Fees collected pursuant to this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, 'Salaries and Expenses' and Department of Justice, 'Salaries and Expenses, Antitrust Division': *Provided*, That fees in excess of \$40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States: *Provided further*, That fees made available to the Federal Trade Commission and the Antitrust Division herein shall remain available until expended.

"(b) The filing fees referred to in subsection (a) are—

"(1) \$30,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than \$161,500,000 (as adjusted and published for each fiscal year beginning after September 30, 2023, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2022);

"(2) \$100,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$161,500,000 (as so adjusted and published) but is less than \$500,000,000 (as so adjusted and published);

"(3) \$250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$500,000,000 (as so adjusted and published) but is less than \$1,000,000,000 (as so adjusted and published);

"(4) \$400,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$1,000,000,000 (as so adjusted and published) but is less than \$2,000,000,000 (as so adjusted and published);

"(5) \$800,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$2,000,000,000 (as so adjusted and published) but is less than

\$5,000,000,000 (as so adjusted and published); and

"(6) \$2,250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$5,000,000,000 (as so adjusted and published).

"(c)(1) For each fiscal year commencing after September 30, 2023, the filing fees in this section shall be increased by an amount equal to the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, 2022.

"(2) As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by paragraph (1).

"(3) The Federal Trade Commission shall not adjust amounts required by paragraph (1) if the percentage increase described in paragraph (1) is less than 1 percent.

"(4) An amount adjusted under this section shall be rounded to the nearest multiple of \$5,000."

[Another section 101 of div. GG of Pub. L. 117–328 is set out as a note under section 1 of this title.]

## **§18b. Mergers involving foreign government subsidies**

### **(a) Definition**

In this section, the term "foreign entity of concern" has the meaning given the term in section 18741 of title 42.

### **(b) Accounting for foreign government subsidies**

A person required to file a notification under section 18a of this title that received a subsidy from a foreign entity of concern shall include in such notification content regarding such subsidy.

### **(c) Authority of antitrust regulators**

The Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and in consultation with the Chairperson of the Committee on Foreign Investment in the United States, the Secretary of Commerce, the Chair of the United States International Trade Commission, the United States Trade Representative, and the heads of other appropriate agencies, and by rule in accordance with section 553 of title 5, shall require that the notification required under subsection (b) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice to determine whether such acquisition may, if consummated, violate the antitrust laws.

### **(d) Effective date**

Subsection (b) shall take effect on the date on which the rule described in subsection (c) takes effect.

(Pub. L. 117–328, div. GG, title II, §202, Dec. 29, 2022, 136 Stat. 5970.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **FINDINGS AND PURPOSE**

Pub. L. 117–328, div. GG, title II, §201, Dec. 29, 2022, 136 Stat. 5969, provided that:

"(a) FINDINGS.—Congress finds the following:

"(1) Foreign subsidies, which can take the form of direct subsidies, grants, loans (including below-market loans), loan guarantees, tax concessions, preferential government procurement policies, or government ownership or control, can distort the competitive process by enabling the subsidized firm to submit a bid higher than other firms in the market, or otherwise change the incentives of the firm in ways that undermine competition following an acquisition.

"(2) Foreign subsidies are particularly problematic when granted by countries or entities that constitute a strategic or economic threat to United States interests.

"(3) The Made in China 2025 plan, states that the Chinese Communist Party will 'support enterprises to carry out mergers and acquisitions (M&A), equity investment, and venture capital overseas'.

"(4) The 2020 report to Congress from the bipartisan U.S.-China Economic and Security Review Commission concluded that the Chinese Government subsidizes companies with a goal of their expanding into the United States and other countries, finding that '[t]his process assists Chinese national champions in surpassing and supplanting global market leaders'. The report warns that the risk is particularly acute when it comes to emerging technologies, where China seeks to 'surpass and displace the United States altogether [and that] [f]ailure to appreciate the gravity of this challenge and defend U.S. competitiveness would be dire . . . [and] risks setting back U.S. economic and technological progress for decades'.

"(5) In remarks before the Hudson Institute on December 8, 2020, FTC Commissioner Noah Phillips stated, '[O]ne area where antitrust needs to reckon with the strategic interests of other nations is when we scrutinize mergers or conduct involving state-owned entities . . . companies that are controlled, to varying degrees, by the state . . . [and] often are a government tool for implementing industrial policies or to protect national security'.

"(b) PURPOSE.—The purpose of this section [probably means "this title", enacting this section and this note] is to require parties providing pre-merger notifications to include in the notification required under section 7A of the Clayton Act (15 U.S.C. 18a) information concerning subsidies they receive from countries or entities that are strategic or economic threats to the United States."

## **§19. Interlocking directorates and officers**

(a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than \$10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than \$1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the \$10,000,000 and \$1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such

capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

(Oct. 15, 1914, ch. 323, §8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, §329, 49 Stat. 717; Pub. L. 101-588, §2, Nov. 16, 1990, 104 Stat. 2879; Pub. L. 103-203, §1, Dec. 17, 1993, 107 Stat. 2368.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(1)(B), are defined in section 12 of this title.

### AMENDMENTS

**1993**—Subsec. (a)(5). Pub. L. 103-203 substituted "January 31" for "October 30".

**1990**—Pub. L. 101-588 amended section generally, completely revising it in form by substituting text divided into a subsec. (a) consisting of five numbered paragraphs and a subsec. (b) consisting of a single unnumbered paragraph for former provisions which had consisted of a series of five undesignated paragraphs, and in substance by increasing the jurisdictional threshold for application of the section to corporations from \$1,000,000 in net worth to \$10,000,000 in net worth, creating three "de minimis" exceptions to applications of the section in cases of insignificant competitive overlaps, and expanding the section to cover officers elected or chosen by the Board of Directors.

**1935**—Act Aug. 23, 1935, amended section generally.

**1929**—Act Mar. 2, 1929, amended second par.

**1928**—Act Mar. 9, 1928, amended second par.

## **§19a. Repealed. Aug. 23, 1935, ch. 614, §329, 49 Stat. 717**

Section, act Oct. 15, 1914, ch. 323, §8a, as added June 16, 1933, ch. 89, §33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

## **§20. Repealed. Pub. L. 101-588, §3, Nov. 16, 1990, 104 Stat. 2880**

Section, act Oct. 15, 1914, ch. 323, §10, 38 Stat. 734, related to a \$50,000 yearly, aggregate limitation on purchases and contracts between a common carrier and any entity with whom such carrier has any form of interlocking directorate, etc., required filing with ICC of a full statement of transactions excluded from such limitation, and set forth fines and penalties for violation of such limitation.

## **§21. Enforcement provisions**

### **(a) Commission, Board, or Secretary authorized to enforce compliance**

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to part A of subtitle VII of title 49; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

### **(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report;**



**cease and desist orders; reopening and alteration of reports or orders**

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

**(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree**

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall

apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, 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, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file 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 its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

**(d) Exclusive jurisdiction of Court of Appeals**

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

**(e) Liability under antitrust laws**

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

**(f) Service of complaints, orders and other processes**

Complaints, orders, and other processes of the commission, board, or Secretary under this section may be served by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

**(g) Finality of orders generally**

Any order issued under subsection (b) shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

**(h) Finality of orders modified by Supreme Court**

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

**(i) Finality of orders modified by Court of Appeals**

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

**(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court**

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

**(k) "Mandate" defined**

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

**(l) Penalties**

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, §11, 38 Stat. 734; June 19, 1934, ch. 652, title VII, §702(d), formerly title VI, §602(d), 48 Stat. 1102; renumbered Pub. L. 98–549, §6(a), Oct. 30, 1984, 98 Stat. 2804; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; June 23, 1938, ch. 601, §1107(g), 52 Stat. 1028; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 85–726, title XIV, §1401(b), Aug. 23, 1958, 72 Stat. 806; Pub. L. 85–791, §4, Aug. 28, 1958, 72 Stat. 943; Pub. L. 86–107, §1, July 23, 1959, 73 Stat. 243; Pub. L. 98–443, §9(m), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 98–620, title IV, §402(10)(B), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 104–88, title III, §318(2), Dec. 29, 1995, 109 Stat. 949.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsec. (e), are defined in section 12 of this title.

**CODIFICATION**

In subsec. (a), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

**AMENDMENTS**

**1995**—Subsec. (a). Pub. L. 104–88 substituted "Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49" for "Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended".

**1984**—Subsec. (a). Pub. L. 98–443, §9(m)(1), substituted "Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" for "Civil Aeronautics Board

where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 98-443, §9(m)(2), substituted "Commission, Board, or Secretary" for "Commission or Board" wherever appearing.

Subsecs. (c), (d). Pub. L. 98-443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

Pub. L. 98-443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board".

Subsecs. (f) to (j), (l). Pub. L. 98-443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

**1959**—Pub. L. 86-107 amended section generally, and among other changes, authorized the Commission or Board, upon notice and opportunity for hearing, in cases where a petition for review has not been filed within the time allowed, to reopen and alter, modify, or set aside, in whole or in part, any report or order, whenever conditions of fact or law have so changed as to require such action or if the public interest so requires, and added subsecs. (g) to (k), providing for finality of orders, and subsec. (l), prescribing the civil penalty for violation of orders.

**1958**—Pub. L. 85-791, §4(a), struck out "a transcript of" after "Until" in last sentence of second par.

Pub. L. 85-791, §4(b), substituted in first sentence of third par., "file the record in the proceeding, as provided in section 2112 of title 28" for "certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or Board", and in second sentence of third par., struck out "and transcript" after "application", inserted "concurrently with the Commission or Board until the filing of the record", and struck out "upon the pleadings, testimony, and proceedings set forth in such transcript" after "make and enter".

Pub. L. 85-791, §4(c), substituted in second sentence of fourth par., "transmitted by the clerk of the court to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5,".

Pub. L. 85-791, §4(d), substituted in fifth par., "Upon the filing of the record with it the" for "The".

**1950**—Act Dec. 29, 1950, amended section generally to allow the Attorney General to intervene and appear in any proceeding brought by any Commission or Board to enforce sections 13, 14, 18, and 19 of this title, but the amendment in nowise affects the jurisdiction of the Department of Justice to enforce these sections in the courts.

**1938**—Act June 23, 1938, inserted "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938", and "authority" after "commission" wherever appearing.

**1935**—Act Aug. 23, 1935, changed the name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

**1934**—Act June 19, 1934, amended first par.

## 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 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

### EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86-107 provided that: "The amendments made by section 1 [amending this section]

shall have no application to any proceeding initiated before the date of enactment of this Act [July 23, 1959] under the third or fourth paragraph of section 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 734, as amended; 15 U.S.C. 21) [this section]. Each such proceeding shall be governed by the provisions of such section as they existed on the day preceding the date of enactment of this Act."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **§21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations**

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

(June 19, 1936, ch. 592, §2, 49 Stat. 1527.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Nothing herein contained, referred to in text, probably means nothing contained in act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such

Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§22. District in which to sue corporation**

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

(Oct. 15, 1914, ch. 323, §12, 38 Stat. 736.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

## **§23. Suits by United States; subpoenas for witnesses**

In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

(Oct. 15, 1914, ch. 323, §13, 38 Stat. 736.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

## **§24. Liability of directors and agents of corporation**

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, §14, 38 Stat. 736.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

## **§25. Restraining violations; procedure**

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their

respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

(Oct. 15, 1914, ch. 323, §15, 38 Stat. 736; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

## **§26. Injunctive relief for private parties; exception; costs**

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(Oct. 15, 1914, ch. 323, §16, 38 Stat. 737; Pub. L. 94-435, title III, §302(3), Sept. 30, 1976, 90 Stat. 1396; Pub. L. 104-88, title III, §318(3), Dec. 29, 1995, 109 Stat. 949.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

### **AMENDMENTS**

**1995**—Pub. L. 104-88 substituted "for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49" for "in equity for injunctive

relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

1976—Pub. L. 94-435 inserted provision authorizing court to award costs, including attorneys' fees, to a successful plaintiff.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1995 AMENDMENT**

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

## **§26a. Restrictions on the purchase of gasohol and synthetic motor fuel**

### **(a) Limitations on the use of credit instruments; sales, resales, and transfers**

Except as provided in subsection (b), it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that—

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on transactions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

### **(b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities**

(1) Nothing in this section or in any other provision of law in effect on December 2, 1980, which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3) Nothing in this section shall—

(A) preclude any person referred to in subsection (a) from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or other synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other related facilities required for the sale of the gasohol or other synthetic motor fuel.

### **(c) "United States" defined**

As used in this section, "United States" includes the several States, the District of Columbia, any



territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

(Oct. 15, 1914, ch. 323, §26, as added Pub. L. 96–493, §2, Dec. 2, 1980, 94 Stat. 2568.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE

For short title of Pub. L. 96–493 as the "Gasohol Competition Act of 1980", see section 1 of Pub. L. 96–493, set out as a Short Title of 1980 Amendment note under section 1 of this title.

## **§26b. Application of antitrust laws to professional major league baseball**

### **(a) Major league baseball subject to antitrust laws**

Subject to subsections (b) through (d), the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

### **(b) Limitation of section**

No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to—

(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the "Professional Baseball Agreement", the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

(3) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

(4) any conduct, acts, practices, or agreements protected by Public Law 87–331 (15 U.S.C. § 1291 et seq.) (commonly known as the "Sports Broadcasting Act of 1961");

(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons; or

(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

### **(c) Standing to sue**

Only a major league baseball player has standing to sue under this section. For the purposes of this

section, a major league baseball player is—

(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

(2) a person who was a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: *Provided however*, That for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

(4) a person who was a party to a major league player's contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.

**(d) Conduct, acts, practices, or agreements subject to antitrust laws**

(1) As used in this section, "person" means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not "in the business of organized professional major league baseball".

(2) In cases involving conduct, acts, practices, or agreements that directly relate to or affect both employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b), only those components, portions or aspects of such conduct, acts, practices, or agreements that directly relate to or affect employment of major league players to play baseball at the major league level may be challenged under subsection (a) and then only to the extent that they directly relate to or affect employment of major league baseball players to play baseball at the major league level.

(3) As used in subsection (a), interpretation of the term "directly" shall not be governed by any interpretation of section 151 et seq. of title 29, United States Code (as amended).

(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

(5) The scope of the conduct, acts, practices, or agreements covered by subsection (b) shall not be strictly or narrowly construed.

(Oct. 15, 1914, ch. 323, §27, as added Pub. L. 105–297, §3, Oct. 27, 1998, 112 Stat. 2824.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The antitrust laws, referred to in text, are defined in section 12 of this title.

Public Law 87–331, referred to in subsec. (b)(4), is Pub. L. 87–331, Sept. 30, 1961, 75 Stat. 732, which is classified generally to chapter 32 (§1291 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

**CODIFICATION**

Another section 27 of act Oct. 15, 1914, ch. 323, was renumbered section 28 and is classified to section 27 of this title.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

## PURPOSE

Pub. L. 105–297, §2, Oct. 27, 1998, 112 Stat. 2824, provided that: "It is the purpose of this legislation to state that major league baseball players are covered under the antitrust laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act [enacting this section and provisions set out as a note under section 1 of this title] does not change the application of the antitrust laws in any other context or with respect to any other person or entity."

## §27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Oct. 15, 1914, ch. 323, §28, formerly §26, 38 Stat. 740; renumbered §27, Pub. L. 96–493, §2, Dec. 2, 1980, 94 Stat. 2568; renumbered §28, Pub. L. 107–273, div. C, title IV, §14102(d), Nov. 2, 2002, 116 Stat. 1922.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

## §27a. Transferred

## EDITORIAL NOTES

### CODIFICATION

Section, act Oct. 15, 1914, ch. 323, §27, as added Pub. L. 105–297, §3, Oct. 27, 1998, 112 Stat. 2824, which related to application of antitrust laws to professional major league baseball, was transferred to section 26b of this title.

## §28. Repealed. Pub. L. 98–620, title IV, §402(11), Nov. 8, 1984, 98 Stat. 3358

Section, acts Feb. 11, 1903, ch. 544, §1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, §1, 56 Stat. 198; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93–528, §4, 88 Stat. 1708, related to expedition of actions by the United States involving general public importance.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

## §29. Appeals

### (a) Court of appeals; review by Supreme Court

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgement entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28.

#### **(b) Direct appeals to Supreme Court**

An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a).

(Feb. 11, 1903, ch. 544, §2, 32 Stat. 823; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, §17, 62 Stat. 989; Pub. L. 93-528, §5, Dec. 21, 1974, 88 Stat. 1709.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, referred to in subsec. (a), is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

#### **CODIFICATION**

Section was previously set out in both this section and in section 45 of former Title 49, Transportation.

#### **AMENDMENTS**

**1974**—Pub. L. 93-528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

**1948**—Act June 25, 1948, amended section generally to strike out provisions relating to time for appeal, procedure, etc. See sections 2101 and 2109 of Title 28, Judiciary and Judicial Procedure.

**1944**—Act June 9, 1944, provided for certification of case to circuit court of appeals when there was no quorum of Justices of the Supreme Court qualified to participate in the consideration of the case and for designation of circuit judges in the event of disqualification from hearing the case.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CHANGE OF NAME**

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted "district court" for "circuit court".

#### **EFFECTIVE DATE OF 1974 AMENDMENT**

Pub. L. 93-528, §7, Dec. 21, 1974, 88 Stat. 1710, provided that: "The amendment made by section 5 of this Act [amending this section] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; [former] 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act."

#### **EFFECTIVE DATE OF 1948 AMENDMENT**

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

#### **EFFECTIVE DATE OF 1944 AMENDMENT**

Act June 9, 1944, ch. 239, 58 Stat. 272, provided in part: "This Act [this section] shall apply to every case pending before the Supreme Court of the United States on the date of its enactment [June 9, 1944]."

#### **SHORT TITLE**

Act Feb. 11, 1903, which enacted sections 28 and 29 of this title, is commonly known as the "Expediting Act".

### **§30. Repealed. Pub. L. 107-273, div. C, title IV, §14102(f), Nov. 2, 2002, 116 Stat. 1922**

Section, act Mar. 3, 1913, ch. 114, 37 Stat. 731, provided that depositions for use in suits in equity brought under sections 1 to 7 of this title would be open to public.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF REPEAL**

Repeal effective Nov. 2, 2002, and applicable to cases pending on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as an Effective Date of 2002 Amendment note under section 3 of this title.

### **§31. Repealed. Pub. L. 107-273, div. C, title IV, §14102(a), Nov. 2, 2002, 116 Stat. 1921**

Section, act Aug. 24, 1912, ch. 390, §11, 37 Stat. 567, related to closure of Panama Canal to violators of antitrust laws.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF REPEAL**

Repeal effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as a note under section 3 of this title.

### **§§32, 33. Repealed. Pub. L. 91-452, title II, §§209, 210, Oct. 15, 1970, 84 Stat. 929**

Section 32, act Feb. 25, 1903, ch. 755, §1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1 to 11 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 33, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of former section 32 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF REPEAL**

Repeal 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**

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under sections 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.

### **§34. Definitions applicable to sections 34 to 36**

For purposes of sections 34 to 36 of this title—

(1) the term "local government" means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(Pub. L. 98-544, §2, Oct. 24, 1984, 98 Stat. 2750.)

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE**

Pub. L. 98-544, §6, Oct. 24, 1984, 98 Stat. 2751, provided that: "This Act [enacting this section, sections 35 and 36 of this title, and provisions set out as a note under section 1 of this title] shall take effect thirty days before the date of the enactment of this Act [Oct. 24, 1984]."

### **§35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity**

#### **(a) Prohibition in general**

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

#### **(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition**

Subsection (a) shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) shall not apply.

(Pub. L. 98-544, §3, Oct. 24, 1984, 98 Stat. 2750.)

#### **EDITORIAL NOTES**

## REFERENCES IN TEXT

For the effective date of this Act, referred to in subsec. (b), see Effective Date note below.

The Clayton Act, referred to in subsecs. (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

## **§36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity**

### **(a) Prohibition in general**

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

### **(b) Nonapplication of prohibition for cases commenced before effective date of provisions**

Subsection (a) shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98-544, §4, Oct. 24, 1984, 98 Stat. 2750.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

For effective date of this Act, referred to in subsec. (b), see Effective Date note below.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

## **§37. Immunity from antitrust laws**

### **(a) Inapplicability of antitrust laws**

Except as provided in subsection (d), the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

### **(b) Immunity**

Except as provided in subsection (d), any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning,

issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

**(c) Treatment of certain annuities and trusts**

Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

- (1) in any filing by the donor with the Internal Revenue Service; or
- (2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this section and section 37a of this title to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

**(d) Limitation**

Subsections (a) and (b) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.

(Pub. L. 104–63, §2, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105–26, §2(1), July 3, 1997, 111 Stat. 241.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

For definition of "antitrust laws", referred to in text, see section 37a(1) of this title.

**AMENDMENTS**

**1997**—Pub. L. 105–26 amended section generally. Prior to amendment, section related to modification of antitrust laws to allow two or more charitable organizations to use, or to agree to use, the same annuity rate in issuing one or more charitable gift annuities and to limitations on such conduct.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105–26, §3, July 3, 1997, 111 Stat. 242, provided that: "This Act [see Short Title of 1997 Amendments note set out under section 1 of this title], and the amendments made by this Act, shall apply with respect to all conduct occurring before, on, or after the date of the enactment of this Act [July 3, 1997] and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act."

**EFFECTIVE DATE**

Pub. L. 104–63, §4, Dec. 8, 1995, 109 Stat. 688, provided that: "This Act [enacting this section, section 37a of this title, and provisions set out as a note under section 1 of this title] shall apply with respect to conduct occurring before, on, or after the date of the enactment of this Act [Dec. 8, 1995]."

**STUDY AND REPORT**

Pub. L. 105–26, §4, July 3, 1997, 111 Stat. 242, provided that:

"(a) **STUDY AND REPORT.**—The Attorney General shall carry out a study to determine the effect of this Act [see Short Title of 1997 Amendments note set out under section 1 of this title] on markets for noncharitable annuities, charitable gift annuities, and charitable remainder trusts. The Attorney General shall prepare a report summarizing the results of the study.

"(b) **DETAILS OF STUDY AND REPORT.**—The report referred to in subsection (a) shall include any



information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

"(c) SUBMISSION OF REPORT.—The Attorney General shall submit the report referred to in subsection (a) to the Chairman and the ranking member of the Committee on the Judiciary of the House of Representatives, and to the Chairman and the ranking member of the Committee on the Judiciary of the Senate, not later than 27 months after the date of the enactment of this Act [July 3, 1997]."

## **§37a. Definitions**

For purposes of this section and section 37 of this title:

### **(1) Antitrust laws**

The term "antitrust laws" has the meaning given it in subsection (a) of 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.

### **(2) Charitable remainder trust**

The term "charitable remainder trust" has the meaning given it in section 664(d) of title 26.

### **(3) Charitable gift annuity**

The term "charitable gift annuity" has the meaning given it in section 501(m)(5) of title 26.

### **(4) Final determination**

The term "final determination" includes an Internal Revenue Service determination, after exhaustion of donor's and donee's administrative remedies, disallowing the donor's charitable deduction for the year in which the initial contribution was made because of the donee's failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of title 26.

### **(5) Person**

The term "person" has the meaning given it in subsection (a) of section 12 of this title.

### **(6) State**

The term "State" has the meaning given it in section 15g(2) of this title.

(Pub. L. 104–63, §3, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105–26, §2(2), July 3, 1997, 111 Stat. 242.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1997**—Pars. (1), (2). Pub. L. 105–26, §2(2)(A)–(C), added par. (2), redesignated former par. (2) as (1), and struck out heading and text of former par. (1). Text read as follows: "The term 'annuity rate' means the percentage of the fair market value of a gift (determined as of the date of the gift) given in exchange for a charitable gift annuity, that represents the amount of the annual payment to be made to 1 or 2 annuitants over the life of either or both under the terms of the agreement to give such gift in exchange for such annuity."

Pars. (4) to (6). Pub. L. 105–26, §2(2)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105–26 applicable with respect to all conduct occurring before, on, or after July 3, 1997, and applicable in all administrative and judicial actions pending on or commenced after July 3, 1997, see section 3 of Pub. L. 105–26, set out as a note under section 37 of this title.

### **EFFECTIVE DATE**

Section applicable with respect to conduct occurring before, on, or after Dec. 8, 1995, see section 4 of Pub. L. 104–63, set out as a note under section 37 of this title.

## **§37b. Confirmation of antitrust status of graduate medical resident matching programs**

### **(a) Findings and purposes**

#### **(1) Findings**

Congress makes the following findings:

(A) For over 50 years, most United States medical school seniors and the large majority of graduate medical education programs (popularly known as "residency programs") have chosen to use a matching program to match medical students with residency programs to which they have applied. These matching programs have been an integral part of an educational system that has produced the finest physicians and medical researchers in the world.

(B) Before such matching programs were instituted, medical students often felt pressure, at an unreasonably early stage of their medical education, to seek admission to, and accept offers from, residency programs. As a result, medical students often made binding commitments before they were in a position to make an informed decision about a medical specialty or a residency program and before residency programs could make an informed assessment of students' qualifications. This situation was inefficient, chaotic, and unfair and it often led to placements that did not serve the interests of either medical students or residency programs.

(C) The original matching program, now operated by the independent non-profit National Resident Matching Program and popularly known as "the Match", was developed and implemented more than 50 years ago in response to widespread student complaints about the prior process. This Program includes on its board of directors individuals nominated by medical student organizations as well as by major medical education and hospital associations.

(D) The Match uses a computerized mathematical algorithm, as students had recommended, to analyze the preferences of students and residency programs and match students with their highest preferences from among the available positions in residency programs that listed them. Students thus obtain a residency position in the most highly ranked program on their list that has ranked them sufficiently high among its preferences. Each year, about 85 percent of participating United States medical students secure a place in one of their top 3 residency program choices.

(E) Antitrust lawsuits challenging the matching process, regardless of their merit or lack thereof, have the potential to undermine this highly efficient, pro-competitive, and long-standing process. The costs of defending such litigation would divert the scarce resources of our country's teaching hospitals and medical schools from their crucial missions of patient care, physician training, and medical research. In addition, such costs may lead to abandonment of the matching process, which has effectively served the interests of medical students, teaching hospitals, and patients for over half a century.

#### **(2) Purposes**

It is the purpose of this section to—

(A) confirm that the antitrust laws do not prohibit sponsoring, conducting, or participating in a graduate medical education residency matching program, or agreeing to do so; and

(B) ensure that those who sponsor, conduct or participate in such matching programs are not subjected to the burden and expense of defending against litigation that challenges such matching programs under the antitrust laws.

### **(b) Application of antitrust laws to graduate medical education residency matching programs**

#### **(1) Definitions**

In this subsection:

##### **(A) Antitrust laws**

The term "antitrust laws"—

(i) has the meaning given such term in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent such section 45 applies to unfair methods of competition; and

(ii) includes any State law similar to the laws referred to in clause (i).

**(B) Graduate medical education program**

The term "graduate medical education program" means—

(i) a residency program for the medical education and training of individuals following graduation from medical school;

(ii) a program, known as a specialty or subspecialty fellowship program, that provides more advanced training; and

(iii) an institution or organization that operates, sponsors or participates in such a program.

**(C) Graduate medical education residency matching program**

The term "graduate medical education residency matching program" means a program (such as those conducted by the National Resident Matching Program) that, in connection with the admission of students to graduate medical education programs, uses an algorithm and matching rules to match students in accordance with the preferences of students and the preferences of graduate medical education programs.

**(D) Student**

The term "student" means any individual who seeks to be admitted to a graduate medical education program.

**(2) Confirmation of antitrust status**

It shall not be unlawful under the antitrust laws to sponsor, conduct, or participate in a graduate medical education residency matching program, or to agree to sponsor, conduct, or participate in such a program. Evidence of any of the conduct described in the preceding sentence shall not be admissible in Federal court to support any claim or action alleging a violation of the antitrust laws.

**(3) Applicability**

Nothing in this section shall be construed to exempt from the antitrust laws any agreement on the part of 2 or more graduate medical education programs to fix the amount of the stipend or other benefits received by students participating in such programs.

**(c) Effective date**

This section shall take effect on April 10, 2004, shall apply to conduct whether it occurs prior to, on, or after April 10, 2004, and shall apply to all judicial and administrative actions or other proceedings pending on April 10, 2004.

(Pub. L. 108–218, title II, §207, Apr. 10, 2004, 118 Stat. 611.)

**§38. Association of marine insurance companies; application of antitrust laws**

(a) Whenever used in this section—

(1) The term "association" means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term "marine insurance companies" means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

(b) Nothing contained in the "antitrust laws" as designated in section 12 of this title, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

(June 5, 1920, ch. 250, §29, 41 Stat. 1000.)

## EDITORIAL NOTES

### CODIFICATION

Section was classified to section 885 of the former Appendix to Title 46, prior to the completion of the enactment of Title 46, Shipping, by Pub. L. 109–304, Oct. 6, 2006, 120 Stat. 1485.

## CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

### SUBCHAPTER I—FEDERAL TRADE COMMISSION

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- 61. Export trade; definitions.
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- 63. Acquisition of stock of export trade corporation.
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#### SUBCHAPTER III—LABELING OF WOOL PRODUCTS

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- 68a. Misbranding declared unlawful.
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#### SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION

- 70. Definitions.
- 70a. Violations of Federal Trade Commission Act.
- 70b. Misbranded and falsely advertised textile fiber products.
- 70c. Removal of stamp, tag, label, or other identification.
- 70d. Records.
- 70e. Enforcement.
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## **SUBCHAPTER I—FEDERAL TRADE COMMISSION**

### **§41. Federal Trade Commission established; membership; vacancies; seal**

A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from September 26, 1914, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified..<sup>1</sup> The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

(Sept. 26, 1914, ch. 311, §1, 38 Stat. 717; Mar. 21, 1938, ch. 49, §1, 52 Stat. 111; 1950 Reorg. Plan No. 8, §3, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1938**—Act Mar. 21, 1938, inserted proviso clause to third sentence.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

Functions of Federal Trade Commission (1) under Flammable Fabrics Act [section 1191 et seq. of this title] and under this subchapter to extent that such functions relate to administration of Flammable Fabrics Act, and (2) under Act of August 2, 1956, [section 1211 et seq. of this title], transferred to Consumer Product Safety Commission by section 30 of Act Oct. 27, 1972, Pub. L. 92-573 [section 2079 of this title].

By section 3 of act Sept. 26, 1914, Bureau of Corporations abolished and all employees and functions of said Bureau transferred to Federal Trade Commission.

### **CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES**

Pub. L. 106-102, title I, §133(a), (b), Nov. 12, 1999, 113 Stat. 1383, provided that:

"(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person that directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of any provisions applied by the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

"(b) SAVINGS PROVISION.—No provision of this section [amending section 18a of this title] shall be

construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818]."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

Executive and administrative functions of Federal Trade Commission, with certain reservations, transferred to Chairman of such Commission by Reorg. Plan No. 8 of 1950, set out below.

### **REORGANIZATION PLAN NO. 8 OF 1950**

EFF. MAY 24, 1950, 15 F.R. 3175, 64 STAT. 1264

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

## **FEDERAL TRADE COMMISSION**

### **SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN**

(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Federal Trade Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

### **SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS**

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan.

### **SEC. 3. DESIGNATION OF CHAIRMAN**

The functions of the Commission with respect to choosing a Chairman from among the membership of the Commission are hereby transferred to the President.

## **MESSAGE OF THE PRESIDENT**

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 8 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Federal Trade Commission. My reasons for transmitting this plan are stated in any accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 8 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

HARRY S. TRUMAN.

## REORGANIZATION PLAN NO. 4 OF 1961

EFF. JULY 9, 1961, 26 F.R. 6191, 75 STAT. 837

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

### FEDERAL TRADE COMMISSION

#### SECTION 1. AUTHORITY TO DELEGATE

(a) In addition to its existing authority, the Federal Trade Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter; *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [see 5 U.S.C. 556].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

#### SEC. 2. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

In addition to the functions transferred by the provisions of Reorganization Plan No. 8 of 1950 (64 Stat. 1264) [set out as a note under this section], there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

#### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Federal Trade Commission.

This Reorganization Plan No. 4 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Federal Trade Commission.

The plan provides for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Commission, individual Commissioners, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), by other employees. This will relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Commission as a whole the right to review any such decision, report or certification either upon its own initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Commission the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision, report or certification upon the vote of a majority of the Commission less one member.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of



the business, that function is placed in the Chairman by section 2 of the plan.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

<sup>1</sup> *So in original.*

## **§42. Employees; expenses**

Each commissioner shall receive a salary, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each Commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the Commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Director of the Office of Personnel Management.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the Commission may rent suitable offices for its use.

The Government Accountability Office shall receive and examine all accounts of expenditures of the Commission.

(Sept. 26, 1914, ch. 311, §2, 38 Stat. 718; June 10, 1921, ch. 18, title III, §304, 42 Stat. 24; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The classified civil service, referred to in second par., means the "competitive service", see section 2102 of Title 5, Government Organization and Employees. Rules and regulations of the Civil Service Commission for entry into the service are prescribed generally under authority of section 3301 et seq. of Title 5.

### **CODIFICATION**

In the first par., provisions that fixed the salary of the commissioners have been omitted as obsolete. The positions of chairman and members of the commission are now under the Executive Schedule, see sections 5414 and 5315 of Title 5, Government Organization and Employees.

Provisions that fixed the salary of the secretary of the commission, payable in like manner, have been omitted as obsolete. The position is now subject to chapter 51 and subchapter III of chapter 53 (relating to classification and General Schedule pay rates) and section 5504 (relating to biweekly pay periods) of Title 5.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

"Government Accountability Office" substituted in text for "General Accounting Office" pursuant to section 8(b) of Pub. L. 108-271, set out as a note under section 702 of Title 31, Money and Finance, which redesignated the General Accounting Office and any references thereto as the Government Accountability Office. Previously, "General Accounting Office" substituted in text for "Auditor for the State and Other Departments" pursuant to act June 10, 1921, which transferred all powers and duties of the Comptroller, six auditors, and certain other employees of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

"Director of the Office of Personnel Management" substituted in text for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **§43. Office and place of meeting**

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(Sept. 26, 1914, ch. 311, §3, 38 Stat. 719.)

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **§44. Definitions**

The words defined in this section shall have the following meaning when found in this subchapter, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means subtitle IV of title 49 and the Communications Act of 1934

[47 U.S.C. 151 et seq.] and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890; also sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes' ", approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

"Banks" means the types of banks and other financial institutions referred to in section 57a(f)(2) of this title.

"Foreign law enforcement agency" means—

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).

(Sept. 26, 1914, ch. 311, §4, 38 Stat. 719; Mar. 21, 1938, ch. 49, §2, 52 Stat. 111; Pub. L. 102–242, title II, §212(g)(1), Dec. 19, 1991, 105 Stat. 2302; Pub. L. 107–273, div. C, title IV, §14102(c)(2)(B), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 109–455, §§2, 13, Dec. 22, 2006, 120 Stat. 3372, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

## AMENDMENT OF SECTION

*For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.*

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in the text, is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

Sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, referred to in text, are known as the Wilson Tariff Act. Sections 73 to 76 are classified to sections 8 to 11 of this title.

Act February 12, 1913, is set out as amendments to sections 8 and 11 of this title.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, referred to in text, is the Clayton Act. For classification of the Act to the Code, see References in Text note set out under section 12 of this title.

## CODIFICATION

"Subtitle IV of title 49" substituted in text for "the Act entitled 'An Act to regulate commerce', approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

## AMENDMENTS

**2012**—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment note below.

**2006**—Pub. L. 109–455, §2, which added par. defining "Foreign law enforcement agency", was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

**2002**—Pub. L. 107–273 substituted "73 to 76" for "73 to 77" in par. defining "Antitrust Acts".

**1991**—Pub. L. 102–242 added par. defining "Banks".

**1938**—Act Mar. 21, 1938, amended section generally.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TERMINATION DATE OF 2006 AMENDMENT**

Pub. L. 109–455, §13, Dec. 22, 2006, 120 Stat. 3382, as amended by Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484; Pub. L. 116–173, §1, Oct. 20, 2020, 134 Stat. 837, provided that: "Effective September 30, 2027, this Act [enacting sections 57b–2a, 57b–2b, 57c–1, and 57c–2 of this title, amending this section, sections 45, 46, 56, 57b–2, and 58 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section and section 58 of this title], and the amendments made by this Act, are repealed, and any provision of law amended by this Act shall be amended to read as if this Act had not been enacted into law."

[Pub. L. 116–173, §1, which delayed the repeal of Pub. L. 109–455, and reversion of any amended text, by substituting "September 30, 2027" for "September 30, 2020" in section 13 of Pub. L. 109–455, set out above, was given effect to reflect the probable intent of Congress, notwithstanding that Pub. L. 116–173 was enacted on Oct. 20, 2020.]

### **EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as a note under section 3 of this title.

### **PRESERVATION OF EXISTING AUTHORITY**

Pub. L. 109–455, §12, Dec. 22, 2006, 120 Stat. 3382, provided that: "The authority provided by this Act [see Termination Date of 2006 Amendment note above], and by the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States."

[Section 12 of Pub. L. 109–455, set out above, repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note above.]

## **§45. Unfair methods of competition unlawful; prevention by Commission**

### **(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade**

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)(A) For purposes of subsection (a), the term "unfair or deceptive acts or practices" includes such acts or practices involving foreign commerce that—

- (i) cause or are likely to cause reasonably foreseeable injury within the United States; or
- (ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

**(b) Proceeding by Commission; modifying and setting aside orders**

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The

Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph <sup>1</sup>(2) not later than 120 days after the date of the filing of such request.

**(c) Review of order; rehearing**

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the 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, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

**(d) Jurisdiction of court**

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

**(e) Exemption from liability**

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

**(f) Service of complaints, orders and other processes; return**

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

**(g) Finality of order**

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) and of section 57b(a)(2) of this title, if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

#### **(h) Modification or setting aside of order by Supreme Court**

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

#### **(i) Modification or setting aside of order by Court of Appeals**

If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

**(j) Rehearing upon order or remand**

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

**(k) "Mandate" defined**

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

**(l) Penalty for violation of order; injunctions and other appropriate equitable relief**

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

**(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure**

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1)) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1), each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such



action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a).

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

**(n) Standard of proof; public policy considerations**

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(Sept. 26, 1914, ch. 311, §5, 38 Stat. 719; Mar. 21, 1938, ch. 49, §3, 52 Stat. 111; June 23, 1938, ch. 601, title XI, §1107(f), 52 Stat. 1028; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Mar. 16, 1950, ch. 61, §4(c), 64 Stat. 21; July 14, 1952, ch. 745, §2, 66 Stat. 632; Pub. L. 85-726, title XIV, §§1401(b), 1411, Aug. 23, 1958, 72 Stat. 806, 809; Pub. L. 85-791, §3, Aug. 28, 1958, 72 Stat. 942; Pub. L. 85-909, §3, Sept. 2, 1958, 72 Stat. 1750; Pub. L. 86-507, §1(13), June 11, 1960, 74 Stat. 200; Pub. L. 93-153, title IV, §408(c), (d), Nov. 16, 1973, 87 Stat. 591, 592; Pub. L. 93-637, title II, §§201(a), 204(b), 205(a), Jan. 4, 1975, 88 Stat. 2193, 2200; Pub. L. 94-145, §3, Dec. 12, 1975, 89 Stat. 801; Pub. L. 96-37, §1(a), July 23, 1979, 93 Stat. 95; Pub. L. 96-252, §2, May 28, 1980, 94 Stat. 374; Pub. L. 97-290, title IV, §403, Oct. 8, 1982, 96 Stat. 1246; Pub. L. 98-620, title IV, §402(12), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 100-86, title VII, §715(a)(1), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103-312, §§4, 6, 9, Aug. 26, 1994, 108 Stat. 1691, 1692, 1695; Pub. L. 109-455, §§3, 13, Dec. 22, 2006, 120 Stat. 3372, 3382; Pub. L. 112-203, §1, Dec. 4, 2012, 126 Stat. 1484.)

**AMENDMENT OF SECTION**

*For repeal of amendment by section 13 of Pub. L. 109-455, see Termination Date of 2006 Amendment note below.*

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Packers and Stockyards Act, 1921, as amended, referred to in subsec. (a)(2), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

**CODIFICATION**

In subsec. (a)(2), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

In subsec. (c), "section 1254 of title 28" substituted for "section 240 of the Judicial Code [28 U.S.C. 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

**AMENDMENTS**

**2012**—Subsec. (a)(4). Pub. L. 112-203, §1, amended Pub. L. 109-455, §13. See 2006 Amendment note below.

**2006**—Subsec. (a)(4). Pub. L. 109-455, §3, which added par. (4) extending the definition of unfair or deceptive acts or practices to include certain ones involving foreign commerce, was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

**1994**—Subsec. (g)(1). Pub. L. 103-312, §6(d), substituted a period for "; or" at end.

Subsec. (g)(2). Pub. L. 103-312, §6(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or".

Subsec. (g)(3). Pub. L. 103-312, §6(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or".

Subsec. (g)(4). Pub. L. 103-312, §6(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed."

Subsec. (m)(1)(B). Pub. L. 103-312, §4(a), inserted ", other than a consent order," after "a final cease and desist order" in introductory provisions.

Subsec. (m)(2). Pub. L. 103-312, §4(b), inserted at end "Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a)."

Subsec. (n). Pub. L. 103-312, §9, added subsec. (n).

**1987**—Subsec. (a)(2). Pub. L. 100-86 inserted "Federal credit unions described in section 57a(f)(4) of this title," after "section 57a(f)(3) of this title,".

**1984**—Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

**1982**—Subsec. (a)(3). Pub. L. 97-290 added par. (3).

**1980**—Subsec. (b). Pub. L. 96-252 added cl. (2) and provision following cl. (2) requiring that the Commission determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

**1979**—Subsec. (a)(2). Pub. L. 96-37 added savings and loan institutions described in section 57a(f)(3) of this title to the enumeration of entities exempted from the Commission's power to prevent the use of unfair methods of competition and unfair or deceptive acts or practices.

**1975**—Pub. L. 93-637, §201(a), substituted "in or affecting commerce" for "in commerce" wherever appearing.

Subsec. (a). Pub. L. 94-145 struck out pars. (2) to (5) which permitted fair trade pricing of articles for retail sale and State enactment of nonsigner provisions, and redesignated par. (6) as (2).

Subsec. (m). Pub. L. 93-637, §§204(b), 205(a), added subsec. (m). Former subsec. (m), relating to the election by the Commission to appear in its own name after notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission, was struck out.

**1973**—Subsec. (l). Pub. L. 93-153, §408(c), raised the maximum civil penalty for each violation to \$10,000 and inserted provisions empowering the United States District Courts to grant mandatory injunctions and such other and further equitable relief as they might deem appropriate for the enforcement of final Commission orders.

Subsec. (m). Pub. L. 93-153, §408(d), added subsec. (m).

**1960**—Subsec. (f). Pub. L. 86-507 substituted "mailing a copy thereof by registered mail or by certified mail" for "registering and mailing a copy thereof", and "mailed by registered mail or by certified mail" for "registered and mailed".

**1958**—Subsec. (a)(6). Pub. L. 85-909 substituted "persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended," for "persons, partnerships or corporations subject to the Packers and Stockyards Act, 1921,".

Pub. L. 85-726, §1411, substituted "Federal Aviation Act of 1958" for "Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 85-791, §3(a), struck out "the transcript of" before "the record in the proceeding" in sixth sentence.

Subsec. (c). Pub. L. 85-791, §3(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", and "Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission", and which, in third sentence struck out "and transcript" after "petition", inserted "concurrently with the Commission until the filing of the record" and struck out "upon the pleadings, evidence, and proceedings set forth in such transcript" before "a decree affirming".

Subsec. (d). Pub. L. 85-791, §3(c), substituted "Upon the filing of the record with it the" for "The".

**1952**—Subsec. (a). Act July 14, 1952, amended subsec. (a) generally to permit fair trade pricing of articles for retail sale.

**1950**—Subsec. (l). Act Mar. 16, 1950, inserted last sentence to make each separate violation of a cease and desist order as a separate offense, except that each day of a continuing failure to obey a final order shall be a separate offense.

**1938**—Subsec. (a). Act June 23, 1938, inserted "air carriers and foreign air carriers subject to chapter 9 of title 49" in second par.

Act Mar. 21, 1938, amended section generally.

## **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".

### **TERMINATION DATE OF 2006 AMENDMENT**

Amendment by section 3 of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

### **EFFECTIVE DATE OF 1994 AMENDMENT**

Pub. L. 103–312, §15, Aug. 26, 1994, 108 Stat. 1697, provided that:

"(a) **IN GENERAL.**—Except as provided in subsections (b), (c), (d), and (e), the provisions of this Act [enacting section 57b–5 of this title, amending this section and sections 53, 57a, 57b–1, 57b–2, 57c, and 58 of this title, and enacting provisions set out as notes under sections 57c and 58 of this title] shall take effect on the date of enactment of this Act [Aug. 26, 1994].

"(b) **APPLICABILITY OF SECTION 5.**—The amendment made by section 5 of this Act [amending section 57a of this title] shall apply only to rulemaking proceedings initiated after the date of enactment of this Act. Such amendment shall not be construed to affect in any manner a rulemaking proceeding which was initiated before the date of enactment of this Act [Aug. 26, 1994].

"(c) **APPLICABILITY OF SECTION 6.**—The amendments made by section 6 of this Act [amending this section] shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) after the date of enactment of this Act [Aug. 26, 1994]. These amendments shall not be construed to affect in any manner a cease and desist order which was issued before the date of enactment of this Act.

"(d) **APPLICABILITY OF SECTIONS 7 AND 8.**—The amendments made by sections 7 and 8 of this Act [amending sections 57b–1 and 57b–2 of this title] shall apply only with respect to compulsory process issued after the date of enactment of this Act [Aug. 26, 1994].

"(e) **APPLICABILITY OF SECTION 9.**—The amendments made by section 9 of this Act [amending this section] shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), or to rules promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) after the date of enactment of this Act [Aug. 26, 1994]. These amendments shall not be construed to affect in any manner a cease and desist order which was issued, or a rule which was promulgated, before the date of enactment of this Act. These amendments shall not be construed to affect in any manner a cease and desist order issued after the date of enactment of this Act, if such order was issued pursuant to remand from a court of appeals or the Supreme Court of an order issued by the Federal Trade Commission before the date of enactment of this Act."

### **EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Pub. L. 96–252, §23, May 28, 1980, 94 Stat. 397, provided that: "The provisions of this Act [enacting sections 57a–1 and 57b–1 to 57b–4 of this title, amending this section and sections 46, 50, 57a, 57c, and 58 of this title, and enacting provisions set out as notes under sections 46, 57a, 57a–1, 57c, and 58 of this title], and the amendments made by this Act, shall take effect on the date of the enactment of this Act [May 28, 1980]."

### **EFFECTIVE DATE OF 1975 AMENDMENTS**

Amendment by Pub. L. 94-145 effective upon expiration of ninety-day period beginning on Dec. 12, 1975, see section 4 of Pub. L. 94-145, set out as a note under section 1 of this title.

Amendment by section 204(b) of Pub. L. 93-637 not applicable to any civil action commenced before Jan. 4, 1975, see section 204(c) of Pub. L. 93-637, set out as a note under section 56 of this title.

Pub. L. 93-637, §205(b), Jan. 4, 1975, 88 Stat. 2201, provided that: "The amendment made by subsection (a) of this section [amending this section] shall not apply to any violation, act, or practice to the extent that such violation, act, or practice occurred before the date of enactment of this Act [Jan. 4, 1975]."

#### **EFFECTIVE DATE OF 1958 AMENDMENT**

Amendment by Pub. L. 85-726 effective on 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office, see section 1505(2) of Pub. L. 85-726. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

#### **EFFECTIVE DATE OF 1950 AMENDMENT**

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

### **PROHIBITING DECEPTIVE ACTS OR PRACTICES IN CONNECTION WITH THE NOVEL CORONAVIRUS**

Pub. L. 116-260, div. FF, title XIV, §1401, Dec. 27, 2020, 134 Stat. 3275, provided that:

"(a) **SHORT TITLE.**—This section may be cited as the 'COVID-19 Consumer Protection Act'.

"(b) **IN GENERAL.**—For the duration of a public health emergency declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) as a result of confirmed cases of the 2019 novel coronavirus (COVID-19), including any renewal thereof, it shall be unlawful for any person, partnership, or corporation to engage in a deceptive act or practice in or affecting commerce in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) that is associated with—

"(1) the treatment, cure, prevention, mitigation, or diagnosis of COVID-19; or

"(2) a government benefit related to COVID-19.

"(c) **ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.**—

"(1) **VIOLATION.**—A violation of subsection (b) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

"(2) **POWERS OF THE FEDERAL TRADE COMMISSION.**—

"(A) **IN GENERAL.**—The Federal Trade Commission shall enforce subsection (b) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act [probably means "this section"].

"(B) **PRIVILEGES AND IMMUNITIES.**—Any person who violates this Act [probably means "this section"] shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

"(3) **EFFECT ON OTHER LAWS.**—Nothing in this Act [probably means "this section"] shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

"(d) **SEVERABILITY.**—If any provision of this Act [probably means "this section"], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation."

### **CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF**

Pub. L. 93-153, §408(a), (b), Nov. 16, 1973, 87 Stat. 591, provided that:

"(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpoenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

"(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

"(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission

administers by granting statutory authority to directly enforce subpoenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."

#### **PURPOSE OF ACT JULY 14, 1952**

Act July 14, 1952, ch. 745, §1, 66 Stat. 631, provided: "That it is the purpose of this Act [amending this section] to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce."

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

*<sup>1</sup> So in original. Probably should be "clause".*

#### **§45a. Labels on products**

To the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 45 of this title. This section only applies to such labels. Nothing in this section shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 45 of this title and may from time to time issue rules pursuant to section 553 of title 5 for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after September 13, 1994.

(Pub. L. 103-322, title XXXII, §320933, Sept. 13, 1994, 108 Stat. 2135.)

#### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, and not as part of the Federal Trade Commission Act which comprises this subchapter.

#### **§45b. Consumer review protection**

##### **(a) Definitions**

In this section:

##### **(1) Commission**

The term "Commission" means the Federal Trade Commission.

**(2) Covered communication**

The term "covered communication" means a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party.

**(3) Form contract**

**(A) In general**

Except as provided in subparagraph (B), the term "form contract" means a contract with standardized terms—

- (i) used by a person in the course of selling or leasing the person's goods or services; and
- (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

**(B) Exception**

The term "form contract" does not include an employer-employee or independent contractor contract.

**(4) Pictorial**

The term "pictorial" includes pictures, photographs, video, illustrations, and symbols.

**(b) Invalidity of contracts that impede consumer reviews**

**(1) In general**

Except as provided in paragraphs (2) and (3), a provision of a form contract is void from the inception of such contract if such provision—

- (A) prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication;
- (B) imposes a penalty or fee against an individual who is a party to the form contract for engaging in a covered communication; or
- (C) transfers or requires an individual who is a party to the form contract to transfer to any person any intellectual property rights in review or feedback content, with the exception of a non-exclusive license to use the content, that the individual may have in any otherwise lawful covered communication about such person or the goods or services provided by such person.

**(2) Rule of construction**

Nothing in paragraph (1) shall be construed to affect—

- (A) any duty of confidentiality imposed by law (including agency guidance);
- (B) any civil cause of action for defamation, libel, or slander, or any similar cause of action;
- (C) any party's right to remove or refuse to display publicly on an Internet website or webpage owned, operated, or otherwise controlled by such party any content of a covered communication that—
  - (i) contains the personal information or likeness of another person, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
  - (ii) is unrelated to the goods or services offered by or available at such party's Internet website or webpage; or
  - (iii) is clearly false or misleading; or

(D) a party's right to establish terms and conditions with respect to the creation of photographs or video of such party's property when those photographs or video are created by an employee or independent contractor of a commercial entity and solely intended for commercial purposes by that entity.

### **(3) Exceptions**

Paragraph (1) shall not apply to the extent that a provision of a form contract prohibits disclosure or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments to remove—

(A) trade secrets or commercial or financial information obtained from a person and considered privileged or confidential;

(B) personnel and medical files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(C) records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(D) content that is unlawful or otherwise meets the requirements of paragraph (2)(C); or

(E) content that contains any computer viruses, worms, or other potentially damaging computer code, processes, programs, applications, or files.

### **(c) Prohibition**

It shall be unlawful for a person to offer a form contract containing a provision described as void in subsection (b).

### **(d) Enforcement by Commission**

#### **(1) Unfair or deceptive acts or practices**

A violation of subsection (c) by a person with respect to which the Commission is empowered under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

#### **(2) Powers of Commission**

##### **(A) In general**

The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

##### **(B) Privileges and immunities**

Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

### **(e) Enforcement by States**

#### **(1) Authorization**

Subject to paragraph (2), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (c) in a practice that violates such subsection, the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

#### **(2) Rights of Federal Trade Commission**

##### **(A) Notice to Federal Trade Commission**

###### **(i) In general**

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person described in subsection (d)(1).

###### **(ii) Contents**

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

**(iii) Exception**

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

**(B) Intervention by Federal Trade Commission**

The Commission may—

- (i) intervene in any civil action brought by the attorney general of a State under paragraph (1) against a person described in subsection (d)(1); and
- (ii) upon intervening—
  - (I) be heard on all matters arising in the civil action; and
  - (II) file petitions for appeal of a decision in the civil action.

**(3) Investigatory powers**

Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

**(4) Preemptive action by Federal Trade Commission**

If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

**(5) Venue; service of process**

**(A) Venue**

Any action brought under paragraph (1) may be brought in—

- (i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28; or
- (ii) another court of competent jurisdiction.

**(B) Service of process**

In an action brought under paragraph (1), process may be served in any district in which the defendant—

- (i) is an inhabitant; or
- (ii) may be found.

**(6) Actions by other State officials**

**(A) In general**

In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

**(B) Savings provision**

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

**(f) Education and outreach for businesses**

Not later than 60 days after December 14, 2016, the Commission shall commence conducting



education and outreach that provides businesses with non-binding best practices for compliance with this Act.

**(g) Relation to State causes of action**

Nothing in this section shall be construed to affect any cause of action brought by a person that exists or may exist under State law.

**(h) Savings provision**

Nothing in this section shall be construed to limit, impair, or supersede the operation of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any other provision of Federal law.

**(i) Effective dates**

This section shall take effect on December 14, 2016, except that—

(1) subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after December 14, 2016; and

(2) subsections (d) and (e) shall apply with respect to contracts in effect on or after the date that is 1 year after December 14, 2016.

(Pub. L. 114–258, §2, Dec. 14, 2016, 130 Stat. 1355.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsecs. (d)(2) and (h), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to this subchapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This Act, referred to in subsecs. (d)(2)(A) and (f), is Pub. L. 114–258, Dec. 14, 2016, 130 Stat. 1355, known as the Consumer Review Fairness Act of 2016, which enacted this section and provisions set out as a note under section 58 of this title. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 58 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the Consumer Review Fairness Act of 2016, and not as part of the Federal Trade Commission Act which comprises this subchapter.

**§45c. Unfair and deceptive acts and practices relating to circumvention of ticket access control measures**

**(a) Conduct prohibited**

**(1) In general**

Except as provided in paragraph (2), it shall be unlawful for any person—

(A) to circumvent a security measure, access control system, or other technological control or measure on an Internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules; or

(B) to sell or offer to sell any event ticket in interstate commerce obtained in violation of subparagraph (A) if the person selling or offering to sell the ticket either—

(i) participated directly in or had the ability to control the conduct in violation of subparagraph (A); or

(ii) knew or should have known that the event ticket was acquired in violation of subparagraph (A).

**(2) Exception**

It shall not be unlawful under this section for a person to create or use any computer software or system—

(A) to investigate, or further the enforcement or defense, of any alleged violation of this section or other statute or regulation; or

(B) to engage in research necessary to identify and analyze flaws and vulnerabilities of measures, systems, or controls described in paragraph (1)(A), if these research activities are conducted to advance the state of knowledge in the field of computer system security or to assist in the development of computer security product.

**(b) Enforcement by the Federal Trade Commission**

**(1) Unfair or deceptive acts or practices**

A violation of subsection (a) shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

**(2) Powers of Commission**

**(A) In general**

The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

**(B) Privileges and immunities**

Any person who violates subsection (a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

**(C) Authority preserved**

Nothing in this section shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

**(c) Enforcement by States**

**(1) In general**

In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (a) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

(A) to enjoin further violation of such subsection by such person;

(B) to compel compliance with such subsection; and

(C) to obtain damages, restitution, or other compensation on behalf of such residents.

**(2) Rights of Federal Trade Commission**

**(A) Notice to Federal Trade Commission**

**(i) In general**

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) not later than 10 days before initiating the civil action.

**(ii) Contents**

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

**(iii) Exception**

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify

the Commission immediately upon instituting the civil action.

**(B) Intervention by Federal Trade Commission**

The Commission may—

- (i) intervene in any civil action brought by the attorney general of a State under paragraph (1); and
- (ii) upon intervening—
  - (I) be heard on all matters arising in the civil action; and
  - (II) file petitions for appeal of a decision in the civil action.

**(3) Investigatory powers**

Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

**(4) Preemptive action by Federal Trade Commission**

If the Commission institutes a civil action or an administrative action with respect to a violation of subsection (a), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

**(5) Venue; service of process**

**(A) Venue**

Any action brought under paragraph (1) may be brought in—

- (i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28; or
- (ii) another court of competent jurisdiction.

**(B) Service of process**

In an action brought under paragraph (1), process may be served in any district in which the defendant—

- (i) is an inhabitant; or
- (ii) may be found.

**(6) Actions by other State officials**

**(A) In general**

In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

**(B) Savings provision**

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(Pub. L. 114–274, §2, Dec. 14, 2016, 130 Stat. 1401.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (b)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to this subchapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the Better Online Ticket Sales Act of 2016 or the BOTS Act of 2016, and not as part of the Federal Trade Commission Act which comprises this subchapter.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### DEFINITIONS

Pub. L. 114–274, §3, Dec. 14, 2016, 130 Stat. 1403, provided that: "In this Act [see Short Title of 2016 Amendment note set out under section 58 of this title]:

"(1) COMMISSION.—The term 'Commission' means the Federal Trade Commission.

"(2) EVENT.—The term 'event' means any concert, theatrical performance, sporting event, show, or similarly scheduled activity, taking place in a venue with a seating or attendance capacity exceeding 200 persons that—

"(A) is open to the general public; and

"(B) is promoted, advertised, or marketed in interstate commerce or for which event tickets are generally sold or distributed in interstate commerce.

"(3) EVENT TICKET.—The term 'event ticket' means any physical, electronic, or other form of a certificate, document, voucher, token, or other evidence indicating that the bearer, possessor, or person entitled to possession through purchase or otherwise has—

"(A) a right, privilege, or license to enter an event venue or occupy a particular seat or area in an event venue with respect to one or more events; or

"(B) an entitlement to purchase such a right, privilege, or license with respect to one or more future events.

"(4) TICKET ISSUER.—The term 'ticket issuer' means any person who makes event tickets available, directly or indirectly, to the general public, and may include—

"(A) the operator of the venue;

"(B) the sponsor or promoter of an event;

"(C) a sports team participating in an event or a league whose teams are participating in an event;

"(D) a theater company, musical group, or similar participant in an event; and

"(E) an agent for any such person."

## **§45d. Unfair or deceptive acts or practices with respect to substance use disorder treatment service and products**

### **(a) Unlawful activity**

It is unlawful to engage in an unfair or deceptive act or practice with respect to any substance use disorder treatment service or substance use disorder treatment product.

### **(b) Enforcement by the Federal Trade Commission**

#### **(1) Unfair or deceptive acts or practices**

A violation of subsection (a) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

#### **(2) Powers of the Federal Trade Commission**

##### **(A) In general**

The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

##### **(B) Privileges and immunities**

Any person who violates subsection (a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated and made part of this section.

**(c) Authority preserved**

Nothing in this subtitle shall be construed to limit the authority of the Federal Trade Commission or the Food and Drug Administration under any other provision of law.

(Pub. L. 115–271, title VIII, §8023, Oct. 24, 2018, 132 Stat. 4082.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (b)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to this subchapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This subtitle, referred to in subsec. (c), is subtitle B (§§8021–8023) of title VIII of Pub. L. 115–271, Oct. 24, 2018, 132 Stat. 4082, known as the Opioid Addiction Recovery Fraud Prevention Act of 2018, which enacted this section and provisions set out as notes under this section and section 58 of this title.

**CODIFICATION**

Section was enacted as part of the Opioid Addiction Recovery Fraud Prevention Act of 2018, and also as part of the Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, also known as the SUPPORT for Patients and Communities Act, and not as part of the Federal Trade Commission Act which comprises this subchapter.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**DEFINITIONS**

Pub. L. 115–271, title VIII, §8022, Oct. 24, 2018, 132 Stat. 4082, provided that: "For purposes of this subtitle [subtitle B (§§8021–8023) of title VIII of Pub. L. 115–271, see References in Text note above] only, and not [to] be construed or applied as to challenge or affect the characterization, definition, or treatment under any other statute, regulation, or rule:

"(1) **SUBSTANCE USE DISORDER TREATMENT PRODUCT**.—The term 'substance use disorder treatment product' means a product for use or marketed for use in the treatment, cure, or prevention of a substance use disorder, including an opioid use disorder.

"(2) **SUBSTANCE USE DISORDER TREATMENT SERVICE**.—The term 'substance use disorder treatment service' means a service that purports to provide referrals to treatment, treatment, or recovery housing for people diagnosed with, having, or purporting to have a substance use disorder, including an opioid use disorder."

**§45e. Office for the prevention of fraud targeting seniors**

**(a) Establishment of Advisory Office**

The Federal Trade Commission (in this section referred to as the "Commission") shall establish an office within the Bureau of Consumer Protection for the purpose of advising the Commission on the prevention of fraud targeting seniors and to assist the Commission with the following:

**(1) Oversight**

The advisory office shall monitor the market for mail, television, internet, telemarketing, and recorded message telephone call (in this section referred to as "robocall") fraud targeting seniors and shall coordinate with other relevant agencies regarding the requirements of this section.

**(2) Consumer education**

The Commission, through the advisory office and in consultation with the Attorney General, the Secretary of Health and Human Services, the Postmaster General, the Chief Postal Inspector for the United States Postal Inspection Service, and other relevant agencies, shall—

(A) disseminate to seniors and families and caregivers of seniors general information on mail, television, internet, telemarketing, and robocall fraud targeting seniors, including descriptions of

the most common fraud schemes;

(B) disseminate to seniors and families and caregivers of seniors information on reporting complaints of fraud targeting seniors either to the national toll-free telephone number established by the Commission for reporting such complaints, or to the Consumer Sentinel Network, operated by the Commission, where such complaints will become immediately available to appropriate law enforcement agencies, including the Federal Bureau of Investigation and the attorneys general of the States;

(C) in response to a specific request about a particular entity or individual, provide publicly available information of any enforcement action taken by the Commission for mail, television, internet, telemarketing, and robocall fraud against such entity; and

(D) maintain a website to serve as a resource for information for seniors and families and caregivers of seniors regarding mail, television, internet, telemarketing, robocall, and other identified fraud targeting seniors.

### **(3) Complaints**

The Commission, through the advisory office and in consultation with the Attorney General, shall establish procedures to—

(A) log and acknowledge the receipt of complaints by individuals who believe they have been a victim of mail, television, internet, telemarketing, and robocall fraud in the Consumer Sentinel Network, and shall make those complaints immediately available to Federal, State, and local law enforcement authorities; and

(B) provide to individuals described in subparagraph (A), and to any other persons, specific and general information on mail, television, internet, telemarketing, and robocall fraud, including descriptions of the most common schemes using such methods of communication.

### **(b) Commencement**

The Commission shall commence carrying out the requirements of this section not later than 1 year after March 15, 2022.

### **(c) Use of existing funds**

No additional funds are authorized to be appropriated to carry out this section and the Commission shall carry out this section using amounts otherwise made available to the Commission.

(Pub. L. 117–103, div. Q, title I, §122, Mar. 15, 2022, 136 Stat. 811.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was enacted as part of the Seniors Fraud Prevention Act of 2022, the Fraud and Scam Reduction Act, and also as part of the Consolidated Appropriations Act, 2022, and not as part of the Federal Trade Commission Act which comprises this subchapter.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SENIOR SCAMS PREVENTION ADVISORY GROUP**

Pub. L. 117–103, div. Q, title I, §112(a)–(d), Mar. 15, 2022, 136 Stat. 809, 810, provided that:

"(a) ESTABLISHMENT.—There is established a Senior Scams Prevention Advisory Group (in this subtitle [subtitle A of div. Q of Pub. L. 117–103, amending section 21711 of Title 34, Crime Control and Law Enforcement, and enacting provisions set out as notes under section 58 of this title and section 21711 of Title 34] referred to as the 'Advisory Group').

"(b) MEMBERS.—The Advisory Group shall be composed of stakeholders such as the following individuals or the designees of those individuals:

"(1) The Chairman of the Federal Trade Commission.

"(2) The Secretary of the Treasury.

"(3) The Attorney General.

"(4) The Director of the Bureau of Consumer Financial Protection.

"(5) Representatives from each of the following sectors, including trade associations, to be selected by the Federal Trade Commission:

"(A) Retail.

"(B) Gift cards.

"(C) Telecommunications.

"(D) Wire-transfer services.

"(E) Senior peer advocates.

"(F) Consumer advocacy organizations with efforts focused on preventing seniors from becoming the victims of scams.

"(G) Financial services, including institutions that engage in digital currency.

"(H) Prepaid cards.

"(6) A member of the Board of Governors of the Federal Reserve System.

"(7) A prudential regulator, as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

"(8) The Director of the Financial Crimes Enforcement Network.

"(9) Any other Federal, State, or local agency, industry representative, consumer advocate, or entity, as determined by the Federal Trade Commission.

"(c) NO COMPENSATION FOR MEMBERS.—A member of the Advisory Group shall serve without compensation in addition to any compensation received for the service of the member as an officer or employee of the United States, if applicable.

"(d) DUTIES.—

"(1) IN GENERAL.—The Advisory Group shall—

"(A) collect information on the existence, use, and success of educational materials and programs for retailers, financial services, and wire-transfer companies, which—

"(i) may be used as a guide to educate employees on how to identify and prevent scams that affect seniors; and

"(ii) includes—

"(I) useful information for retailers, financial services, and wire transfer companies for the purpose described in clause (i);

"(II) training for employees on ways to identify and prevent senior scams;

"(III) best practices for keeping employees up to date on current scams;

"(IV) the most effective signage and placement in retail locations to warn seniors about scammers' use of gift cards, prepaid cards, and wire transfer services;

"(V) suggestions on effective collaborative community education campaigns;

"(VI) available technology to assist in identifying possible scams at the point of sale; and

"(VII) other information that would be helpful to retailers, wire transfer companies, financial institutions, and their employees as they work to prevent fraud affecting seniors; and

"(B) based on the findings in subparagraph (A)—

"(i) identify inadequacies, omissions, or deficiencies in those educational materials and programs for the categories listed in subparagraph (A) and their execution in reaching employees to protect older adults; and

"(ii) create model materials, best practices guidance, or recommendations to fill those inadequacies, omissions, or deficiencies that may be used by industry and others to help protect older adults from scams.

"(2) ENCOURAGED USE.—The Chairman of the Federal Trade Commission shall—

"(A) make the materials or guidance created by the Federal Trade Commission described in paragraph (1) publicly available; and

"(B) encourage the use and distribution of the materials created under this subsection to prevent scams affecting seniors by governmental agencies and the private sector."

[Pub. L. 117–103, div. Q, title I, §112(a)–(d), set out above, ceases to be effective on the date that is 5 years after Mar. 15, 2022, see section 112(f) of title I of div. Q of Pub. L. 117–103, set out as a Termination of 2022 Amendment note under section 21711 of Title 34, Crime Control and Law Enforcement.]

## **§45f. Collection, verification, and disclosure of information by online marketplaces to inform consumers**

### **(a) Collection and verification of information**

## **(1) Collection**

### **(A) In general**

An online marketplace shall require any high-volume third party seller on such online marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third party seller on the platform, the following information to the online marketplace:

#### **(i) Bank account**

##### **(I) In general**

A bank account number, or, if such seller does not have a bank account, the name of the payee for payments issued by the online marketplace to such seller.

##### **(II) Provision of information**

The bank account or payee information required under subclause (I) may be provided by the seller in the following ways:

(aa) To the online marketplace.

(bb) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information within 3 business days from such payment processor or other third party.

#### **(ii) Contact information**

Contact information for such seller as follows:

(I) With respect to a high-volume third party seller that is an individual, the individual's name.

(II) With respect to a high-volume third party seller that is not an individual, one of the following forms of contact information:

(aa) A copy of a valid government-issued identification for an individual acting on behalf of such seller that includes the individual's name.

(bb) A copy of a valid government-issued record or tax document that includes the business name and physical address of such seller.

#### **(iii) Tax ID**

A business tax identification number, or, if such seller does not have a business tax identification number, a taxpayer identification number.

#### **(iv) Working email and phone number**

A current working email address and phone number for such seller.

### **(B) Notification of change; annual certification**

An online marketplace shall—

(i) periodically, but not less than annually, notify any high-volume third party seller on such online marketplace's platform of the requirement to keep any information collected under subparagraph (A) current; and

(ii) require any high-volume third party seller on such online marketplace's platform to, not later than 10 days after receiving the notice under clause (i), electronically certify that—

(I) the seller has provided any changes to such information to the online marketplace, if any such changes have occurred; or

(II) there have been no changes to such seller's information.

### **(C) Suspension**

In the event that a high-volume third party seller does not provide the information or certification required under this paragraph, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide such information or certification not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.



## **(2) Verification**

### **(A) In general**

An online marketplace shall—

- (i) verify the information collected under paragraph (1)(A) not later than 10 days after such collection; and
- (ii) verify any change to such information not later than 10 days after being notified of such change by a high-volume third party seller under paragraph (1)(B).

### **(B) Presumption of verification**

In the case of a high-volume third party seller that provides a copy of a valid government-issued tax document, any information contained in such document shall be presumed to be verified as of the date of issuance of such document.

## **(3) Data use limitation**

Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

## **(4) Data security requirement**

An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the data and the purposes for which the data will be used, to protect the data collected to comply with the requirements of this section from unauthorized use, disclosure, access, destruction, or modification.

## **(b) Disclosure required**

### **(1) Requirement**

#### **(A) In general**

An online marketplace shall—

- (i) require any high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace's platform, to provide the information described in subparagraph (B) to the online marketplace; and
- (ii) disclose the information described in subparagraph (B) to consumers in a clear and conspicuous manner—
  - (I) on the product listing page (including via hyperlink); or
  - (II) in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer's account transaction history.

#### **(B) Information described**

The information described in this subparagraph is the following:

- (i) Subject to paragraph (2), the identity of the high-volume third party seller, including—
  - (I) the full name of the seller, which may include the seller name or seller's company name, or the name by which the seller or company operates on the online marketplace;
  - (II) the physical address of the seller; and
  - (III) contact information for the seller, to allow for the direct, unhindered communication with high-volume third party sellers by users of the online marketplace, including—
    - (aa) a current working phone number;
    - (bb) a current working email address; or
    - (cc) other means of direct electronic messaging (which may be provided to such seller by the online marketplace), provided that the requirements of this item shall not prevent an online marketplace from monitoring communications between high-volume third party sellers and users of the online marketplace for fraud, abuse, or spam.

(ii) Whether the high-volume third party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in clause (i) relating to any such seller that supplied the consumer product to the purchaser, if such seller is different than the high-volume third party seller listed on the product listing prior to purchase.

## **(2) Exception**

### **(A) In general**

Subject to subparagraph (B), upon the request of a high-volume third party seller, an online marketplace may provide for partial disclosure of the identity information required under paragraph (1)(B)(i) in the following situations:

(i) If such seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may—

(I) disclose only the country and, if applicable, the State in which such seller resides; and

(II) inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace.

(ii) If such seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns.

(iii) If such seller certifies to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's email address or other means of electronic messaging provided to such seller by the online marketplace.

### **(B) Limitation on exception**

If an online marketplace becomes aware that a high-volume third party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subparagraph (A) or that a high-volume third party seller who has requested and received a provision for a partial disclosure under subparagraph (A) has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to respond not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller unless such seller consents to the disclosure of the identity information required under paragraph (1)(B)(i).

## **(3) Reporting mechanism**

An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

## **(4) Compliance**

If a high-volume third party seller does not comply with the requirements to provide and disclose information under this subsection, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

## **(c) Enforcement by Federal Trade Commission**

### **(1) Unfair and deceptive acts or practices**

A violation of subsection (a) or (b) by an online marketplace shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

## **(2) Powers of the Commission**

### **(A) In general**

The Commission shall enforce subsections (a) and (b) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

### **(B) Privileges and immunities**

Any person that violates subsection (a) or (b) shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

## **(3) Regulations**

The Commission may promulgate regulations under section 553 of title 5 with respect to the collection, verification, or disclosure of information under this section, provided that such regulations are limited to what is necessary to collect, verify, and disclose such information.

## **(4) Authority preserved**

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

## **(d) Enforcement by State attorneys general**

### **(1) In general**

If the attorney general of a State has reason to believe that any online marketplace has violated or is violating this section or a regulation promulgated under this section that affects one or more residents of that State, the attorney general of the State may bring a civil action in any appropriate district court of the United States, to—

- (A) enjoin further such violation by the defendant;
- (B) enforce compliance with this section or such regulation;
- (C) obtain civil penalties in the amount provided for under subsection (c);
- (D) obtain other remedies permitted under State law; and
- (E) obtain damages, restitution, or other compensation on behalf of residents of the State.

### **(2) Notice**

The attorney general of a State shall provide prior written notice of any action under paragraph (1) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action.

### **(3) Intervention by the Commission**

Upon receiving notice under paragraph (2), the Commission shall have the right—

- (A) to intervene in the action;
- (B) upon so intervening, to be heard on all matters arising therein; and
- (C) to file petitions for appeal.

### **(4) Limitation on State action while Federal action is pending**

If the Commission has instituted a civil action for violation of this section or a regulation promulgated under this section, no State attorney general, or official or agency of a State, may bring a separate action under paragraph (1) during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this section or a

regulation promulgated under this section that is alleged in the complaint. A State attorney general, or official or agency of a State, may join a civil action for a violation of this section or regulation promulgated under this section filed by the Commission.

**(5) Rule of construction**

For purposes of bringing a civil action under paragraph (1), nothing in this section shall be construed to prevent the chief law enforcement officer, or official or agency of a State, from exercising the powers conferred on such chief law enforcement officer, or official or agency of a State, by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

**(6) Actions by other State officials**

**(A) In general**

In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so, except for any private person on behalf of the State attorney general, may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

**(B) Savings provision**

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

**(e) Severability**

If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

**(f) Definitions**

In this section:

**(1) Commission**

The term "Commission" means the Federal Trade Commission.

**(2) Consumer product**

The term "consumer product" has the meaning given such term in section 2301 of this title and section 700.1 of title 16, Code of Federal Regulations.

**(3) High-volume third party seller**

**(A) In general**

The term "high-volume third party seller" means a participant on an online marketplace's platform who is a third party seller and, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

**(B) Clarification**

For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under subparagraph (A), an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.

**(4) Online marketplace**

The term "online marketplace" means any person or entity that operates a consumer-directed electronically based or accessed platform that—

(A) includes features that allow for, facilitate, or enable third party sellers to engage in the

sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

(B) is used by one or more third party sellers for such purposes; and

(C) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

**(5) Seller**

The term "seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace's platform.

**(6) Third party seller**

**(A) In general**

The term "third party seller" means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace's platform.

**(B) Exclusions**

The term "third party seller" does not include, with respect to an online marketplace—

(i) a seller who operates the online marketplace's platform; or

(ii) a business entity that has—

(I) made available to the general public the entity's name, business address, and working contact information;

(II) an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

**(7) Verify**

The term "verify" means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

**(g) Relationship to State laws**

No State or political subdivision of a State, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this section.

**(h) Effective date**

This section shall take effect 180 days after December 29, 2022.

(Pub. L. 117–328, div. BB, title III, §301, Dec. 29, 2022, 136 Stat. 5555.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (c)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the Consolidated Appropriations Act, 2023, and not as part of the Federal Trade Commission Act which comprises this chapter.

## **§46. Additional powers of Commission**

The Commission shall also have power—

### **(a) Investigation of persons, partnerships, or corporations**

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

### **(b) Reports of persons, partnerships, and corporations**

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

### **(c) Investigation of compliance with antitrust decrees**

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

### **(d) Investigations of violations of antitrust statutes**

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

### **(e) Readjustment of business of corporations violating antitrust statutes**

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

### **(f) Publication of information; reports**

To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information (1) to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes, and (2) to any officer or employee of any foreign law

enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 57b–2(b) of this title.

**(g) Classification of corporations; regulations**

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of this subchapter.

**(h) Investigations of foreign trade conditions; reports**

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

**(i) Investigations of foreign antitrust law violations**

With respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]).

**(j) Investigative assistance for foreign law enforcement agencies**

**(1) In general**

Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

**(2) Type of assistance**

In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this subchapter; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28.

**(3) Criteria for determination**

In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the public interest of the United States; and

(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

**(4) International agreements**

If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing

oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

- (A) provide assistance using the powers set forth in this subsection;
- (B) disclose materials and information in accordance with subsection (f) and section 57b–2(b) of this title; and
- (C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this subchapter.

#### **(5) Additional authority**

The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

#### **(6) Limitation**

The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 57a(f)(3) of this title, a Federal credit union described in section 57a(f)(4) of this title, or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of this section.

#### **(7) Assistance to certain countries**

The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 4605(j) <sup>1</sup> of title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 4605(j)(4) <sup>1</sup> of title 50.

### **(k) Referral of evidence for criminal proceedings**

#### **(1) In general**

Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

#### **(2) International information**

The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

### **(l) Expenditures for cooperative arrangements**

To expend appropriated funds for—

- (1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and
- (2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—



- (A) such incidental expenses as meals taken in the course of such attendance;
- (B) any travel and transportation to or from such meetings; and
- (C) any other related lodging or subsistence.

*Provided*, That the exception of "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in subsections (a), (b), and (j) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on May 28, 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.

(Sept. 26, 1914, ch. 311, §6, 38 Stat. 721; Pub. L. 93-153, title IV, §408(e), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93-637, title II, §§201(b), 202(b), 203(a), Jan. 4, 1975, 88 Stat. 2193, 2198; Pub. L. 96-37, §1(b), July 23, 1979, 93 Stat. 95; Pub. L. 96-252, §§3-5(a), May 28, 1980, 94 Stat. 374, 375; Pub. L. 100-86, title VII, §715(a), (b), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103-437, §5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 103-438, §3(e)(2)(A), Nov. 2, 1994, 108 Stat. 4598; Pub. L. 109-455, §§4(a), (b), (d), 13, Dec. 22, 2006, 120 Stat. 3372, 3373, 3375, 3382; Pub. L. 112-203, §1, Dec. 4, 2012, 126 Stat. 1484.)

## **AMENDMENT OF SECTION**

*For repeal of amendment by section 13 of Pub. L. 109-455, see Termination Date of 2006 Amendment note below.*

## **EDITORIAL NOTES**

## **REFERENCES IN TEXT**

The Act to regulate commerce, referred to in subsecs. (a), (b), (j)(6), and the proviso following subsec. (l), is defined in section 44 of this title.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (i), is Pub. L. 103-438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 4605(j) of title 50, referred to in subsec. (j)(7), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For provisions similar to those of former section 4605(j) of title 50, see section 4813(c) of title 50, as enacted by Pub. L. 115-232.

## AMENDMENTS

**2012**—Pub. L. 112-203, §1, amended Pub. L. 109-455, §13. See 2006 Amendment notes below.

**2006**—Pub. L. 109-455, §4(d), which substituted "subsections (a), (b), and (j)" for "clauses (a) and (b)" in proviso following subsec. (l), was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109-455, §4(a), which inserted "(1)" after "disclose such information", substituted "purposes, and" for "purposes.", and added par. (2) providing for conditional disclosure to officers and employees of foreign law enforcement, was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

Subsecs. (j) to (l). Pub. L. 109-455, §4(b), which added subsecs. (j) to (l) relating to investigative assistance for foreign law enforcement agencies, referral of evidence for criminal proceedings, and expenditures for cooperative arrangements, respectively, was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

**1994**—Pub. L. 103-437, in first and third undesignated pars. following proviso after subsec. (h), substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

Subsec. (i). Pub. L. 103-438 added subsec. (i).

**1987**—Pub. L. 100-86, §715(b), in proviso following subsec. (h), inserted reference to Federal credit unions described in section 57a(f)(4) of this title and reference to in business as a Federal credit union.

Subsecs. (a), (b). Pub. L. 100-86, §715(a)(1), (2), inserted reference to Federal credit unions described in section 57a(f)(4) of this title.

**1980**—Pub. L. 96-252, §§3(b)-5(a), inserted three undesignated paragraphs following proviso after subsec. (h) requiring the Commission to establish a plan to reduce burdens imposed upon small businesses by the quarterly financial reporting requirements under subsec. (b) of this section, prohibiting Commissioners and officers and employees of the Commission from publishing or disclosing information whereby line-of-business data furnished by particular establishments or individuals can be identified, and, with certain exceptions, making this section inapplicable to the business of insurance.

Subsec. (f). Pub. L. 96-252, §3(a), substituted "as are" for ", except trade secrets and names of customers, as it shall deem expedient" and inserted proviso restricting Commission's authority to make public trade secrets or commercial or financial information which is obtained from any person and which is privileged or confidential.

**1979**—Pub. L. 96-37, §1(b)(3), in proviso following subsec. (h), inserted references to savings and loan institutions and to persons, partnerships, corporations, groups of persons, partnerships, or corporations or industries that are not engaged or are engaged only incidentally in business as savings and loan institutions.

Subsecs. (a), (b). Pub. L. 96-37, §1(b)(1), (2), inserted reference to savings and loan institutions described in section 57a(f)(3) of this title.

**1975**—Pub. L. 93-637, §203(a)(3), in proviso following subsec. (h), substituted "any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations," for "any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,".

Subsec. (a). Pub. L. 93-637, §§201(b), 203(a)(1), substituted "in or whose business affects commerce" for "in commerce", "person, partnership, or corporation" for "corporation", and "persons, partnerships, and corporations" for "corporations and to individuals, associations, and partnerships".

Subsec. (b). Pub. L. 93-637, §§201(b), 203(a)(2), substituted "in or whose business affects commerce" for "in commerce", "special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting" for "special orders, corporations engaged in or whose business affects commerce, excepting", and "respective persons, partnerships, and corporations" for "respective corporations".

Subsec. (g). Pub. L. 93-637, §202(b), inserted "(except as provided in section 57a(a)(2) of this title)" before "to make rules and regulations".

**1973**—Pub. L. 93–153 inserted proviso following subsec. (h) that the Commission's investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission's power to investigate and require reports from corporations.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

### **TERMINATION DATE OF 2006 AMENDMENT**

Amendment by section 4(a), (b), (d) of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

### **APPLICABILITY OF 1975 AMENDMENT TO SUBSECTION (G) OF THIS SECTION**

For applicability to rules promulgated or proposed under subsec. (g) of this section prior to Jan. 4, 1975, of amendment made to said subsec. (g) by section 202(b) of Act Jan. 4, 1975, see "Applicability" provisions of section 202(c) of Act Jan. 4, 1975, set out as a note under section 57a of this title.

### **STUDY AND EVALUATION OF EFFECTIVENESS OF STATE POLICIES AND PROGRAMS RELATING TO REGULATION OF CERTAIN HEALTH INSURANCE POLICIES**

Pub. L. 96–252, §5(b), May 28, 1980, 94 Stat. 376, provided that: "The amendment made in subsection (a) [adding undesignated paragraph authorizing studies and reports relating to the business of insurance] shall not be construed to prohibit the Federal Trade Commission from participating with the Secretary of Health and Human Services in a comprehensive study and evaluation of the comparative effectiveness of various State policies and programs relating to the regulation of health insurance policies available for purchase by individuals who are eligible for benefits under the program of health insurance benefits established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq]."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **EX. ORD. NO. 10544. INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION**

Ex. Ord. No. 10544, July 12, 1954, 19 F.R. 4289, provided:

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722) and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the year 1953 and subsequent years shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, [this subchapter], such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in

the Treasury decision relating to the inspection of returns by the Federal Trade Commission, approved by me this date [T.D. 6080, 19 F.R. 4308].

This Executive Order shall be effective upon its filing for publication in the Federal Register.

DWIGHT D. EISENHOWER.

<sup>1</sup> See References in Text note below.

#### **§46a. Concurrent resolution essential to authorize investigations**

After June 16, 1933, no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress.

(June 16, 1933, ch. 101, §1, 48 Stat. 291.)

#### **EDITORIAL NOTES**

##### **CODIFICATION**

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

#### **EXECUTIVE DOCUMENTS**

##### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

#### **§47. Reference of suits under antitrust statutes to Commission**

In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

(Sept. 26, 1914, ch. 311, §7, 38 Stat. 722.)

#### **EDITORIAL NOTES**

##### **REFERENCES IN TEXT**

The words "In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts" have reference to actions under sections 4, 9, and 25 of this title.

#### **EXECUTIVE DOCUMENTS**

##### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

#### **§48. Information and assistance from departments**

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this subchapter, and shall detail from time to time such officials and employees to the Commission as he may direct.

(Sept. 26, 1914, ch. 311, §8, 38 Stat. 722.)

### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

#### **§49. Documentary evidence; depositions; witnesses**

For the purposes of this subchapter the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this subchapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Sept. 26, 1914, ch. 311, §9, 38 Stat. 722; Pub. L. 91-452, title II, §211, Oct. 15, 1970, 84 Stat. 929; Pub. L. 93-637, title II, §203(b), Jan. 4, 1975, 88 Stat. 2198.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1975**—First par. Pub. L. 93–637, §203(b)(1), substituted "person, partnership, or corporation" for "corporation".

Third par. Pub. L. 93–637, §203(b)(2), substituted "person, partnership, or corporation" for "corporation or other person" wherever appearing.

Fourth par. Pub. L. 93–637, §203(b)(3), substituted "person, partnership, or corporation" for "person or corporation".

**1970**—Seventh par. Pub. L. 91–452 struck out provisions which granted immunity from prosecution for any natural person testifying or producing evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it.

## **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.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§50. Offenses and penalties**

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce any documentary evidence, if in his power to do so, in obedience to an order of a district court of the United States directing compliance with the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this subchapter, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to this subchapter, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the

United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this subchapter to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture 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 brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

(Sept. 26, 1914, ch. 311, §10, 38 Stat. 723; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 93-637, title II, §203(c), Jan. 4, 1975, 88 Stat. 2199; Pub. L. 96-252, §6, May 28, 1980, 94 Stat. 376.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1980**—First par. Pub. L. 96-252 inserted "any" after "produce" and "an order of a district court of the United States directing compliance with" after "obedience to".

**1975**—Second par. Pub. L. 93-637, §203(c)(1), substituted "person, partnership, or corporation" for "corporation" wherever appearing.

Third par. Pub. L. 93-637, §203(c)(2), substituted "If any persons, partnership, or corporation" for "If any corporation", and "in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business" for "in the district where the corporation has its principal office or in any district in which it shall do business".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as a note under section 45 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§51. Effect on other statutory provisions**

Nothing contained in this subchapter shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in this subchapter be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.  
(Sept. 26, 1914, ch. 311, §11, 38 Stat. 724.)

## **§52. Dissemination of false advertisements**

### **(a) Unlawfulness**

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, services, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.

### **(b) Unfair or deceptive act or practice**

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.

(Sept. 26, 1914, ch. 311, §12, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–637, title II, §201(c), Jan. 4, 1975, 88 Stat. 2193; Pub. L. 103–297, §8, Aug. 16, 1994, 108 Stat. 1550.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1994**—Subsec. (a). Pub. L. 103–297 inserted "services," after "devices," in pars. (1) and (2).

**1975**—Subsec. (a). Pub. L. 93–637 substituted "in or having an effect upon commerce," for "in commerce".

Subsec. (b). Pub. L. 93–637 substituted "in or affecting commerce" for "in commerce".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **INFORMATION ABOUT SCAMS RELATED TO COVID–19**

Pub. L. 116–287, §2, Jan. 5, 2021, 134 Stat. 4882, provided that:

"(a) **DISSEMINATION OF INFORMATION.**—

"(1) **IN GENERAL.**—As expeditiously as possible after the date of the enactment of this Act [Jan. 5, 2021], the Commission, in consultation with the Attorney General, the Secretary of Health and Human Services, the Postmaster General, the Chief Postal Inspector, and the Internet Crime Complaint Center, shall develop and disseminate information to the public about scams related to the novel coronavirus (COVID–19).

"(2) **REQUIREMENTS.**—In carrying out paragraph (1), the Commission shall—

"(A) include—

"(i) information regarding mail, telemarketing, and internet fraud and illegal robocalls related to COVID–19 that identifies the most common scams; and

"(ii) information regarding where and how to report instances of scams related to COVID–19, including instructions on how to file a complaint with the appropriate law enforcement agency;

"(B) disseminate information under such paragraph in a manner that prioritizes, and that is easily accessible by and user-friendly to, senior citizens and people with infirmities and disabilities;

"(C) disseminate information under such paragraph on an internet website of the Commission that serves as a source of information for the public about scams related to COVID–19; and



"(D) regularly update the information developed and disseminated under such paragraph to keep pace with the changing nature of scams related to COVID-19.

"(b) DATABASE.—As expeditiously as possible after the date of the enactment of this Act, the Commission shall, in consultation with State law enforcement agencies, the Director of the Bureau of Consumer Financial Protection, the Attorney General, the Secretary of Health and Human Services, and other relevant Federal officials, establish a comprehensive national database, either within or separate from the Consumer Sentinel Network, that tracks instances of scams related to COVID-19.

"(c) COMMISSION DEFINED.—In this section, the term 'Commission' means the Federal Trade Commission."

## **§53. False advertisements; injunctions and restraining orders**

### **(a) Power of Commission; jurisdiction of courts**

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

### **(b) Temporary restraining orders; preliminary injunctions**

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a

party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

**(c) Service of process; proof of service**

Any process of the Commission under this section may be served by any person duly authorized by the Commission—

(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;

(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or

(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.

The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.

**(d) Exception of periodical publications**

Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction.

(Sept. 26, 1914, ch. 311, §13, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93-153, title IV, §408(f), Nov. 16, 1973, 87 Stat. 592; Pub. L. 103-312, §10, Aug. 26, 1994, 108 Stat. 1695.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1994**—Subsecs. (a), (b). Pub. L. 103-312, §10(a), in concluding provisions, substituted "Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found." for "Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

Subsecs. (c), (d). Pub. L. 103-312, §10(b), added subsec. (c) and redesignated former subsec. (c) as (d).

**1973**—Subsecs. (b), (c). Pub. L. 93-153 added subsec. (b) and redesignated former subsec. (b) as (c).

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under

section 41 of this title.

## **§54. False advertisements; penalties**

### **(a) Imposition of penalties**

Any person, partnership, or corporation who violates any provision of section 52(a) of this title shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act [21 U.S.C. 601 et seq.] shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

### **(b) Exception of advertising medium or agency**

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement. (Sept. 26, 1914, ch. 311, §14, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Meat Inspection Act, referred to in subsec. (a), is act Mar. 4, 1907, ch. 2907, titles I to IV, as added Dec. 15, 1967, Pub. L. 90-201, 81 Stat. 584, which is classified to subchapters I to IV (§601 et seq.) of chapter 12 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Act Mar. 21, 1938, ch. 49, §5(b), 52 Stat. 117, provided: "Section 14 of the Federal Trade Commission Act [this section] added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act [Mar. 21, 1938]."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§55. Additional definitions**

For the purposes of sections 52 to 54 of this title—

### **(a) False advertisement**

(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

### **(b) Food**

The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

### **(c) Drug**

The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

### **(d) Device**

The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

### **(e) Cosmetic**

The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component

of any such article; except that such term shall not include soap.

**(f) Oleomargarine or margarine**

For the purposes of this section and section 347 of title 21, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

(Sept. 26, 1914, ch. 311, §15, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Mar. 16, 1950, ch. 61, §4(a), (b), 64 Stat. 21; Pub. L. 94-295, §3(a)(1)(B), May 28, 1976, 90 Stat. 575.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1976**—Subsec. (d). Pub. L. 94-295 expanded definition of "device" to include implements, machines, implants, in vitro reagents, and other similar or related articles, added recognition in the National Formulary or the United States Pharmacopeia, or any supplement to the Formulary or Pharmacopeia, to the enumeration of conditions under which a device may qualify for inclusion under this chapter, and inserted requirements that a device be one which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

**1950**—Subsec. (a). Act Mar. 16, 1950, §4(a), designated existing provisions as par. (1) and added par. (2) relating to oleomargarine.

Subsec. (f). Act Mar. 16, 1950, §4(b), added subsec. (f).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1950 AMENDMENT**

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

**§56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General**

**(a) Procedure for exercise of authority to litigate or appeal**

(1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this subchapter (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 53 of this title (relating to injunctive relief);

(B) under section 57b of this title (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 45 of this title;

(D) under the second paragraph of section 49 of this title (relating to enforcement of a subpoena) and under the fourth paragraph of such section (relating to compliance with section 46 of this title); or

(E) under section 57b-2a of this title;

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, or any other provision of law.

#### **(b) Certification by Commission to Attorney General for criminal proceedings**

Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this subchapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

#### **(c) Foreign litigation**

##### **(1) Commission attorneys**

With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

##### **(2) Reimbursement for foreign counsel**

The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

### **(3) Limitation on use of funds**

Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31.

### **(4) Other authority**

The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.

(Sept. 26, 1914, ch. 311, §16, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–153, title IV, §408(g), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93–637, title II, §204(a), Jan. 4, 1975, 88 Stat. 2199; Pub. L. 109–455, §§5, 7(b), 13, Dec. 22, 2006, 120 Stat. 3375, 3379, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

## **AMENDMENT OF SECTION**

*For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.*

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2012**—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

**2006**—Subsec. (a)(2)(E). Pub. L. 109–455, §7(b), which added subpar. (E) reading "under section 57b–2a of this title;", was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (c). Pub. L. 109–455, §5, which added subsec. (c) relating to attorneys used and money expended for foreign litigation, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

**1975**—Pub. L. 93–637 substituted provisions authorizing the Commission at its election to appear in court by its own name and designate its attorneys for such purpose, for provisions relating to the certification of facts by the Commission to the Attorney General who brought the appropriate proceedings, or, after compliance with section 45(m) of this title, itself brought the appropriate proceedings.

**1973**—Pub. L. 93–153 inserted provisions authorizing the Federal Trade Commission to itself cause appropriate proceedings to be brought after compliance with the requirements of section 45(m) of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TERMINATION DATE OF 2006 AMENDMENT**

Amendment by sections 5 and 7(b) of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Pub. L. 93–637, title II, §204(c), Jan. 4, 1975, 88 Stat. 2200, provided that: "The amendment and repeal made by this section [amending this section and repealing section 45(m) of this title] shall not apply to any civil action commenced before the date of enactment of this Act [Jan. 4, 1975]."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§57. Separability clause**

If any provision of this subchapter, or the application thereof to any person, partnership, or corporation, or circumstance, is held invalid, the remainder of this subchapter, and the application of such provisions to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

(Sept. 26, 1914, ch. 311, §17, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114.)

## **§57a. Unfair or deceptive acts or practices rulemaking proceedings**

### **(a) Authority of Commission to prescribe rules and general statements of policy**

(1) Except as provided in subsection (h), the Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section. Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this subchapter, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

### **(b) Procedures applicable**

(1) When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the text of the rule, including any alternatives, which the Commission proposes to promulgate, and the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with subsection (c); and (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B)), together with a statement of basis and purpose.

(2)(A) Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

(i) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and

(ii) invite the response of interested parties with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(B) The Commission shall submit such advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. The Commission may use such additional mechanisms as the Commission considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed rulemaking under paragraph (1)(A).



(C) The Commission shall, 30 days before the publication of a notice of proposed rulemaking pursuant to paragraph (1)(A), submit such notice to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(3) The Commission shall issue a notice of proposed rulemaking pursuant to paragraph (1)(A) only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent. The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if—

(A) it has issued cease and desist orders regarding such acts or practices, or

(B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.

**(c) Informal hearing procedure**

The Commission shall conduct any informal hearings required by subsection (b)(1)(C) of this section in accordance with the following procedure:

(1)(A) The Commission shall provide for the conduct of proceedings under this subsection by hearing officers who shall perform their functions in accordance with the requirements of this subsection.

(B) The officer who presides over the rulemaking proceedings shall be responsible to a chief presiding officer who shall not be responsible to any other officer or employee of the Commission. The officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to all relevant and material evidence, except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

(C) Except as required for the disposition of ex parte matters as authorized by law, no presiding officer shall consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(2) Subject to paragraph (3) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submission (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (3)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(3) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (2) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(4)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (2) and (3) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable

and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(5) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

**(d) Statement of basis and purpose accompanying rule; "Commission" defined; judicial review of amendment or repeal of rule; violation of rule**

(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.

**(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submissions and presentations; scope of review and relief; review by Supreme Court; additional remedies**

(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B) by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemaking record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(5), any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of <sup>1</sup> purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5 (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

- (i) a Commission determination under subsection (c) that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or
- (ii) a Commission rule or ruling under subsection (c) limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence", as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule 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.

(5)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeal shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B), if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B)(i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of title 5 shall not apply to any rule promulgated under subsection (a)(1)(B). The contents and adequacy of any statement required by subsection (b)(1)(D) shall not be subject to judicial review in any respect.

**(f) Definitions of banks, savings and loan institutions, and Federal credit unions**

(1) Repealed. Pub. L. 111–203, title X, §1092(2), July 21, 2010, 124 Stat. 2095

(2) DEFINITION.—For purposes of this subchapter, the term "bank" means—

(A) national banks and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks.

(3) For purposes of this subchapter, the term "savings and loan institution" has the same meaning as in section 1813 of title 12.

(4) For purposes of this subchapter, the term "Federal credit union" has the same meaning as in sections 1766 and 1786 of title 12.

The terms used in this paragraph <sup>2</sup> that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the meaning given to them in section 3101 of title 12.

**(g) Exemptions and stays from application of rules; procedures**

(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) to any person or class or <sup>3</sup> persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5 shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B).

**(h) Restriction on rulemaking authority of Commission respecting children's advertising proceedings pending on May 28, 1980**

The Commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on May 28, 1980, or in any substantially similar proceeding on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice in or affecting commerce.

**(i) Meetings with outside parties**

(1) For purposes of this subsection, the term "outside party" means any person other than (A) a Commissioner; (B) an officer or employee of the Commission; or (C) any person who has entered into a contract or any other agreement or arrangement with the Commission to provide any goods or services (including consulting services) to the Commission.

(2) Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall authorize the Commission or any Commissioner to meet with any outside party concerning any rulemaking proceeding of the Commission. Such rule shall provide that—

(A) notice of any such meeting shall be included in any weekly calendar prepared by the Commission; and

(B) a verbatim record or a summary of any such meeting, or of any communication relating to any such meeting, shall be kept, made available to the public, and included in the rulemaking record.

**(j) Communications by investigative personnel with staff of Commission concerning matters outside rulemaking record prohibited**

Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall prohibit any officer, employee, or agent of the Commission with any investigative responsibility or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission, from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

(Sept. 26, 1914, ch. 311, §18, as added Pub. L. 93-637, title II, §202(a), Jan. 4, 1975, 88 Stat. 2193; amended Pub. L. 96-37, §1(c), July 23, 1979, 93 Stat. 95; Pub. L. 96-221, title VI, §610(b), Mar. 31, 1980, 94 Stat. 174; Pub. L. 96-252, §§7-11(a), 12, May 28, 1980, 94 Stat. 376-379; Pub. L. 100-86, title VII, §715(c), Aug. 10, 1987, 101 Stat. 655; Pub. L. 101-73, title VII, §744(t), Aug. 9, 1989, 103 Stat. 441; Pub. L. 102-242, title II, §212(g)(2), Dec. 19, 1991, 105 Stat. 2302; Pub. L. 102-550, title XVI, §1604(a)(9), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 103-312, §§3, 5, Aug. 26, 1994, 108 Stat. 1691, 1692; Pub. L. 103-437, §5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 109-351, title VII, §725(g), Oct. 13, 2006, 120 Stat. 2002; Pub. L. 109-356, title I, §123(g), Oct. 16, 2006, 120 Stat. 2029; Pub. L. 111-203, title X, §1092, July 21, 2010, 124 Stat. 2094.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (f)(2)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

**PRIOR PROVISIONS**

A prior section 18 of act Sept. 26, 1914, ch. 311, was renumbered section 28 and is classified to section 58 of this title.

## AMENDMENTS

**2010**—Subsec. (f). Pub. L. 111–203, §1092(1), inserted subsec. heading.

Subsec. (f)(1). Pub. L. 111–203, §1092(2), struck out par. (1) which related to prevention of unfair or deceptive acts or practices in or affecting commerce.

Subsec. (f)(2). Pub. L. 111–203, §1092(4)(A), substituted "Definition" for "Enforcement" in heading and "For purposes of this subchapter, the term 'bank' means" for "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of" in introductory provisions.

Subsec. (f)(2)(A). Pub. L. 111–203, §1092(4)(B), struck out ", by the division of consumer affairs established by the Office of the Comptroller of the Currency" before semicolon at end.

Subsec. (f)(2)(B). Pub. L. 111–203, §1092(4)(C), substituted "25A" for "25(a)" and struck out ", by the division of consumer affairs established by the Board of Governors of the Federal Reserve System" before "; and".

Subsec. (f)(2)(C). Pub. L. 111–203, §1092(4)(D), inserted "than" after "other" and struck out ", by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation" before period at end.

Subsec. (f)(3). Pub. L. 111–203, §1092(5), substituted "For purposes of this subchapter, the term 'savings and loan institution' has the same meaning as in" for "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12 with respect to savings associations as defined in".

Subsec. (f)(4). Pub. L. 111–203, §1092(6), substituted "For purposes of this subchapter, the term 'Federal credit union' has the same meaning as in" for "Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under".

Subsec. (f)(5) to (7). Pub. L. 111–203, §1092(3), struck out pars. (5) to (7) which related to violation of regulations, authority to make rules relating to compliance, and annual report to Congress by each agency exercising authority.

**2006**—Subsec. (f)(2)(A), (B). Pub. L. 109–351 and Pub. L. 109–356 amended par. (2) identically, striking out ", banks operating under the code of law for the District of Columbia," after "national banks" in subpar. (A) and "and banks operating under the code of law for the District of Columbia" after "(other than national banks" in subpar. (B).

**1994**—Subsec. (a)(1). Pub. L. 103–312, §3(b), substituted "subsection (h)" for "subsection (i)" in introductory provisions.

Subsec. (b)(2)(B), (C). Pub. L. 103–437 substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

Subsec. (b)(3). Pub. L. 103–312, §5, added par. (3).

Subsecs. (h) to (k). Pub. L. 103–312, §3(a), redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h) which provided for compensation for attorney fees, expert witness fees, etc., incurred in rulemaking proceedings, limitation on amount, and establishment of small business outreach program.

**1992**—Subsec. (f)(2)(A). Pub. L. 102–550 substituted "division" for "divisions".

**1991**—Subsec. (f). Pub. L. 102–242, §212(g)(2)(B), inserted at end "The terms used in this paragraph that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the meaning given to them in section 3101 of title 12."

Subsec. (f)(2). Pub. L. 102–242, §212(g)(2)(A), added par. (2) and struck out former par. (2) which read as follows: "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of—

"(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation."

**1989**—Subsec. (f)(3). Pub. L. 101–73 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Compliance with regulations prescribed under this subsection shall be enforced under section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) with respect to Federal savings and loan associations,

section 407 of the National Housing Act (12 U.S.C. 1730) with respect to insured institutions, and sections 6(i) and 17 of the Federal Home Loan Bank Act (12 U.S.C. 1426(i), 1437) with respect to savings and loan institutions which are members of a Federal Home Loan Bank, by a division of consumer affairs to be established by the Federal Home Loan Bank Board pursuant to the Federal Home Loan Bank Act."

**1987**—Subsec. (f)(1). Pub. L. 100–86, §715(c)(1), (2), in second sentence inserted "and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4))" and in last sentence inserted "or Federal credit unions described in paragraph (4)," in two places, substituted "any such" for "either such", and inserted ", savings and loan institutions or Federal credit unions".

Subsec. (f)(4) to (7). Pub. L. 100–86, §715(c)(3), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

**1980**—Subsec. (a)(1). Pub. L. 96–252, §§7, 11(a)(2), in provisions preceding subpar. (A) substituted "Except as provided in subsection (i), the" for "The" and in subpar. (B) inserted ", except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section" after "section 45(a)(1) of this title)".

Subsec. (b). Pub. L. 96–252, §§8(a), 11(a)(3), designated existing provisions as par. (1) and cls. (1) to (4) thereof as subpars. (A) to (D) and, subpar. (A) thereof, inserted "the text of the rule, including any alternatives, which the Commission proposes to promulgate, and" after "particularity", and added par. (2).

Subsec. (c). Pub. L. 96–252, §8(b)(1), in provisions preceding par. (1) substituted "subsection (b)(1)(C)" for "subsection (b)(3)".

Subsec. (c)(1). Pub. L. 96–252, §9(a)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 96–252, §9(a)(1), (b)(1), redesignated former par. (1) as (2), substituted "paragraph (3)" for "paragraph (2)" and "paragraph (3)(B)" for "paragraph (2)(B)". Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 96–252, §9(a)(1), (b)(2), redesignated former par. (2) as (3) and substituted "paragraph (2)" for "paragraph (1)". Former par. (3) redesignated (4).

Subsec. (c)(4), (5). Pub. L. 96–252, §9(a)(1), (b)(3), redesignated former par. (3) as (4) and substituted in subpar. (A) "paragraph (2) and (3)" for "paragraphs (1) and (2)". Former par. (4) redesignated (5).

Subsec. (e). Pub. L. 96–252, §§8(b)(2), 9(c), substituted in par. (1)(B) "subsection (c)(5)" for "subsection (c)(4)" and in par. (5)(C) "subsection (b)(1)(D)" for "subsection (b)(4)".

Subsec. (f)(6). Pub. L. 96–221 struck out requirement that the report be made not later than every March 15.

Subsec. (h)(2). Pub. L. 96–252, §10(b), substituted provisions reserving an amount equal to 25 percent of the amount appropriated for the payment of compensation under this subsection to be available solely for the payment of compensation to persons who either would be regulated by a proposed rule or represent persons who would be so regulated for provisions restricting the aggregate amount of compensation paid under this subsection in any fiscal year to all persons, who in rulemaking proceedings in which they receive compensation, are persons who would be regulated by the proposed rule or represent persons who would be so regulated, to an amount not in excess of 25 percent of the aggregate amount paid as compensation under this subsection.

Subsec. (h)(3). Pub. L. 96–252, §10(a), (e), temporarily added par. (3) and redesignated former par. (3) as (4). See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(4). Pub. L. 96–252, §10(a), (c), (e), temporarily redesignated former par. (3) as (4) and substituted "\$750,000" for "\$1,000,000". See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(5). Pub. L. 96–252, §10(d), (e), added par. (5) to be redesignated (4) effective Sept. 30, 1983. See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (i). Pub. L. 96–252, §11(a)(1), added subsec. (i).

Subsecs. (j), (k). Pub. L. 96–252, §12, added subsecs. (j) and (k).

**1979**—Subsec. (f)(1). Pub. L. 96–37, §1(c)(1), inserted provisions relating to savings and loan institutions and to regulations with respect to savings and loan institutions promulgated by Federal Home Loan Bank Board.

Subsec. (f)(3) to (6). Pub. L. 96–37, §1(c)(2), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section

21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

#### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by section 5 of Pub. L. 103–312 applicable only to rulemaking proceedings initiated after Aug. 26, 1994, and not to be construed to affect in any manner a rulemaking proceeding initiated before such date, see section 15(b) of Pub. L. 103–312, set out as a note under section 45 of this title.

#### **EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

#### **EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENTS**

Pub. L. 96–252, §10(e), May 28, 1980, 94 Stat. 378, provided that: "The amendments made in subsection (a) and subsection (c) [amending this section] are repealed, effective at the end of fiscal year 1982. Effective upon such repeal, paragraph (5) of section 18(h) of the Federal Trade Commission Act [subsec. (h)(5) of this section], as added by subsection (d), is redesignated as paragraph (4) of section 18(h) of such Act."

Pub. L. 97–377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1866, 1870, provided in part that: "Notwithstanding any other provision of law, the provisions of sections 10 [amending this section and enacting provision set out as first paragraph of this note], 11(b) [set out as a note below], 18 [set out as a note under section 57c of this title], 20 [set out as a note under section 57c of this title] and 21 [enacting section 57a–1 of this title and enacting a provision set out as a note under section 57a–1 of this title], of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252; 94 Stat. 374) are hereby extended until the termination date set forth in section 102(c) of H.J. Res. 631 [Sept. 30, 1983] as enacted into law [Pub. L. 97–377], notwithstanding subsections 10(e) [see paragraph above] and 21(i) [set out as a note under section 57a–1 of this title] of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252; 94 Stat. 374)."

Pub. L. 96–252, §11(c), May 28, 1980, 94 Stat. 379, provided that: "The amendments made in subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [May 28, 1980]. The children's advertising proceeding pending on the date of the enactment of this Act shall not proceed further until such time as the Commission has complied with section 18(b)(1)(A) of the Federal Trade Commission Act [subsec. (b)(1)(A) of this section], as amended by subsection (a)(3) and as so redesignated in section 8(a). In any such further proceeding, interested parties shall be given a reasonable opportunity to present their views in accordance with section 18(b)(1)(B) of the Federal Trade Commission Act, as so redesignated in section 8(a) [subsec. (b)(1)(B) of this section], section 18(b)(1)(C) of such Act, as so redesignated in section 8(a) [subsec. (b)(1)(C) of this section], and section 18(c) of such Act (15 U.S.C. 57a(c))."

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

#### **RESTRICTION ON USE OF FUNDS FOR PURPOSE OF INITIATING NEW RULEMAKING PROCEEDING**

Pub. L. 96–252, §11(b), May 28, 1980, 94 Stat. 379, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under section 57c of this title, for the purpose of initiating any new rulemaking proceeding under this section which was intended to result in, or which might result in, the promulgation of any rule by the Commission which prohibited or otherwise regulated any commercial advertising on the basis of a determination by the Commission that such commercial advertising constituted an unfair act or practice in or affecting commerce.



## **RESTRICTION ON USE OF FUNDS RESPECTING REGULATION OF FUNERAL INDUSTRY; EXCEPTION**

Pub. L. 96-252, §19, May 28, 1980, 94 Stat. 391, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982, under section 57c of this title to issue the proposed trade regulation rule which was published in the Federal Register of Aug. 29, 1975, beginning at page 39901, and which relates to the regulation of funeral industry practices, in final form or a substantially similar proposed or final trade regulation rule unless the final rule met specific requirements and the Commission followed specific procedures.

## **OVERSIGHT HEARINGS WITH RESPECT TO FEDERAL TRADE COMMISSION**

Pub. L. 96-252, §22, May 28, 1980, 94 Stat. 396, required the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation of the Senate to conduct an oversight hearing with respect to the Federal Trade Commission at least once during the first 6 calendar months, and at least once during the last 6 calendar months, of each of the fiscal years 1980, 1981, and 1982.

## **APPLICABILITY OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES TO RULES CLASSIFYING CORPORATIONS PROMULGATED PRIOR TO JANUARY 4, 1975**

Pub. L. 93-637, title II, §202(c), Jan. 4, 1975, 88 Stat. 2198, provided that:

"(1) The amendments made by subsections (a) and (b) of this section [enacting this section and amending section 46 of this title] shall not affect the validity of any rule which was promulgated under section 6(g) of the Federal Trade Commission Act [section 46(g) of this title] prior to the date of enactment of this section [Jan. 4, 1975]. Any proposed rule under section 6(g) of such Act with respect to which presentation of data, views, and arguments was substantially completed before such date may be promulgated in the same manner and with the same validity as such rule could have been promulgated had this section not been enacted.

"(2) If a rule described in paragraph (1) of this subsection is valid and if section 18 of the Federal Trade Commission Act [this section] would have applied to such rule had such rule been promulgated after the date of enactment of this Act, any substantive change in the rule after it has been promulgated shall be made in accordance with such section 18."

## **STUDY, EVALUATION, AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES; RULEMAKING PROCEDURES**

Pub. L. 93-637, title II, §202(d), Jan. 4, 1975, 88 Stat. 2198, as amended by Pub. L. 94-299, §2, May 29, 1976, 90 Stat. 588; Pub. L. 95-558, Nov. 1, 1978, 92 Stat. 2130, required the Federal Trade Commission and the Administrative Conference of the United States, not later than June 30, 1979, to conduct a study and submit a report to Congress on the rulemaking procedures under section 57a of this title.

<sup>1</sup> *So in original. Probably should be "and".*

<sup>2</sup> *So in original.*

<sup>3</sup> *So in original. Probably should be "of".*

## **§57a-1. Omitted**

## **EDITORIAL NOTES**

### **CODIFICATION**

Section, Pub. L. 96-252, §21(a)-(h), May 28, 1980, 94 Stat. 393; H. Res. 549, Mar. 25, 1980; Pub. L. 98-620, title IV, §402(13), Nov. 8, 1984, 98 Stat. 3358, provided procedures for review by Congress of final rules promulgated by the Federal Trade Commission.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**



## **EFFECTIVE DATE; TERMINATION DATE**

Pub. L. 96-252, §21(i), May 28, 1980, 94 Stat. 396, provided that: "The provisions of this section shall take effect on the date of the enactment of this Act [May 28, 1980] and shall cease to have any force or effect after September 30, 1982."

Pub. L. 97-377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1870, provided in part that notwithstanding any other provision of law, the provisions of section 21 of the Federal Trade Commission Improvements Act of 1980 [Pub. L. 96-252], which enacted this section and enacted provisions set out as a note under this section, were extended until Sept. 30, 1983, notwithstanding section 21(i) of such Act.

## **§57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices**

### **(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts**

(1) If any person, partnership, or corporation violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 45(a) of this title), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 45(a)(1) of this title) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b).

### **(b) Nature of relief available**

The court in an action under subsection (a) shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

### **(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.**

(1) If (A) a cease and desist order issued under section 45(b) of this title has become final under section 45(g) of this title with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 45(b) of this title with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 45(g)(1) of this title, in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

**(d) Time for bringing of actions**

No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 45(b) of this title which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

**(e) Availability of additional Federal or State remedies; other authority of Commission unaffected**

Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

(Sept. 26, 1914, ch. 311, §19, as added Pub. L. 93-637, title II, §206(a), Jan. 4, 1975, 88 Stat. 2201.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Pub. L. 93-637, title II, §206(b), Jan. 4, 1975, 88 Stat. 2202, provided that: "The amendment made by subsection (a) of this section [enacting this section] shall not apply to—

"(1) any violation of a rule to the extent that such violation occurred before the date of enactment of this Act [Jan. 4, 1975], or

"(2) any act or practice with respect to which the Commission issues a cease-and-desist order, to the extent that such act or practice occurred before the date of enactment of this Act [Jan. 4, 1975], unless such order was issued after such date and the person, partnership or corporation against whom such an order was issued had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought."

**§57b-1. Civil investigative demands**

**(a) Definitions**

For purposes of this section:

(1) The terms "civil investigative demand" and "demand" mean any demand issued by the commission under subsection (c)(1).

(2) The term "Commission investigation" means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or in any antitrust violations.

(3) The term "Commission investigator" means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions relating to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or any provisions relating to antitrust violations.

(4) The term "custodian" means the custodian or any deputy custodian designated under section 57b-2(b)(2)(A) of this title.

(5) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(6) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law.

(7) The term "violation" means any act or omission constituting an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of this title) or any antitrust violation.

(8) The term "antitrust violation" means—

(A) any unfair method of competition (within the meaning of section 45(a)(1) of this title);

(B) any violation of the Clayton Act [15 U.S.C. 12 et seq.] or of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce;

(C) with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], any violation of any of the foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]) with respect to which a request is made under section 3 of such Act [15 U.S.C. 6202]; or

(D) any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in any such unfair method of competition or in any such violation.

**(b) Actions conducted by Commission respecting unfair or deceptive acts or practices in or affecting commerce**

For the purpose of investigations performed pursuant to this section with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title); all actions of the Commission taken under section 46 and section 49 of this title shall be conducted pursuant to subsection (c).

**(c) Issuance of demand; contents; service; verified return; sworn certificate; answers; taking of oral testimony**

(1) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), or to antitrust violations, the Commission may, before the institution of any proceedings under this subchapter, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to submit such tangible things, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

- (6) Each civil investigative demand for the giving of oral testimony shall—
- (A) prescribe a date, time, and place at which oral testimony shall be commenced; and
  - (B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7)(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of such partnership, corporation, association, or other legal entity, or to any agent of such partnership, corporation, association, or other legal entity authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or other legal entity;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or other legal entity to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or other legal entity at its principal office or place of business.

(9) Service of any civil investigative demand or of any enforcement petition filed under this section may be made upon any natural person by—

(A) delivering a duly executed copy of such demand or petition to the person to be served; or

(B) depositing a duly executed copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(10) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(11) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(12) The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(13) Each reporting requirement or question in a civil investigative demand shall be answered

separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(14)(A) Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom the oral testimony of such person is to be taken and such person.

(D)(i) Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(ii) Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not himself or through his attorney otherwise interrupt the oral examination. If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(iii) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18.

(E)(i) After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript. The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Commission investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(ii) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) The Commission investigator shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcription) to the witness only, except that the Commission may for

good cause limit such witness to inspection of the official transcript of his testimony.

(H) Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

**(d) Procedures for demand material**

Materials received as a result of a civil investigative demand shall be subject to the procedures established in section 57b-2 of this title.

**(e) Petition for enforcement**

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

**(f) Petition for order modifying or setting aside demand**

(1) Not later than 20 days after the service of any civil investigative demand upon any person under subsection (c), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

(2) The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

**(g) Custodial control of documentary material, tangible things, reports, etc.**

At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or section 57b-2 of this title.

**(h) Jurisdiction of court**

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of such court.

**(i) Commission authority to issue subpoenas or make demand for information**

Notwithstanding any other provision of law, the Commission shall have no authority to issue a subpoena or make a demand for information, under authority of this subchapter or any other provision of law, unless such subpoena or demand for information is signed by a Commissioner acting pursuant to a Commission resolution. The Commission shall not delegate the power conferred by this section to sign subpoenas or demands for information to any other person.

**(j) Applicability of this section**

The provisions of this section shall not—

(1) apply to any proceeding under section 45(b) of this title, any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law; or

(2) apply to or affect the jurisdiction, duties, or powers of any agency of the Federal Government, other than the Commission, regardless of whether such jurisdiction, duties, or powers are derived in whole or in part, by reference to this subchapter.

(Sept. 26, 1914, ch. 311, §20, as added Pub. L. 96–252, §13, May 28, 1980, 94 Stat. 380; amended Pub. L. 103–312, §7, Aug. 26, 1994, 108 Stat. 1693; Pub. L. 103–438, §3(e)(2)(B), Nov. 2, 1994, 108 Stat. 4598.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Clayton Act, referred to in subsec. (a)(8)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (a)(8)(C), is Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

### **PRIOR PROVISIONS**

A prior section 20 of act Sept. 26, 1914, ch. 311, was renumbered section 24 and is classified to section 57c of this title.

### **AMENDMENTS**

**1994**—Subsec. (a)(2). Pub. L. 103–312, §7(a)(1), inserted before period at end "or in any antitrust violations".

Subsec. (a)(3). Pub. L. 103–312, §7(a)(2), inserted before period at end "or any provisions relating to antitrust violations".

Subsec. (a)(7). Pub. L. 103–312, §7(a)(3), inserted before period at end "or any antitrust violation".

Subsec. (a)(8). Pub. L. 103–438 amended par. (8) generally. Prior to amendment, par. (8) read as follows: "The term 'antitrust violation' means any unfair method of competition (within the meaning of section 45(a)(1) of this title), any violation of the Clayton Act, any violation of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce, or any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in such an unfair method of competition or violation."

Pub. L. 103–312, §7(a)(4), added par. (8).

Subsec. (c)(1). Pub. L. 103–312, §7(b)(1), inserted "or tangible things" after "control of any documentary material", "or to antitrust violations," after "section 45(a)(1) of this title),", and "to submit such tangible things," after "copying or reproduction,".

Subsec. (c)(4) to (14). Pub. L. 103–312, §7(b)(2), added pars. (4) and (12) and redesignated former pars. (4) to (10), (11), and (12) as (5) to (11), (13), and (14), respectively.

Subsec. (g). Pub. L. 103–312, §7(c), inserted ", tangible things" after "documentary material".

Subsec. (j)(1). Pub. L. 103–312, §7(d), inserted before semicolon at end ", any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–312 applicable only with respect to compulsory process issued after Aug. 26, 1994, see section 15(d) of Pub. L. 103–312, set out as a note under section 45 of this title.

### **EFFECTIVE DATE**

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

## **§57b-2. Confidentiality**

### **(a) Definitions**

For purposes of this section:

(1) The term "material" means documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony.

(2) The term "Federal agency" has the meaning given it in section 552(e) <sup>1</sup> of title 5.

### **(b) Procedures respecting documents, tangible things, or transcripts of oral testimony received pursuant to compulsory process or investigation**

(1) With respect to any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, tangible things, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct pursuant to section 57b-1(h) of this title) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(3)(A) The custodian to whom any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony, and may make tangible things available, as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material, things, and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, tangible things, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material, things, or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material, tangible things, or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and



(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation;

then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

(C) the appropriate Federal banking agency (as defined in section 1813(q) of title 12) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior

approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 57a(f)(3) of this title, or a Federal credit union described in section 57a(f)(4) of this title; and

(D) the foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 4605(j) <sup>1</sup> of title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 4605(j)(4) <sup>1</sup> of title 50.

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 6211 of this title) to any officer or employee of a foreign law enforcement agency.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this subchapter, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

**(c) Information considered confidential**

(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

**(d) Particular disclosures allowed**

(1) The provisions of subsection (c) shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the

owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512<sup>1</sup> of title 44, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

**(e) Effect on other statutory provisions limiting disclosure**

Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

**(f) Exemption from public disclosure**

**(1) In general**

Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5 or any other provision of law, except as provided in paragraph (2)(B) of this section.

**(2) Material obtained from a foreign source**

**(A) In general**

Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5 or any other provision of law—

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

**(B) Savings provision**

Nothing in this subsection shall 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.

(Sept. 26, 1914, ch. 311, §21, as added Pub. L. 96-252, §14, May 28, 1980, 94 Stat. 385; amended Pub. L. 103-312, §8, Aug. 26, 1994, 108 Stat. 1694; Pub. L. 109-455, §§6, 13, Dec. 22, 2006, 120 Stat. 3376, 3382; Pub. L. 112-203, §1, Dec. 4, 2012, 126 Stat. 1484.)

## AMENDMENT OF SECTION

*For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.*

### EDITORIAL NOTES

#### REFERENCES IN TEXT

Section 552(e) of title 5, referred to in subsec. (a)(2), was redesignated section 552(f) of Title 5, Government Organization and Employees, by section 1802(b) of Pub. L. 99–570.

Section 4605(j) of title 50, referred to in subsec. (b)(6)(D), was repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For provisions similar to those of former section 4605(j) of title 50, see section 4813(c) of title 50, as enacted by Pub. L. 115–232.

Section 3512 of title 44, referred to in subsec. (d)(1)(D), which related to requirements for the collection of information by independent Federal regulatory agencies, was a part of chapter 35 of Title 44, Public Printing and Documents. Chapter 35 was amended generally by the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and subsequently by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

#### PRIOR PROVISIONS

A prior section 21 of act Sept. 26, 1914, ch. 311, was renumbered section 28 and is classified to section 58 of this title.

#### AMENDMENTS

**2012**—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

**2006**—Subsec. (b)(6). Pub. L. 109–455, §6(a), which inserted at end "The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—", added subpars. (A) to (D) setting forth conditions for making materials available to foreign law enforcement agencies, and inserted concluding provisions restricting disclosure of certain antitrust materials, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109–455, §6(b), which inserted heading "Exemption from public disclosure" and amended text of subsec. (f) generally, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. Prior to amendment by section 6(b), text read as follows: "Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5." See Termination Date of 2006 Amendment note below.

**1994**—Subsec. (a)(1). Pub. L. 103–312, §8(1), inserted "tangible things," after "documentary material,".

Subsec. (b)(1). Pub. L. 103–312, §8(2), inserted ", tangible thing," after "document".

Subsec. (b)(2)(A). Pub. L. 103–312, §8(3), inserted "tangible things," after "documentary material,".

Subsec. (b)(3). Pub. L. 103–312, §8(4), in subpar. (A), inserted "tangible things," after "documentary material," in subpar. (B), inserted ", and may make tangible things available," after "transcripts of oral testimony" and ", things," after "such material", in subpar. (C), inserted "tangible things," after "documentary material," and ", things," after "material", and in subpar. (D)(i), inserted ", tangible things," after "documentary material".

Subsec. (b)(4), (5). Pub. L. 103–312, §8(5), (6), inserted "tangible things," after "documentary material,".

Subsec. (b)(6). Pub. L. 103–312, §8(7), inserted "The custodian of any tangible things may make such things available for inspection to such persons on the same basis." after first sentence, and "results of inspections of tangible things," after "Such documentary material,".

Subsec. (b)(7). Pub. L. 103–312, §8(8), inserted "tangible things," after "documentary material,".

### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 6 of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by

Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

#### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–312 applicable only with respect to compulsory process issued after Aug. 26, 1994, see section 15(d) of Pub. L. 103–312, set out as a note under section 45 of this title.

#### **EFFECTIVE DATE**

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

*<sup>1</sup> See References in Text note below.*

### **§57b–2a. Confidentiality and delayed notice of compulsory process for certain third parties**

#### **(a) Application with other laws**

The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18 shall apply with respect to the Commission, except as otherwise provided in this section.

#### **(b) Procedures for delay of notification or prohibition of disclosure**

The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18 (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

(2) if notification would otherwise be required under chapter 121 of title 18, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

#### **(c) Ex parte application by Commission**

##### **(1) In general**

If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

##### **(2) Application**

This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

**(3) Limitation**

No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

**(d) No liability for failure to notify**

If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, the recipient of compulsory process issued by the Commission under this subchapter shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

- (1) the underlying conduct reported;
- (2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404[c]), where applicable; or
- (3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

**(e) Venue and procedure**

**(1) In general**

All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

**(2) In camera proceedings**

Upon application by the Commission, all judicial proceedings pursuant to this section 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.

**(f) Section not to apply to antitrust investigations or proceedings**

This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 6211 of this title).

**(g) Adverse result defined**

For purposes of this section the term "adverse result" means—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) the destruction of, or tampering with, evidence;
- (4) the intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—
  - (A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;
  - (B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such

practices; or

(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.

(Sept. 26, 1914, ch. 311, §21A, as added Pub. L. 109–455, §7(a), Dec. 22, 2006, 120 Stat. 3377.)

## **REPEAL OF SECTION**

*For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.*

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Right to Financial Privacy Act, referred to in subsecs. (a) to (e), probably means the Right to Financial Privacy Act of 1978, Pub. L. 95–630, title XI, 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.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF REPEAL**

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

## **§57b–2b. Protection for voluntary provision of information**

### **(a) In general**

#### **(1) No liability for providing certain material**

An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(A) a possible unfair or deceptive act or practice, as defined in section 45(a) of this title; or

(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

#### **(2) Limitations**

Nothing in this subsection shall be construed to exempt any such entity from liability—

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

### **(b) Certain financial institutions**

An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

(A) related to possibly fraudulent or deceptive commercial practices;

(B) related to persons involved in such practices; or

(C) otherwise subject to recovery by the Commission; or

(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

**(c) Consumer complaints**

Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

**(d) Application**

This section applies to the following entities, whether foreign or domestic:

(1) A financial institution as defined in section 5312 of title 31.

(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

(Sept. 26, 1914, ch. 311, §21B, as added Pub. L. 109–455, §8, Dec. 22, 2006, 120 Stat. 3380.)

**REPEAL OF SECTION**

*For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.*

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF REPEAL**

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

**§57b–3. Rulemaking process**

**(a) Definitions**

For purposes of this section:

(1) The term "rule" means any rule promulgated by the Commission under section 46 or section 57a of this title, except that such term does not include interpretive rules, rules involving Commission management or personnel, general statements of policy, or rules relating to Commission organization, procedure, or practice. Such term does not include any amendment to a rule unless the Commission—

(A) estimates that such amendment will have an annual effect on the national economy of \$100,000,000 or more;

(B) estimates that such amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

(C) otherwise determines that such amendment will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

(2) The term "rulemaking" means any Commission process for formulating or amending a rule.

**(b) Notice of proposed rulemaking; regulatory analysis; contents; issuance**



(1) In any case in which the Commission publishes notice of a proposed rulemaking, the Commission shall issue a preliminary regulatory analysis relating to the proposed rule involved. Each preliminary regulatory analysis shall contain—

- (A) a concise statement of the need for, and the objectives of, the proposed rule;
- (B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and
- (C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.

(2) In any case in which the Commission promulgates a final rule, the Commission shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

- (A) a concise statement of the need for, and the objectives of, the final rule;
- (B) a description of any alternatives to the final rule which were considered by the Commission;
- (C) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;
- (D) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and
- (E) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

(3)(A) In order to avoid duplication or waste, the Commission is authorized to—

- (i) consider a series of closely related rules as one rule for purposes of this subsection; and
- (ii) whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose to accompany any rule promulgated under section 57a(a)(1)(B) of this title, and incorporate by reference in any preliminary or final regulatory analysis information contained in a notice of proposed rulemaking or a statement of basis and purpose.

(B) The Commission shall include, in each notice of proposed rulemaking and in each publication of a final rule, a statement of the manner in which the public may obtain copies of the preliminary and final regulatory analyses. The Commission may charge a reasonable fee for the copying and mailing of regulatory analyses. The regulatory analyses shall be furnished without charge or at a reduced charge if the Commission determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(4) The Commission is authorized to delay the completion of any of the requirements established in this subsection by publishing in the Federal Register, not later than the date of publication of the final rule involved, a finding that the final rule is being promulgated in response to an emergency which makes timely compliance with the provisions of this subsection impracticable. Such publication shall include a statement of the reasons for such finding.

(5) The requirements of this subsection shall not be construed to alter in any manner the substantive standards applicable to any action by the Commission, or the procedural standards otherwise applicable to such action.

### **(c) Judicial review**

(1) The contents and adequacy of any regulatory analysis prepared or issued by the Commission under this section, including the adequacy of any procedure involved in such preparation or issuance, shall not be subject to any judicial review in any court, except that a court, upon review of a rule pursuant to section 57a(e) of this title, may set aside such rule if the Commission has failed entirely to prepare a regulatory analysis.

(2) Except as specified in paragraph (1), no Commission action may be invalidated, remanded, or

otherwise affected by any court on account of any failure to comply with the requirements of this section.

(3) The provisions of this subsection do not alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

**(d) Regulatory agenda; contents; publication dates in Federal Register**

(1) The Commission shall publish at least semiannually a regulatory agenda. Each regulatory agenda shall contain a list of rules which the Commission intends to propose or promulgate during the 12-month period following the publication of the agenda. On the first Monday in October of each year, the Commission shall publish in the Federal Register a schedule showing the dates during the current fiscal year on which the semiannual regulatory agenda of the Commission will be published.

(2) For each rule listed in a regulatory agenda, the Commission shall—

(A) describe the rule;

(B) state the objectives of and the legal basis for the rule; and

(C) specify any dates established or anticipated by the Commission for taking action, including dates for advance notice of proposed rulemaking, notices of proposed rulemaking, and final action by the Commission.

(3) Each regulatory agenda shall state the name, office address, and office telephone number of the Commission officer or employee responsible for responding to any inquiry relating to each rule listed.

(4) The Commission shall not propose or promulgate a rule which was not listed on a regulatory agenda unless the Commission publishes with the rule an explanation of the reasons the rule was omitted from such agenda.

(Sept. 26, 1914, ch. 311, §22, as added Pub. L. 96-252, §15, May 28, 1980, 94 Stat. 388.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

**§57b-4. Good faith reliance on actions of Board of Governors**

**(a) "Board of Governors" defined**

For purposes of this section, the term "Board of Governors" means the Board of Governors" of the Federal Reserve System.

**(b) Use as defense**

Notwithstanding any other provision of law, if—

(1) any person, partnership, or corporation engages in any conduct or practice which allegedly constitutes a violation of any Federal law with respect to which the Board of Governors of the Federal Reserve System has rulemaking authority; and

(2) such person, partnership, or corporation engaged in such conduct or practice in good faith reliance upon, and in conformity with, any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors under such Federal law;

then such good faith reliance shall constitute a defense in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Commission under this subchapter or in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Attorney General of the United States, upon request made by the Commission, under any provision of law.

**(c) Applicability of subsection (b)**

The provisions of subsection (b) shall apply regardless of whether any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors is amended, rescinded, or held to be invalid by judicial authority or any other authority after a person, partnership, or corporation has engaged in any conduct or practice in good faith reliance upon, and in conformity with, such rule, regulation, statement of interpretation, or statement of approval.

**(d) Request for issuance of statement or interpretation concerning conduct or practice**

If, in any case in which—

- (1) the Board of Governors has rulemaking authority with respect to any Federal law; and
- (2) the Commission is authorized to enforce the requirements of such Federal law;

any person, partnership, or corporation submits a request to the Board of Governors for the issuance of any statement of interpretation or statement of approval relating to any conduct or practice of such person, partnership, or corporation which may be subject to the requirements of such Federal law, then the Board of Governors shall dispose of such request as soon as practicable after the receipt of such request.

(Sept. 26, 1914, ch. 311, §23, as added Pub. L. 96–252, §16, May 28, 1980, 94 Stat. 390.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

**§57b–5. Agricultural cooperatives**

(a) The Commission shall not have any authority to conduct any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of sections 291 and 292 of title 7, is not a violation of any of the antitrust Acts or this subchapter.

(b) The Commission shall not have any authority to conduct any study or investigation of any agricultural marketing orders.

(Sept. 26, 1914, ch. 311, §24, as added Pub. L. 103–312, §2, Aug. 26, 1994, 108 Stat. 1691.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

A prior section 24 of act Sept. 26, 1914, was renumbered section 25 and is classified to section 57c of this title.

**§57c. Authorization of appropriations**

There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$92,700,000 for fiscal year 1994; not to exceed \$99,000,000 for fiscal year 1995; not to exceed \$102,000,000 for fiscal year 1996; not to exceed \$107,000,000 for fiscal year 1997; and not to exceed \$111,000,000 for fiscal year 1998.

(Sept. 26, 1914, ch. 311, §25, formerly §20, as added Pub. L. 93–367, title II, §207, Jan. 4, 1975, 88 Stat. 2203; amended Pub. L. 94–299, §1, May 29, 1976, 90 Stat. 588; renumbered §24 and amended Pub. L. 96–252, §§13, 17, May 28, 1980, 94 Stat. 380, 391; renumbered §25 and amended Pub. L. 103–312, §§2, 14, Aug. 26, 1994, 108 Stat. 1691, 1697; Pub. L. 104–216, §2, Oct. 1, 1996, 110 Stat. 3019.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

A prior section 25 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

### **AMENDMENTS**

**1996**—Pub. L. 104–216 struck out "and" before "not to exceed \$102,000,000" and inserted before period at end "; not to exceed \$107,000,000 for fiscal year 1997; and not to exceed \$111,000,000 for fiscal year 1998".

**1994**—Pub. L. 103–312, §14, amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed \$42,000,000 for the fiscal year ending June 30, 1975; not to exceed \$47,091,000 for the fiscal year ending June 30, 1976; not to exceed \$50,000,000 for the fiscal year ending in 1977; not to exceed \$70,000,000 for the fiscal year ending September 30, 1980; not to exceed \$75,000,000 for the fiscal year ending September 30, 1981; and not to exceed \$80,000,000 for the fiscal year ending September 30, 1982."

**1980**—Pub. L. 96–252, §17, substituted "1977; not to exceed \$70,000,000 for the fiscal year ending September 30, 1980; not to exceed \$75,000,000 for the fiscal year ending September 30, 1981; and not to exceed \$80,000,000 for the fiscal year ending September 30, 1982" for "1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law".

**1976**—Pub. L. 94–299 substituted "\$47,091,000" for "\$46,000,000".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

### **INTERVENTION BY COMMISSION IN CERTAIN PROCEEDINGS**

Pub. L. 103–312, §11, Aug. 26, 1994, 108 Stat. 1696, provided that:

"(a) **LIMITATION ON USE OF AUTHORIZED FUNDS.**—The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal years 1994, 1995, and 1996 for the purpose of submitting statements to, appearing before, or intervening in the proceedings of, any Federal or State agency or State legislative body concerning proposed rules or legislation that the agency or legislative body is considering unless the Commission advises the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding such action as soon as possible.

"(b) **CONTENTS OF NOTICE TO CONGRESS.**—The notice required in subsection (a) shall include the name of the agency or legislator involved, the date of such action, and a concise statement regarding the nature and purpose of such action."

### **RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS**

Pub. L. 96–252, §18, May 28, 1980, 94 Stat. 391, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of taking any action under 15 U.S.C. 1064 with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance.

### **RESTRICTION ON USE OF FUNDS RESPECTING STUDY, INVESTIGATION, OR PROSECUTION OF ANY AGRICULTURAL COOPERATIVE OR STUDY OR INVESTIGATION OF ANY AGRICULTURAL MARKETING ORDERS**

Pub. L. 96–252, §20, May 28, 1980, 94 Stat. 393, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of conducting any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Capper-Volstead Act (7 U.S.C. 291 et seq.), was not a violation of any

Federal antitrust Act or this subchapter or for the purpose of conducting any study or investigation of any agricultural marketing orders.

## **§57c–1. Staff exchanges**

### **(a) In general**

The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 42 of this title or section 3101 or section 3109 of title 5; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

### **(b) Reciprocity and reimbursement**

The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

### **(c) Standards of conduct**

A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.

(Sept. 26, 1914, ch. 311, §25A, as added Pub. L. 109–455, §9, Dec. 22, 2006, 120 Stat. 3381.)

## **REPEAL OF SECTION**

*For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.*

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF REPEAL**

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

## **§57c–2. Reimbursement of expenses**

The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

(Sept. 26, 1914, ch. 311, §26, as added Pub. L. 109–455, §11(2), Dec. 22, 2006, 120 Stat. 3381.)

## **REPEAL OF SECTION**

*For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.*

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

A prior section 26 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

### §58. Short title

This subchapter may be cited as the "Federal Trade Commission Act".

(Sept. 26, 1914, ch. 311, §28, formerly §18, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; renumbered §21, Pub. L. 93–637, title II, §202(a), Jan. 4, 1975, 88 Stat. 2193; renumbered §25, Pub. L. 96–252, §13, May 28, 1980, 94 Stat. 380; renumbered §26, Pub. L. 103–312, §2, Aug. 26, 1994, 108 Stat. 1691; renumbered §28, Pub. L. 109–455, §11(1), Dec. 22, 2006, 120 Stat. 3381.)

### AMENDMENT OF SECTION

*For repeal of amendment renumbering this section by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.*

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, as amended, set out as a note under section 44 of this title.

### SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–103, div. Q, title I, §101, Mar. 15, 2022, 136 Stat. 809, provided that: "This title [enacting section 45e of this title, amending section 21711 of Title 34, Crime Control and Law Enforcement, and enacting provisions set out as notes under this section and section 45e of this title, and section 21711 of Title 34] may be cited as the 'Fraud and Scam Reduction Act'."

Pub. L. 117–103, div. Q, title I, §111, Mar. 15, 2022, 136 Stat. 809, provided that: "This subtitle [subtitle A (§§111, 112) of title I of div. Q of Pub. L. 117–103, amending section 21711 of Title 34, Crime Control and Law Enforcement, and enacting provisions set out as notes under section 45e of this title and section 21711 of Title 34] may be cited as the 'Stop Senior Scams Act'."

Pub. L. 117–103, div. Q, title I, §121, Mar. 15, 2022, 136 Stat. 811, provided that: "This subtitle [subtitle B (§§121, 122) of title I of div. Q of Pub. L. 117–103, enacting section 45e of this title] may be cited as the 'Seniors Fraud Prevention Act of 2022'."

### SHORT TITLE OF 2021 AMENDMENT

Pub. L. 116–287, §1, Jan. 5, 2021, 134 Stat. 4882, provided that: "This Act [enacting provisions set out as a note under section 52 of this title] may be cited as the 'Combating Pandemic Scams Act of 2020'."

### SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–271, title VIII, §8021, Oct. 24, 2018, 132 Stat. 4082, provided that: "This subtitle [subtitle B (§§8021–8023) of title VIII of Pub. L. 115–271, enacting section 45d of this title and provisions set out as a note under section 45d of this title] may be cited as the 'Opioid Addiction Recovery Fraud Prevention Act of 2018'."

### SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114–274, §1, Dec. 14, 2016, 130 Stat. 1401, provided that: "This Act [enacting section 45c of this title and provisions set out as a note under section 45c of this title] may be cited as the 'Better Online Ticket Sales Act of 2016' or the 'BOTS Act of 2016'."

Pub. L. 114–258, §1, Dec. 14, 2016, 130 Stat. 1355, provided that: "This Act [enacting section 45b of this title] may be cited as the 'Consumer Review Fairness Act of 2016'."

### SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–455, §1, Dec. 22, 2006, 120 Stat. 3372, provided that: "This Act [enacting sections 57b–2a,

57b–2b, 57c–1, and 57c–2 of this title, amending this section, sections 44, 45, 46, 56, and 57b–2 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under section 44 of this title] may be cited as the 'Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006' or the 'U.S. SAFE WEB Act of 2006'."

[Section 1 of Pub. L. 109–455, set out above, repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.]

#### **SHORT TITLE OF 1996 AMENDMENT**

Pub. L. 104–216, §1, Oct. 1, 1996, 110 Stat. 3019, provided that: "This Act [amending section 57c of this title] may be cited as the 'Federal Trade Commission Reauthorization Act of 1996'."

#### **SHORT TITLE OF 1994 AMENDMENT**

Pub. L. 103–312, §1(a), Aug. 26, 1994, 108 Stat. 1691, provided that: "This Act [enacting section 57b–5 of this title, amending this section and sections 45, 53, 57a, 57b–1, 57b–2, and 57c of this title, and enacting provisions set out as notes under sections 45 and 57c of this title] may be cited as the 'Federal Trade Commission Act Amendments of 1994'."

#### **SHORT TITLE OF 1980 AMENDMENT**

Pub. L. 96–252, §1, May 28, 1980, 94 Stat. 374, provided that "This Act [enacting sections 57a–1 and 57b–1 to 57b–4 of this title, amending this section and sections 45, 46, 50, 57a, and 57c of this title, and enacting provisions set out as notes under sections 45, 46, 57a, 57a–1, and 57c of this title] may be cited as the 'Federal Trade Commission Improvements Act of 1980'."

## **SUBCHAPTER II—PROMOTION OF EXPORT TRADE**

### **§61. Export trade; definitions**

The words "export trade" wherever used in this subchapter mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

The words "trade within the United States" wherever used in this subchapter mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

The word "association" wherever used in this subchapter means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

(Apr. 10, 1918, ch. 50, §1, 40 Stat. 516.)

### **§62. Export trade and antitrust legislation**

Nothing contained in the Sherman Act [15 U.S.C. 1 et seq.] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such

association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

(Apr. 10, 1918, ch. 50, §2, 40 Stat. 517.)

## EDITORIAL NOTES

### CODIFICATION

"Sherman Act [15 U.S.C. 1 et seq.]" substituted in text for "Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety" on authority of the enacting clause of that Act set out as a Short Title note under section 1 of this title.

## **§63. Acquisition of stock of export trade corporation**

Nothing contained in section 18 of this title shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

(Apr. 10, 1918, ch. 50, §3, 40 Stat. 517.)

## **§64. Unfair methods of competition in export trade**

The prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Federal Trade Commission Act [15 U.S.C. 41 et seq.] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

(Apr. 10, 1918, ch. 50, §4, 40 Stat. 517.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" substituted in text for "Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September twenty-sixth, nineteen hundred and fourteen" on authority of section 18 of that Act [15 U.S.C. 58].

## **§65. Information required from export trade corporation; powers of Federal Trade Commission**

Every association which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and bylaws, and if unincorporated, a copy of its articles or contract of association, and on the 1st day of January of each year every association engaged solely in export trade shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its



stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the Commission such information as the Commission may require as to its organization business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of sections 62 and 63 of this title, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture 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 brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said Commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. (Apr. 10, 1918, ch. 50, §5, 40 Stat. 517; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### **CODIFICATION**

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" substituted in text for "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," on authority of section 18 of that Act [15 U.S.C. 58].

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 of Title 28, Judiciary and Judicial Procedure.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§66. Short title**

This subchapter may be cited as the "Webb-Pomerene Act".

(Apr. 10, 1918, ch. 50, §6, as added Pub. L. 94-435, title III, §305(c), Sept. 30, 1976, 90 Stat. 1397.)

## **SUBCHAPTER III—LABELING OF WOOL PRODUCTS**

### **§68. Definitions**

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise, plural or singular, as the case demands.

(b) The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

(c) The term "recycled wool" means (1) the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state, or (2) the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(d) The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool or recycled wool.

(e) The term "Commission" means the Federal Trade Commission.

(f) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended, and the Federal Trade Commission Act approved March 21, 1938.

(g) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(h) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(Oct. 14, 1940, ch. 871, §2, 54 Stat. 1128; Pub. L. 96-242, §1, May 5, 1980, 94 Stat. 344.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The Act of September 26, 1914, referred to in subsec. (f), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Federal Trade Commission Act approved March 21, 1938, referred to in subsec. (f), is act Mar. 21, 1938, ch. 49, 52 Stat. 111. For complete classification of this Act to the Code, see Tables.

#### **AMENDMENTS**

**1980**—Subsec. (c). Pub. L. 96-242, §1(a), substituted "recycled wool" for "reprocessed wool" as term defined, designated existing definition as cl. (1), and added cl. (2).

Subsecs. (d) to (i). Pub. L. 96-242, §1(b)–(d), redesignated subsecs. (e) to (i) as (d) to (h), respectively, and, in subsec. (d) as so redesignated, substituted "containing wool or recycled wool" for "containing wool, reprocessed wool, or reused wool". Former subsec. (d), which defined term "reused wool", was struck out.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Pub. L. 96–242, §3, May 5, 1980, 94 Stat. 344, provided that: "The amendments made by this Act [amending this section and section 68b of this title] shall take effect with respect to wool products manufactured on or after the date sixty days after the date of enactment of this Act [May 5, 1980]."

### **EFFECTIVE DATE**

Act Oct. 14, 1940, ch. 871, §12, 54 Stat. 1133, provided that: "This Act [this subchapter] shall take effect nine months after the date of its passage."

### **SHORT TITLE OF 2006 AMENDMENT**

Pub. L. 109–428, §1, Dec. 20, 2006, 120 Stat. 2913, provided that: "This Act [amending section 68b of this title and enacting provisions set out as a note under section 68b of this title] may be cited as the 'Wool Suit Fabric Labeling Fairness and International Standards Conforming Act'."

### **SHORT TITLE**

Act Oct. 14, 1940, ch. 871, §1, 54 Stat. 1128, provided that: "This Act [this subchapter] may be cited as the 'Wool Products Labeling Act of 1939'."

### **SEPARABILITY**

Act Oct. 14, 1940, ch. 871, §13, 54 Stat. 1133, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, partnership, corporation, or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance shall not be affected thereby."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§68a. Misbranding declared unlawful**

The introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this subchapter or the rules and regulations hereunder, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this subchapter and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

This section shall not apply—

(a) To any common carrier or contract carrier in respect to a wool product shipped or delivered for shipment in commerce in the ordinary course of its business; or

(b) To any person manufacturing, delivering for shipment, shipping, selling, or offering for sale, for exportation from the United States to any foreign country a wool product branded in accordance with the specifications of the purchaser and in accordance with the laws of such country.

(Oct. 14, 1940, ch. 871, §3, 54 Stat. 1129.)

## **§68b. Misbranded wool products**

**(a) False identification; affixation of label, etc., contents**

A wool product shall be misbranded—

- (1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.
- (2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show—
  - (A) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) recycled wool; (3) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (4) the aggregate of all other fibers: *Provided*, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.
  - (B) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.
  - (C) the name of the manufacturer of the wool product and/or the name of one or more persons subject to section 68a of this title with respect to such wool product.
  - (D) the name of the country where processed or manufactured.
- (3) In the case of a wool product containing a fiber other than wool, if the percentages by weight of the wool contents thereof are not shown in words and figures plainly legible.
- (4) In the case of a wool product represented as wool, if the percentages by weight of the wool content thereof are not shown in words and figures plainly legible, or if the total fiber weight of such wool product is not 100 per centum wool exclusive of ornamentation not exceeding 5 per centum of such total fiber weight.
- (5) In the case of a wool product stamped, tagged, labeled, or otherwise identified as—
  - (A) "Super 80's" or "80's", if the average diameter of wool fiber of such wool product does not average 19.75 microns or finer;
  - (B) "Super 90's" or "90's", if the average diameter of wool fiber of such wool product does not average 19.25 microns or finer;
  - (C) "Super 100's" or "100's", if the average diameter of wool fiber of such wool product does not average 18.75 microns or finer;
  - (D) "Super 110's" or "110's", if the average diameter of wool fiber of such wool product does not average 18.25 microns or finer;
  - (E) "Super 120's" or "120's", if the average diameter of wool fiber of such wool product does not average 17.75 microns or finer;
  - (F) "Super 130's" or "130's", if the average diameter of wool fiber of such wool product does not average 17.25 microns or finer;
  - (G) "Super 140's" or "140's", if the average diameter of wool fiber of such wool product does not average 16.75 microns or finer;
  - (H) "Super 150's" or "150's", if the average diameter of wool fiber of such wool product does not average 16.25 microns or finer;
  - (I) "Super 160's" or "160's", if the average diameter of wool fiber of such wool product does not average 15.75 microns or finer;
  - (J) "Super 170's" or "170's", if the average diameter of wool fiber of such wool product does not average 15.25 microns or finer;
  - (K) "Super 180's" or "180's", if the average diameter of wool fiber of such wool product does not average 14.75 microns or finer;
  - (L) "Super 190's" or "190's", if the average diameter of wool fiber of such wool product does not average 14.25 microns or finer;
  - (M) "Super 200's" or "200's", if the average diameter of wool fiber of such wool product does not average 13.75 microns or finer;
  - (N) "Super 210's" or "210's", if the average diameter of wool fiber of such wool product does

not average 13.25 microns or finer;

(O) "Super 220's" or "220's", if the average diameter of wool fiber of such wool product does not average 12.75 microns or finer;

(P) "Super 230's" or "230's", if the average diameter of wool fiber of such wool product does not average 12.25 microns or finer;

(Q) "Super 240's" or "240's", if the average diameter of wool fiber of such wool product does not average 11.75 microns or finer; and

(R) "Super 250's" or "250's", if the average diameter of wool fiber of such wool product does not average 11.25 microns or finer.

In each such case, the average fiber diameter of such wool product may be subject to such standards or deviations as adopted by regulation by the Commission.

(6) In the case of a wool product stamped, tagged, labeled, or otherwise identified as cashmere, if—

(A) such wool product is not the fine (dehaired) undercoat fibers produced by a cashmere goat (*capra hircus laniger*);

(B) the average diameter of the fiber of such wool product exceeds 19 microns; or

(C) such wool product contains more than 3 percent (by weight) of cashmere fibers with average diameters that exceed 30 microns.

The average fiber diameter may be subject to a coefficient of variation around the mean that shall not exceed 24 percent.

**(b) Additional information**

In addition to information required in this section, the stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, may contain other information not violating the provisions of this subchapter or the rules and regulations of the Commission.

**(c) Substitute identification**

If any person subject to section 68a of this title with respect to a wool product finds or has reasonable cause to believe its stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, does not contain the information required by this subchapter, he may replace same with a substitute containing the information so required.

**(d) Designations on linings, paddings, etc.**

This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided*, That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content.

**(e) False or deceptive advertising in mail order promotions**

For the purposes of this subchapter, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States of America, or imported, or both.

**(f) Location of label, etc.**

For purposes of this subchapter, any wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.

(Oct. 14, 1940, ch. 871, §4, 54 Stat. 1129; Pub. L. 96-242, §2, May 5, 1980, 94 Stat. 344; Pub. L. 98-417, title III, §§304, 305, Sept. 24, 1984, 98 Stat. 1604; Pub. L. 109-428, §2(a), Dec. 20, 2006, 120 Stat. 2913.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2006**—Subsec. (a)(5), (6). Pub. L. 109-428 added pars. (5) and (6).

**1984**—Subsec. (a)(2)(D). Pub. L. 98-417, §304, added subpar. (D).

Subsecs. (e), (f). Pub. L. 98-417, §305, added subsecs. (e) and (f).

**1980**—Subsec. (a)(2)(A). Pub. L. 96-242 substituted "recycled wool" for "reprocessed wool" as cl. (2), struck out cl. (3) "reused wool", and redesignated existing cls. (4) and (5) as (3) and (4), respectively.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2006 AMENDMENT**

Pub. L. 109-428, §2(b), Dec. 20, 2006, 120 Stat. 2915, provided that: "The amendments made by this section [amending this section] shall apply to wool products manufactured on or after January 1, 2007."

### **EFFECTIVE DATE OF 1984 AMENDMENT**

Pub. L. 98-417, title III, §307, Sept. 24, 1984, 98 Stat. 1605, provided that: "The amendments made by this title [amending this section and sections 68c and 70b of this title] shall be effective ninety days after the date of enactment of this Act [Sept. 24, 1984]."

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-242 effective with respect to wool products manufactured on or after the date sixty days after May 5, 1980, see section 3 of Pub. L. 96-242, set out as a note under section 68 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§68c. Stamp, tag, label, or other identification**

### **(a) Affixing; retention until sale**

Any person manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this subchapter, and the same, or substitutes therefor containing identical information with respect to content of the wool product or any other products contained therein in an amount of 5 per centum or more by weight and other information required under section 68b of this title, shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the manufacturer of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon.

### **(b) Removal or mutilation**

Any person who shall cause or participate in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a wood <sup>1</sup> product with intent to violate the provisions of this subchapter, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

**(c) Packages of wool products**

For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 68b of this title, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by section 68b of this title,<sup>2</sup> and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.

(Oct. 14, 1940, ch. 871, §5, 54 Stat. 1130; Pub. L. 98-417, title III, §306, Sept. 24, 1984, 98 Stat. 1605.)

**EDITORIAL NOTES**

**CODIFICATION**

Section 68b of this title, the second time it appears in subsec. (c), was in the original "subsection (4)" and was translated as reading "section 4" as the probable intent of Congress.

**AMENDMENTS**

**1984**—Pub. L. 98-417 designated existing first and second pars. as subsecs. (a) and (b), respectively, and added subsec. (c).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98-417, set out as a note under section 68b of this title.

<sup>1</sup> *So in original. Probably should be "wool".*

<sup>2</sup> *See Codification note.*

**§68d. Enforcement of subchapter**

**(a) Authority of Commission**

Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act.

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter; and any such person violating the provisions of

this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter.

The Commission is authorized and directed to make rules and regulations for the manner and form of disclosing information required by this subchapter, and for segregation of such information for different portions of a wool product as may be necessary to avoid deception or confusion, and to make such further rules and regulations under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

The Commission is also authorized to cause inspections, analyses, tests, and examinations to be made of any wool products subject to this subchapter; and to cooperate with any department or agency of the Government, with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

#### **(b) Maintenance of records by wool manufacturers**

Every manufacturer of wool products shall maintain proper records showing the fiber content as required by this subchapter of all wool products made by him, and shall preserve such records for at least three years.

The neglect or refusal to maintain and so preserve such records is unlawful, and any such manufacturer who neglects or refuses to maintain and so preserve such records shall forfeit to the United States the sum of \$100 for each day of such failure, which shall accrue to the United States and be recoverable in a civil action.

(Oct. 14, 1940, ch. 871, §6, 54 Stat. 1131.)

### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **§68e. Condemnation and injunction proceedings**

#### **(a) Grounds for condemnation; disposition of merchandise**

Any wool products shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such wool products are being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to said products are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

If such wool products are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction; by sale; by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such wool products will not be disposed of until properly stamped, tagged, labeled, or otherwise identified under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such wool products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States.

#### **(b) Grounds for temporary injunction or restraining order; issuance without bond**

Whenever the Commission has reason to believe that—

(1) Any person is violating, or is about to violate, sections 68a, 68c, 68f, or 68g of this title, and



that

(2) It would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Oct. 14, 1940, ch. 871, §7, 54 Stat. 1131.)

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **§68f. Exclusion of misbranded wool products**

All wool products imported into the United States, except those made more than twenty years prior to such importation, shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of this subchapter and all invoices of such wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), shall set forth, in addition to the matter therein specified, the information with respect to said wool products required under the provisions of this subchapter, which information shall be in the invoices prior to their certification under said Act of June 17, 1930.

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in said Act of June 17, 1930, insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act, or practice, in commerce under the Federal Trade Commission Act; and any person who falsifies, or fails to set forth, said information in said invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of this subchapter.

A verified statement from the manufacturer or producer of such wool products showing their fiber content as required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Oct. 14, 1940, ch. 871, §8, 54 Stat. 1132.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Provisions covering invoices of wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), referred to in text, are set out as section 1481 et seq. of Title 19, Customs Duties.

Provisions covering certification of invoices under the Act of June 17, 1930, referred to in text, are set out as section 1482 of Title 19.

Provisions covering the consignee's declaration under the Act of June 17, 1930, referred to in text, are set out in section 1485 of Title 19.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## §68g. Guaranty

### (a) Avoidance of liability; requirements

No person shall be guilty under section 68a of this title if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, that said wool product is not misbranded under the provisions of this subchapter.

Said guaranty shall be either (1) a separate guaranty specifically designating the wool product guaranteed, in which case it may be on the invoice or other paper relating to said wool product; or (2) a continuing guaranty filed with the Commission applicable to all wool products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

### (b) Furnishing false guaranty

Any person who furnishes a false guaranty, except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

(Oct. 14, 1940, ch. 871, §9, 54 Stat. 1132.)

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## §68h. Criminal penalty

Any person who willfully violates sections 68a, 68c, 68f, or 68g(b) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$5,000, or be imprisoned not more than one year, or both, in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this subchapter.

Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Oct. 14, 1940, ch. 871, §10, 54 Stat. 1133.)

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such

Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

### **§68i. Application of other laws**

The provision of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Oct. 14, 1940, ch. 871, §11, 54 Stat. 1133.)

### **§68j. Exceptions from subchapter**

None of the provisions of this subchapter shall be construed to apply to the manufacture, delivery for shipment, shipment, sale, or offering for sale any carpets, rugs, mats, or upholsteries, nor to any person manufacturing, delivering for shipment, shipping, selling, or offering for sale any carpets, rugs, mats, or upholsteries.

(Oct. 14, 1940, ch. 871, §14, 54 Stat. 1133.)

## **SUBCHAPTER IV—LABELING OF FUR PRODUCTS**

### **§69. Definitions**

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, business trust, or any organized group of any of the foregoing.

(b) The term "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins as are to be converted into leather or which in processing shall have the hair, fleece, or fur fiber completely removed.

(c) The term "used fur" means fur in any form which has been worn or used by an ultimate consumer.

(d) The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur.

(e) The term "waste fur" means the ears, throats, or scrap pieces which have been severed from the animal pelt, and shall include mats or plates made therefrom.

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(i) The term "Fur Products Name Guide" means the register issued by the Commission pursuant to section 69e of this title.

(j) The term "commerce" means commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

(k) The term "United States" means the several States, the District of Columbia, and the Territories and possessions of the United States.

(Aug. 8, 1951, ch. 298, §2, 65 Stat. 175; Pub. L. 106–476, title I, §1443(b), Nov. 9, 2000, 114 Stat. 2167; Pub. L. 111–313, §2(a), Dec. 18, 2010, 124 Stat. 3326.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The act approved September 26, 1914, referred to in subsec. (h), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, known as the Federal Trade Commission Act, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### **AMENDMENTS**

**2010**—Subsec. (d). Pub. L. 111–313 struck out "; except that such term shall not include such articles (other than any dog or cat fur product to which section 1308 of title 19 applies) as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein" after "used fur".

**2000**—Subsec. (d). Pub. L. 106–476 inserted "(other than any dog or cat fur product to which section 1308 of title 19 applies)" after "shall not include such articles".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Pub. L. 111–313, §2(b), Dec. 18, 2010, 124 Stat. 3326, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 18, 2010]."

### **EFFECTIVE DATE**

Act Aug. 8, 1951, ch. 298, §14, 65 Stat. 181, provided that: "This Act [this subchapter], except section 7 [section 69e of this title], shall take effect one year after the date of its enactment [Aug. 8, 1951]."

### **SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–313, §1, Dec. 18, 2010, 124 Stat. 3326, provided that: "This Act [amending this section and section 69a of this title and enacting provisions set out as a note under this section] may be cited as the 'Truth in Fur Labeling Act of 2010'."

### **SHORT TITLE**

Act Aug. 8, 1951, ch. 298, §1, 65 Stat. 175, provided: "That this Act [this subchapter] may be cited as the 'Fur Products Labeling Act' ".

### **SEPARABILITY**

Act Aug. 8, 1951, ch. 298, §13, 65 Stat. 181, provided that: "If any provision of this Act [this subchapter] or the application thereof to any person or circumstance is held invalid, the remainder of the Act [this subchapter] and the application of such provision to any other person or circumstance shall not be affected thereby."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§69a. Violations of Federal Trade Commission Act**

### **(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce**

The introduction, or manufacture for introduction, into commerce, or the sale, advertising or

offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(b) Manufacture for sale, sale, advertising, offering for sale, transportation or distribution**

The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(c) Introduction into commerce, sale, advertising or offering for sale in commerce or transportation or distribution**

The introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur which is falsely or deceptively advertised or falsely or deceptively invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(d) Removal or mutilation of label**

Except as provided in subsection (e) of this section, it shall be unlawful to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any fur product is sold and delivered to the ultimate consumer, any label required by this subchapter to be affixed to such fur product, and any person violating this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(e) Substitution of labels; records**

Any person introducing, selling, advertising, or offering for sale, in commerce, or processing for commerce, a fur product, or any person selling, advertising, offering for sale or processing a fur product which has been shipped and received in commerce, may substitute for the label affixed to such product pursuant to section 69b of this title, a label conforming to the requirements of such section, and such label may show in lieu of the name or other identification shown pursuant to section 69b(2)(E) of this title on the label so removed, the name or other identification of the person making the substitution. Any person substituting a label shall keep such records as will show the information set forth on the label that he removed and the name or names of the person or persons from whom such fur product was received, and shall preserve such records for at least three years. Neglect or refusal to maintain and preserve such records is unlawful, and any person who shall fail to maintain and preserve such records shall forfeit to the United States the sum of \$100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action. Any person substituting a label who shall fail to keep and preserve such records, or who shall by such substitution misbrand a fur product, shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(f) Application of section to common carrier or freight forwarder**

Subsections (a), (b), and (c) of this section shall not apply to any common carrier, contract carrier or freight forwarder in respect of a fur product or fur shipped, transported, or delivered for shipment in commerce in the ordinary course of business.

**(g) Exemption for particular sales**

No provision of this subchapter shall apply to a fur product—

- (1) the fur of which was obtained from an animal through trapping or hunting; and
- (2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.

(Aug. 8, 1951, ch. 298, §3, 65 Stat. 176; Pub. L. 111–313, §3, Dec. 18, 2010, 124 Stat. 3326.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in text, is defined in section 69 of this title.

### **AMENDMENTS**

**2010**—Subsec. (g). Pub. L. 111–313 added subsec. (g).

## **§69b. Misbranded fur products**

For the purposes of this subchapter, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

(3) if the label required by paragraph (2)(A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph.

(Aug. 8, 1951, ch. 298, §4, 65 Stat. 177.)

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§69c. False advertising and invoicing**

(a) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is

intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

(b) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1)(A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

(Aug. 8, 1951, ch. 298, §5, 65 Stat. 178.)

## **§69d. Fur products imported into United States**

### **(a) Necessity of proper labelling; additional information**

Fur products imported into the United States shall be labeled so as not to be misbranded within the meaning of section 69b of this title; and all invoices of fur products and furs required under title IV of the Tariff Act of 1930, as amended [19 U.S.C. 1401 et seq.], shall set forth, in addition to the matters therein specified, information conforming with the requirements of section 69c(b) of this title, which information shall be included in the invoices prior to their certification under the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.].

### **(b) Violations of Federal Trade Commission Act**

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.], insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or fails to set forth, said information in said

invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any fur products or furs into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said fur products and furs, and any duty thereon, conditioned upon compliance with the provisions of this section.

**(c) Verified statement of compliance**

A verified statement from the manufacturer, producer of, or dealer in, imported fur products and furs showing information required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Aug. 8, 1951, ch. 298, §6, 65 Stat. 178.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Tariff Act of 1930, referred to in subsecs. (a) and (b), is act June 17, 1930, ch. 497, 46 Stat. 590, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. Title IV of the Tariff Act of 1930 is classified generally to subtitle III (§1401 et seq.) of chapter 4 of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is defined in section 69 of this title.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

**§69e. Name guide for fur products**

**(a) Fur Products Name Guide**

The Commission shall, with the assistance and cooperation of the Department of Agriculture and the Department of the Interior, within six months after August 8, 1951, issue, after holding public hearings, a register setting forth the names of hair, fleece, and fur-bearing animals, which shall be known as the Fur Products Name Guide. The names used shall be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.

**(b) Additions and deletions; public hearing**

The Commission may, from time to time, with the assistance and cooperation of the Department of Agriculture and Department of the Interior, after holding public hearings, add to or delete from such register the name of any hair, fleece, or fur-bearing animal.

**(c) Prevention of confusion or deception**

If the name of an animal (as set forth in the Fur Products Name Guide) connotes a geographical origin or significance other than the true country or place of origin of such animal, the Commission may require whenever such name is used in setting forth the information required by this subchapter, such qualifying statements as it may deem necessary to prevent confusion or deception.

(Aug. 8, 1951, ch. 298, §7, 65 Stat. 179.)

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**



For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§69f. Enforcement of subchapter**

### **(a) Enforcement by Federal Trade Commission**

(1) Except as otherwise specifically provided in this subchapter, sections 69a, 69d, and 69h(b) of this title shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(2) The Commission is authorized and directed to prevent any person from violating the provisions of sections 69a, 69d, and 69h(b) of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating any provision of section 69a, 69d, or 69h(b) of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Act were incorporated into and made a part of this subchapter.

### **(b) Rules and regulations for disclosure of information**

The Commission is authorized and directed to prescribe rules and regulations governing the manner and form of disclosing information required by this subchapter, and such further rules and regulations as may be necessary and proper for purposes of administration and enforcement of this subchapter.

### **(c) Inspection, analysis, tests for fur products; cooperation with other governmental agencies**

The Commission is authorized (1) to cause inspections, analyses, tests, and examinations to be made of any fur product or fur subject to this subchapter; and (2) to cooperate, on matters related to the purposes of this subchapter, with any department or agency of the Government; with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

### **(d) Maintenance of records by manufacturer or dealer**

(1) Every manufacturer or dealer in fur products or furs shall maintain proper records showing the information required by this subchapter with respect to all fur products or furs handled by him, and shall preserve such records for at least three years.

(2) The neglect or refusal to maintain and preserve such records is unlawful, and any such manufacturer or dealer who neglects or refuses to maintain and preserve such records shall forfeit to the United States the sum of \$100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action.

(Aug. 8, 1951, ch. 298, §8, 65 Stat. 179.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (a), is defined in section 69 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## **§69g. Condemnation and injunction proceedings**

### **(a) Grounds for condemnation; disposition of merchandise**

(1) Any fur product or fur shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such fur product or fur is being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce, in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to such fur product or fur are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

(2) If such fur products or furs are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction, by sale, by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such fur or fur products will not be disposed of until properly marked, advertised, and invoiced as required under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such furs or fur products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States as miscellaneous receipts.

### **(b) Grounds for temporary injunction or restraining order; issuance without bond**

Whenever the Commission has reason to believe that—

- (1) any person is violating,<sup>1</sup> or is about to violate, section 69a, 69d, or 69h(b) of this title; and
- (2) it would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of said Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Aug. 8, 1951, ch. 298, §9, 65 Stat. 180.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (b)(2), is defined in section 69 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

<sup>1</sup> *So in original. Probably should be "violating."*

## **§69h. Guaranty**

### **(a) Avoidance of liability; requirements**

No person shall be guilty under section 69a of this title if he establishes a guaranty received in

good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received, that said fur product is not misbranded or that said fur product or fur is not falsely advertised or invoiced under the provisions of this subchapter. Such guaranty shall be either (1) a separate guaranty specifically designating the fur product or fur guaranteed, in which case it may be on the invoice or other paper relating to such fur product or fur; or (2) a continuing guaranty filed with the Commission applicable to any fur product or fur handled by a guarantor, in such form as the Commission by rules and regulations may prescribe.

**(b) Furnishing false guaranty**

It shall be unlawful for any person to furnish, with respect to any fur product or fur, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received) with reason to believe the fur product or fur falsely guaranteed may be introduced, sold, transported, or distributed in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Aug. 8, 1951, ch. 298, §10, 65 Stat. 181.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (b), is defined in section 69 of this title.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

**§69i. Criminal penalty**

(a) Any person who willfully violates section 69a, 69d, or 69h(b) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$5,000, or be imprisoned not more than one year, or both, in the discretion of the court.

(b) Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Aug. 8, 1951, ch. 298, §11, 65 Stat. 181.)

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

**§69j. Application of other laws**

The provisions of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of Congress.

(Aug. 8, 1951, ch. 298, §12, 65 Stat. 181.)

## **SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION**

### **§70. Definitions**

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association or any other form of business enterprise.

(b) The term "fiber" or "textile fiber" means a unit of matter which is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

(c) The term "natural fiber" means any fiber that exists as such in the natural state.

(d) The term "manufactured fiber" means any fiber derived by a process of manufacture from any substance which, at any point in the manufacturing process, is not a fiber.

(e) The term "yarn" means a strand of textile fiber in a form suitable for weaving, knitting, braiding, felting, webbing, or otherwise fabricating into a fabric.

(f) The term "fabric" means any material woven, knitted, felted, or otherwise produced from, or in combination with, any natural or manufactured fiber, yarn, or substitute therefor.

(g) The term "household textile articles" means articles of wearing apparel, costumes and accessories, draperies, floor coverings, furnishings, beddings, and other textile goods of a type customarily used in a household regardless of where used in fact.

(h) The term "textile fiber product" means—

(1) any fiber, whether in the finished or unfinished state, used or intended for use in household textile articles;

(2) any yarn or fabric, whether in the finished or unfinished state, used or intended for use in household textile articles; and

(3) any household textile article made in whole or in part of yarn or fabric;

except that such term does not include a product required to be labeled under the Wool Products Labeling Act of 1939 [15 U.S.C. 68 et seq.].

(i) The term "affixed" means attached to the textile fiber product in any manner.

(j) The term "Commission" means the Federal Trade Commission.

(k) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation or between the District of Columbia and any State or Territory or foreign nation.

(l) The term "Territory" includes the insular possessions of the United States, and also any Territory of the United States.

(m) The term "ultimate consumer" means a person who obtains a textile fiber product by purchase or exchange with no intent to sell or exchange such textile fiber product in any form.

(Pub. L. 85-897, §2, Sept. 2, 1958, 72 Stat. 1717.)

### **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Wool Products Labeling Act of 1939, referred to in subsec. (h)(3), is act Oct. 14, 1940, ch. 871, 54

Stat. 1128, which is classified generally to subchapter III (§68 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 68 of this title and Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Pub. L. 85–897, §15, Sept. 2, 1958, 72 Stat. 1724, provided that: "This Act [this subchapter] shall take effect eighteen months after enactment [Sept. 2, 1958], except for the promulgation of rules and regulations by the Commission, which shall be promulgated within nine months after the enactment of this Act. The Commission shall provide for the exception of any textile fiber product acquired prior to the effective date of this Act."

### SHORT TITLE

Pub. L. 85–897, §1, Sept. 2, 1958, 72 Stat. 1717, provided: "That this Act [this subchapter] may be cited as the 'Textile Fiber Products Identification Act'."

### SEPARABILITY

Pub. L. 85–897, §13, Sept. 2, 1958, 72 Stat. 1723, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act and the application of the remaining provisions to any person shall not be affected thereby."

## §70a. Violations of Federal Trade Commission Act

### (a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

### (b) Sale, offering for sale, advertising, delivery, transportation of products advertised for sale in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, and which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

### (c) Sale, offering for sale, advertising, delivery, transportation of products after shipment in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

### (d) Application of section to common carrier, freight forwarder, etc.

This section shall not apply—

- (1) to any common carrier or contract carrier or freight forwarder with respect to a textile fiber

product received, shipped, delivered, or handled by it for shipment in the ordinary course of its business;

(2) to any processor or finisher in performing a contract for the account of a person subject to the provisions of this subchapter if the processor or finisher does not change the textile fiber content of the textile fiber product contrary to the terms of such contract;

(3) with respect to the manufacture, delivery for transportation, transportation, sale, or offering for sale of a textile fiber product for exportation from the United States to any foreign country;

(4) to any publisher or other advertising agency or medium for the dissemination of advertising or promotional material, except the manufacturer, distributor, or seller of the textile fiber product to which the false or deceptive advertisement relates, if such publisher or other advertising agency or medium furnishes to the Commission, upon request, the name and post office address of the manufacturer, distributor, seller, or other person residing in the United States, who caused the dissemination of the advertising material; or

(5) to any textile fiber product until such product has been produced by the manufacturer or processor in the form intended for sale or delivery to, or for use by, the ultimate consumer:

*Provided*, That this exemption shall apply only if such textile fiber product is covered by an invoice or other paper relating to the marketing or handling of the textile fiber product and such invoice or paper correctly discloses the information with respect to the textile fiber product which would otherwise be required under section 70b of this title to be on the stamp, tag, label, or other identification and the name and address of the person issuing the invoice or paper.

(Pub. L. 85-897, §3, Sept. 2, 1958, 72 Stat. 1718.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) to (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

## **§70b. Misbranded and falsely advertised textile fiber products**

### **(a) False or deceptive identification**

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

### **(b) Stamp, tag, label or other means of identification; contents**

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 70c of this title, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product, but nothing in this section shall be construed as prohibiting the use of a nondeceptive trademark in conjunction with a designated generic name: *Provided*, That exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or the trademark of such fiber or fibers, but shall be designated only as "other fiber" or "other fibers" as the case may be, but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product.

(2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content: *Provided*, That, exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or trademark of such fiber or fibers, but shall be designated only as "other fiber" or "other fibers" as the case may be but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated: *Provided further*, That in the case of a textile fiber product which contains more than one kind of fiber, deviation in the fiber content of any fiber in such product, from the amount stated on the stamp, tag, label, or other identification shall not be a misbranding under this section unless such deviation is in excess of reasonable tolerances which shall be established by the Commission: *And provided further*, That any such deviation which exceeds said tolerances shall not be a misbranding if the person charged proves that the deviation resulted from unavoidable variations in manufacture and despite due care to make accurate the statements on the tag, stamp, label, or other identification.

(3) The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to section 70a of this title with respect to such product.

(4) If it is an imported textile fiber product the name of the country where processed or manufactured.

(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.

**(c) False or deceptive advertisement**

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product, unless the same information as that required to be shown on the stamp, tag, label, or other identification under subsection (b)(1) and (2) is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated.

**(d) Additional information allowed**

In addition to the information required in this section, the stamp, tag, label, or other means of identification, or advertisement may contain other information not violating the provisions of this subchapter.

**(e) Labelling of packages**

For purposes of this subchapter, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b), with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.

**(f) Fabric severed from bolts, pieces or rolls of fabric**

This section shall not be construed as requiring designation of the fiber content of any portion of

fabric, when sold at retail, which is severed from bolts, pieces, or rolls of fabric labeled in accordance with the provisions of this section at the time of such sale: *Provided*, That if any portion of fabric severed from a bolt, piece, or roll of fabric is in any manner represented as containing percentages of natural or manufactured fibers, other than that which is set forth on the labeled bolt, piece, or roll, this section shall be applicable thereto, and the information required shall be separately set forth and segregated as required by this section.

**(g) Advertisement of textile product by use of name or symbol of fur-bearing animal**

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if the name or symbol of any fur-bearing animal is used in the advertisement of such product unless such product, or the part thereof in connection with which the name or symbol of a fur-bearing animal is used, is a fur or fur product within the meaning of the Fur Products Labeling Act [15 U.S.C. 69 et seq.]: *Provided, however*, That where a textile fiber product contains the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word "fiber", "hair", or "blend", may be used.

**(h) Reused stuffing**

For the purposes of this subchapter, a textile fiber product shall be misbranded if it is used as stuffing in any upholstered product, mattress, or cushion after having been previously used as stuffing in any other upholstered product, mattress, or cushion, unless the upholstered product, mattress, or cushion containing such textile fiber product bears a stamp, tag, or label approved by the Commission indicating in words plainly legible that it contains reused stuffing.

**(i) Mail order catalog or promotional material**

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

**(j) Location of stamp, tag, label, or other identification**

For purposes of this subchapter, any textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.

**(k) Marking of certain sock products**

(1) Notwithstanding any other provision of law, socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked as legibly, indelibly, and permanently as the nature of the article or package will permit in such a manner as to indicate to the ultimate consumer in the United States the English name of the country of origin of the article. The marking required by this subsection shall be on the front of the package, adjacent to the size designation of the product, and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer.

(2) EXCEPTIONS.—Any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of paragraph (1).

(Pub. L. 85–897, §4, Sept. 2, 1958, 72 Stat. 1719; Pub. L. 89–35, §§1, 2, June 5, 1965, 79 Stat. 124; Pub. L. 98–417, title III, §§301–303, Sept. 24, 1984, 98 Stat. 1603, 1604; Pub. L. 108–429, title II, §2004(h)(1), Dec. 3, 2004, 118 Stat. 2594.)



## REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (k), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Fur Products Labeling Act, referred to in subsec. (g), is act Aug. 8, 1951, ch. 298, 65 Stat. 175, which is classified generally to subchapter IV (§69 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 69 of this title and Tables.

## AMENDMENTS

**2004**—Subsec. (k). Pub. L. 108–429 added subsec. (k).

**1984**—Subsec. (b)(5). Pub. L. 98–417, §301, added par. (5).

Subsec. (e). Pub. L. 98–417, §302, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "This section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each textile fiber product contained in a package if (1) such textile fiber products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the textile fiber products contained therein, the information required by subsection (b) of this section, and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein."

Subsecs. (i), (j). Pub. L. 98–417, §303, added subsecs. (i) and (j).

**1965**—Subsec. (b)(1). Pub. L. 89–35, §1, inserted ", but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product".

Subsec. (b)(2). Pub. L. 89–35, §2, inserted ", but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title II, §2004(h)(2), Dec. 3, 2004, 118 Stat. 2594, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the date that is 15 months after the date of enactment of this Act [Dec. 3, 2004], and on and after the date that is 15 months after such date of enactment, any provision of part 303 of title 16, Code of Federal Regulations, that is inconsistent with such amendment shall not apply."

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98–417, set out as a note under section 68b of this title.

## §70c. Removal of stamp, tag, label, or other identification

### (a) Removal or mutilation after shipment in commerce

After shipment of a textile fiber product in commerce it shall be unlawful, except as provided in this subchapter, to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any textile fiber product is sold and delivered to the ultimate consumer, any stamp, tag, label, or other identification required by this subchapter to be affixed to such textile fiber product, and any person violating this section shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

### (b) Substitution of stamp, tag, etc.

Any person—

(1) introducing, selling, advertising, or offering for sale, in commerce, or importing into the United States, a textile fiber product subject to the provisions of this subchapter, or

(2) selling, advertising, or offering for sale a textile fiber product whether in its original state or contained in other textile fiber products, which has been shipped, advertised, or offered for sale, in

commerce,

may substitute for the stamp, tag, label, or other means of identification required to be affixed to such textile product pursuant to section 70b(b) of this title, a stamp, tag, label, or other means of identification conforming to the requirements of section 70b(b) of this title, and such substituted stamp, tag, label, or other means of identification shall show the name or other identification issued and registered by the Commission of the person making the substitution.

**(c) Affixing of stamp, tag, etc. to individual unit of broken package**

If any person other than the ultimate consumer breaks a package which bears a stamp, tag, label, or other means of identification conforming to the requirements of section 70b of this title, and if such package contains one or more units of a textile fiber product to which a stamp, tag, label, or other identification conforming to the requirements of section 70b of this title is not affixed, such person shall affix a stamp, tag, label, or other identification bearing the information on the stamp, tag, label, or other means of identification attached to such broken package to each unit of textile fiber product taken from such broken package.

(Pub. L. 85–897, §5, Sept. 2, 1958, 72 Stat. 1720.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**§70d. Records**

**(a) Maintenance and preservation by manufacturer**

Every manufacturer of textile fiber products subject to this subchapter shall maintain proper records showing the fiber content as required by this subchapter of all such products made by him, and shall preserve such records for at least three years.

**(b) Maintenance and preservation by person substituting stamp, tag, etc.**

Any person substituting a stamp, tag, label, or other identification pursuant to section 70c(b) of this title shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received, and shall preserve such records for at least three years.

**(c) Neglect or refusal to maintain or preserve records**

The neglect or refusal to maintain or preserve the records required by this section is unlawful, and any person neglecting or refusing to maintain such records shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85–897, §6, Sept. 2, 1958, 72 Stat. 1721.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

## **§70e. Enforcement**

### **(a) Enforcement by Federal Trade Commission**

Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

### **(b) Terms of Federal Trade Commission Act incorporated into this subchapter**

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this subchapter.

### **(c) Rules and regulations by Federal Trade Commission**

The Commission is authorized and directed to make such rules and regulations, including the establishment of generic names of manufactured fibers, under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

### **(d) Inspection, analyses, tests, etc.**

The Commission is authorized to cause inspections, analyses, tests, and examinations to be made of any product subject to this subchapter.

(Pub. L. 85–897, §7, Sept. 2, 1958, 72 Stat. 1721.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

## **§70f. Injunction proceedings**

Whenever the Commission has reason to believe—

(a) that any person is doing, or is about to do, an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful; and

(b) that it would be to the public interest to enjoin the doing of such act until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint is dismissed by the Commission or set aside by the court on review or until an order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin the doing of such act and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Pub. L. 85–897, §8, Sept. 2, 1958, 72 Stat. 1721.)

## **EDITORIAL NOTES**

## REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### **§70g. Exclusion of misbranded textile fiber products**

All textile fiber products imported into the United States shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of section 70b of this title, and all invoices of such products required pursuant to section 1484 of title 19, shall set forth, in addition to the matter therein specified, the information with respect to said products required under the provisions of section 70b(b) of this title, which information shall be in the invoices prior to their certification, if such certification is required pursuant to section 1484 of title 19. The falsification of, or failure to set forth the required information in such invoices, or the falsification or perjury of the consignee's declaration provided for in section 1485 of title 19, insofar as it relates to such information, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or perjures the consignee's declaration insofar as it relates to such information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any textile fiber product into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this subchapter. A verified statement from the manufacturer or producer of such products showing their fiber content as required under the provisions of this subchapter may be required under regulation prescribed by the Secretary of the Treasury.

(Pub. L. 85-897, §9, Sept. 2, 1958, 72 Stat. 1722.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### **§70h. Guaranty**

#### **(a) Avoidance of liability; requirements**

No person shall be guilty of an unlawful act under section 70a of this title if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received, that said product is not misbranded or falsely invoiced under the provisions of this subchapter. Said guaranty shall be (1) a separate guaranty specifically designating the textile fiber product guaranteed, in which case it may be on the invoice or other paper relating to said product; or (2) a continuing guaranty given by seller to the buyer applicable to all textile fiber products sold to or to be sold to buyer by seller in a form as the Commission, by rules and regulations, may prescribe; or (3) a continuing guaranty filed with the Commission applicable to all textile fiber products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

#### **(b) Furnishing false guaranty**

The furnishing of a false guaranty, except where the person furnishing such false guaranty relies on a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the product guaranteed was

manufactured or from whom it was received, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce, within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85–897, §10, Sept. 2, 1958, 72 Stat. 1722.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### §70i. Criminal penalty

(a) Any person who willfully does an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$5,000 or be imprisoned not more than one year, or both, in the discretion of the court: *Provided*, That nothing in this section shall limit any other provision of this subchapter.

(b) Whenever the Commission has reason to believe that any person is guilty of a misdemeanor under this section, it may certify all pertinent facts to the Attorney General. If, on the basis of the facts certified, the Attorney General concurs in such belief, it shall be his duty to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Pub. L. 85–897, §11, Sept. 2, 1958, 72 Stat. 1723.)

### §70j. Exemptions

(a) None of the provisions of this subchapter shall be construed to apply to—

- (1) upholstery stuffing, except as provided in section 70b(h) of this title;
- (2) outer coverings of furniture, mattresses, and box springs;
- (3) linings or interlinings incorporated primarily for structural purposes and not for warmth;
- (4) filling or padding incorporated primarily for structural purposes and not for warmth;
- (5) stiffenings, trimmings, facings, or interfacings;
- (6) backings of, and paddings or cushions to be used under, floor coverings;
- (7) sewing and handicraft threads;
- (8) bandages, surgical dressings, and other textile fiber products, the labeling of which is subject to the requirements of the Federal Food, Drug and Cosmetic Act of 1938, as amended [21 U.S.C. 301 et seq.];
- (9) waste materials not intended for use in a textile fiber product;
- (10) textile fiber products incorporated in shoes or overshoes or similar outer footwear;
- (11) textile fiber products incorporated in headwear, handbags, luggage, brushes, lampshades, or toys, catamenial devices, adhesive tapes and adhesive sheets, cleaning cloths impregnated with chemicals, or diapers.

The exemption provided for any article by paragraph (3) or (4) of this subsection shall not be applicable if any representation as to fiber content of such article is made in any advertisement, label, or other means of identification covered by section 70b of this title.

(b) The Commission may exclude from the provisions of this subchapter other textile fiber products (1) which have an insignificant or inconsequential textile fiber content, or (2) with respect to which the disclosure of textile fiber content is not necessary for the protection of the ultimate consumer.

(Pub. L. 85–897, §12, Sept. 2, 1958, 72 Stat. 1723.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Food, Drug and Cosmetic Act of 1938, referred to in subsec. (a)(8), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

### **§70k. Application of other laws**

The provisions of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Pub. L. 85–897, §14, Sept. 2, 1958, 72 Stat. 1724.)

## SUBCHAPTER VI—PREVENTION OF UNFAIR METHODS OF COMPETITION

### **§71. "Person" defined**

When used in this subchapter the term "person" includes partnerships, corporations, and associations.

(Sept. 8, 1916, ch. 463, title VIII, §800, 39 Stat. 798.)

### **§72. Repealed. Pub. L. 108–429, title II, §2006(a), Dec. 3, 2004, 118 Stat. 2597**

Section, act Sept. 8, 1916, ch. 463, title VIII, §801, 39 Stat. 798, related to importation or sale of articles at less than market value or wholesale price.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SAVINGS PROVISION

Pub. L. 108–429, title II, §2006(b), Dec. 3, 2004, 118 Stat. 2597, provided that: "The repeal made by subsection (a) [repealing this section] shall not affect any action under section 801 of the Act referred to in subsection (a) [this section] that was commenced before the date of the enactment of this Act [Dec. 3, 2004] and is pending on such date."

### **§73. Agreements involving restrictions in favor of imported goods**

If any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that

any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

(Sept. 8, 1916, ch. 463, title VIII, §802, 39 Stat. 799.)

#### **§74. Rules and regulations**

The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 73 of this title.

(Sept. 8, 1916, ch. 463, title VIII, §803, 39 Stat. 799.)

#### **§75. Retaliation against country prohibiting importations**

Whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

(Sept. 8, 1916, ch. 463, title VIII, §804, 39 Stat. 799.)

#### **§76. Retaliation against restriction of importations in time of war**

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than \$2,000 nor more than \$50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

(Sept. 8, 1916, ch. 463, title VIII, §805, 39 Stat. 799.)

#### **§77. Discrimination against neutral Americans in time of war**

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in

regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than \$2,000 nor more than \$50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter. (Sept. 8, 1916, ch. 463, title VIII, §806, 39 Stat. 799.)

## **EXECUTIVE DOCUMENTS**

### **DELEGATION OF FUNCTIONS**

For delegation to Secretary of Homeland Security of authority vested in President by this section, see section 1(j), (k) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, set out as a note under section 301 of Title 3, The President.

## **CHAPTER 2A—SECURITIES AND TRUST INDENTURES**

### **SUBCHAPTER I—DOMESTIC SECURITIES**

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## **SUBCHAPTER I—DOMESTIC SECURITIES**

### **§77a. Short title**

This subchapter may be cited as the "Securities Act of 1933".  
(May 27, 1933, ch. 38, title I, §1, 48 Stat. 74.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SHORT TITLE OF 2012 AMENDMENT**

Pub. L. 112–142, §1, July 9, 2012, 126 Stat. 989, provided that: "This Act [amending section 77c of this title] may be cited as the 'Church Plan Investment Clarification Act'."

Pub. L. 112–106, title III, §301, Apr. 5, 2012, 126 Stat. 315, provided that: "This title [enacting section 77d–1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] may be cited as the 'Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012' or the 'CROWDFUND Act'."

### **SHORT TITLE OF 1980 AMENDMENT**

Pub. L. 96–477, title VI, §601, Oct. 21, 1980, 94 Stat. 2294, provided that: "This title [amending sections 77b and 77d of this title] may be cited as the 'Small Business Issuers' Simplification Act of 1980'."

### **§77b. Definitions; promotion of efficiency, competition, and capital formation**

#### **(a) Definitions**

When used in this subchapter, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, 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, certificate of deposit, 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, 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.

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). 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 offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be

used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 77f of this title, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 77j of this title) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 77j of this title at the time of <sup>1</sup> such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 77j of this title may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers 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 distributors' or sellers' 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.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "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 territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "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, the District of Columbia, 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.

(15) The term "accredited investor" shall mean—

(i) a bank as defined in section 77c(a)(2) of this title whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] or a business development company as defined in section 2(a)(48) of that Act [15 U.S.C. 80a–2(a)(48)]; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act [29 U.S.C. 1002(21)], which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms "security future", "narrow-based security index", and "security futures product" have the same meanings as provided in section 78c(a)(55) of this title.

(17) The terms "swap" and "security-based swap" have the same meanings as in section 1a of title 7.

(18) The terms "purchase" or "sale" of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term "emerging growth company" means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this subchapter;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

#### **(b) 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.

(May 27, 1933, ch. 38, title I, §2, 48 Stat. 74; June 6, 1934, ch. 404, title II, §201, 48 Stat. 905; Aug. 10, 1954, ch. 667, title I, §§1–4, 68 Stat. 683, 684; Pub. L. 86–70, §12(a), June 25, 1959, 73 Stat.

143; Pub. L. 86–624, §7(a), July 12, 1960, 74 Stat. 412; Pub. L. 91–547, §27(a), Dec. 14, 1970, 84 Stat. 1433; Pub. L. 96–477, title VI, §603, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 97–303, §1, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title II, §§201, 202, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104–290, title I, §106(a), Oct. 11, 1996, 110 Stat. 3424; Pub. L. 105–353, title III, §301(a)(1), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–434; Pub. L. 111–203, title VII, §768(a), July 21, 2010, 124 Stat. 1800; Pub. L. 112–106, title I, §§101(a), 105(a), Apr. 5, 2012, 126 Stat. 307, 310.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(15)(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 chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(15)(i), 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.

### CODIFICATION

Words "Philippine Islands" deleted from definition of term "Territory" under authority of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, 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

**2012**—Subsec. (a)(3). Pub. L. 112–106, §105(a), inserted at end "The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term 'research report' means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision."

Subsec. (a)(19). Pub. L. 112–106, §101(a), added par. (19).

**2010**—Subsec. (a)(1). Pub. L. 111–203, §768(a)(1), inserted "security-based swap," after "security future,".

Subsec. (a)(3). Pub. L. 111–203, §768(a)(2), inserted at end "Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities."

Subsec. (a)(17), (18). Pub. L. 111–203, §768(a)(3), added pars. (17) and (18).

**2000**—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)(A)], inserted "security future," after "treasury stock,".

Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)(B)], inserted at end "Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities."

Subsec. (a)(16). Pub. L. 106–554, §1(a)(5) [title II, §208(a)(1)(C)], added par. (16).

**1998**—Subsec. (a)(15)(i). Pub. L. 105–353 made technical amendment to reference in original act which appears in text as reference to section 77c(a)(2) of this title and inserted "of this subsection" after "paragraph (13)".

**1996**—Pub. L. 104–290 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

**1987**—Par. (5). Pub. L. 100–181, §201, substituted "Securities and Exchange Commission" for "Federal Trade Commission".

Par. (6). Pub. L. 100-181, §202, struck out reference to Canal Zone.

**1982**—Par. (1). Pub. L. 97-303 inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, 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 "mineral rights,".

**1980**—Par. (15). Pub. L. 96-477 added par. (15).

**1970**—Pars. (13), (14). Pub. L. 91-547 added pars. (13) and (14).

**1960**—Par. (6). Pub. L. 86-624 struck out reference to Hawaii.

**1959**—Par. (6). Pub. L. 86-70 struck out reference to Alaska.

**1954**—Act Aug. 10, 1954, in pars. (3), (8), (10), and (11), redefined term "sale" so as to distinguish between "offers" and "sales", clarified definition of "registration statement", and conformed definition of "prospectus" to changes made by act Aug. 10, 1954, to sections 77e and 77j of this title.

**1934**—Act June 6, 1934, amended pars. (1), (4), and (10).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2012 AMENDMENT**

Pub. L. 112-106, title I, §101(d), Apr. 5, 2012, 126 Stat. 308, provided that: "Notwithstanding section 2(a)(19) of the Securities Act of 1933 [15 U.S.C. 77b(a)(19)] and section 3(a)(80) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(80)], an issuer shall not be an emerging growth company for purposes of such Acts [15 U.S.C. 77a et seq., 78a et seq.] if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] occurred on or before December 8, 2011."

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Pub. L. 111-203, title VII, §774, July 21, 2010, 124 Stat. 1802, provided that: "Unless otherwise provided, the provisions of this subtitle [subtitle B (§§761-774) of title VII of Pub. L. 111-203, enacting 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, amending this section and sections 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, and amending provisions set out as a note under section 78c of this title] shall take effect on the later of 360 days after the date of the enactment of this subtitle [July 21, 2010] or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

### **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**

Act Aug. 10, 1954, ch. 667, §501, 68 Stat. 689, provided that: "This Act [amending this section and sections 77c to 77e, 77j, 77l, 77q, 77v, 77ccc to 77fff, 77xxx, 78k, 78l, 80a-2 and 80a-24 of this title] shall take effect sixty days after the date of its enactment [Aug. 10, 1954]."

## **ADJUSTING THE ACCREDITED INVESTOR STANDARD**

Pub. L. 111-203, title IV, §413, July 21, 2010, 124 Stat. 1577, provided that:

"(a) **IN GENERAL.**—The [Securities and Exchange] Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than \$1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act [July 21, 2010], any net worth standard shall be \$1,000,000, excluding the value of the primary residence of such natural person.

"(b) **REVIEW AND ADJUSTMENT.**—

"(1) **INITIAL REVIEW AND ADJUSTMENT.**—

"(A) **INITIAL REVIEW.**—The Commission may undertake a review of the definition of the term 'accredited investor', as such term applies to natural persons, to determine whether the requirements of

the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

"(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

"(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

"(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act [July 21, 2010], and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

"(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy."

## 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.

<sup>1</sup> So in original.

## §77b–1. Swap agreements

### (a) [Reserved]

### (b) Security-based swap agreements

(1) The definition of "security" in section 77b(a)(1) of this title does not include any security-based swap agreement (as defined in section 78c(a)(78) of this title).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this subchapter of any security-based swap agreement (as defined in section 78c(a)(78) of this title). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

(3) The Commission is prohibited from—

- (A) promulgating, interpreting, or enforcing rules; or
- (B) issuing orders of general applicability;

under this subchapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 78c(a)(78) of this title).

(4) References in this subchapter to the "purchase" or "sale" of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations



under, a security-based swap agreement (as defined in section 78c(a)(78) of this title), as the context may require.

(May 27, 1933, ch. 38, title I, §2A, as added Pub. L. 106–554, §1(a)(5) [title III, §302(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–451; amended Pub. L. 111–203, title VII, §762(c)(1), July 21, 2010, 124 Stat. 1759.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (a). Pub. L. 111–203, §762(c)(1)(A), struck out subsec. (a) and reserved subsec. (a) designation. Text read as follows: "The definition of 'security' in section 77b(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act)."

Subsec. (b). Pub. L. 111–203, §762(c)(1)(B), substituted "(as defined in section 78c(a)(78) of this title)" for "(as defined in section 206B of the Gramm-Leach-Bliley Act)" wherever appearing.

## 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.

## §77c. Classes of securities under this subchapter

### (a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any 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; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(3)]; or any security which is an industrial development bond (as defined in section 103(c)(2) <sup>1</sup> of title 26) the interest on which is excludable from gross income under section 103(a)(1) <sup>1</sup> of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) <sup>1</sup> of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), <sup>1</sup> paragraph (1) of such section 103(c) <sup>1</sup> does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of title 26, (C) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction

of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a 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)], other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 (other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26), or (iii) which is a plan funded by an annuity contract described in section 403(b) of title 26 (other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, if and to the extent that the Commission determines this to be 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. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.];

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has 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;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)];

(5) Any security issued (A) by 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; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of title 26, (ii) a corporation described in section 501(c)(16) of title 26 and exempt from tax under section 501(a) of title 26, or (iii) a corporation described in section 501(c)(2) of title 26 which is exempt from tax under section 501(a) of title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 1842(a) of title 12 or a savings association under section 1467a(e) of title 12, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 1813(b) of title 12) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) 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)].

(14) Any security futures product that is—

(A) cleared by a clearing agency registered under section 78q-1 of this title or exempt from registration under subsection (b)(7) of such section 78q-1; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title.

## **(b) Additional exemptions**

### **(1) Small issues exemptive authority**

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted

as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

## **(2) Additional issues**

The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed \$50,000,000.

(B) The securities may be offered and sold publicly.

(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

(D) The civil liability provision in section 77l(a)(2) of this title shall apply to any person offering or selling such securities.

(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

## **(3) Limitation**

Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

## **(4) Periodic disclosures**

Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

## **(5) Adjustment**

Not later than 2 years after April 5, 2012,<sup>1</sup> and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase

such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.

**(c) Securities issued by small investment company**

The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title I, §3, 48 Stat. 75; June 6, 1934, ch. 404, title II, §202, 48 Stat. 906; Feb. 4, 1887, ch. 104, title II, §214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557; amended June 29, 1938, ch. 811, §15, 52 Stat. 1240; May 15, 1945, ch. 122, 59 Stat. 167; Aug. 10, 1954, ch. 667, title I, §5, 68 Stat. 684; Pub. L. 85–699, title III, §307(a), Aug. 21, 1958, 72 Stat. 694; Pub. L. 91–373, title IV, §401(a), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91–547, §27(b), (c), Dec. 14, 1970, 84 Stat. 1434; Pub. L. 91–565, Dec. 19, 1970, 84 Stat. 1480; Pub. L. 91–567, §6(a), Dec. 22, 1970, 84 Stat. 1498; Pub. L. 94–210, title III, §308(a)(1), (3), Feb. 5, 1976, 90 Stat. 56, 57; Pub. L. 95–283, §18, May 21, 1978, 92 Stat. 275; Pub. L. 95–425, §2, Oct. 6, 1978, 92 Stat. 962; Pub. L. 95–598, title III, §306, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 96–477, title III, §301, title VII, §701, Oct. 21, 1980, 94 Stat. 2291, 2294; Pub. L. 97–261, §19(d), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–181, title II, §§203, 204, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 103–325, title III, §320, Sept. 23, 1994, 108 Stat. 2225; Pub. L. 104–62, §3, Dec. 8, 1995, 109 Stat. 684; Pub. L. 104–290, title V, §508(b), Oct. 11, 1996, 110 Stat. 3447; Pub. L. 106–102, title II, §221(a), Nov. 12, 1999, 113 Stat. 1401; Pub. L. 106–554, §1(a)(5) [title II, §208(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435; Pub. L. 108–359, §1(b), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111–203, title IX, §985(a)(1), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title IV, §401(a), Apr. 5, 2012, 126 Stat. 323; Pub. L. 112–142, §2, July 9, 2012, 126 Stat. 989.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 103 of title 26, referred to in subsec. (a)(2), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Investment Company Act of 1940, referred to in subsec. (a)(2), 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.

Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (b)(2)(G)(ii), is section 926 of Pub. L. 111–203, which is set out as a note under section 77d of this title.

April 5, 2012, referred to in subsec. (b)(5), was in the original "the date of enactment of the Small Company Capital Formation Act of 2011", and was translated as meaning the date of enactment of the Jumpstart Our Business Startups Act, Pub. L. 112–106, which enacted subsec. (b)(5), to reflect the probable intent of Congress.

The Small Business Investment Act of 1958, referred to in subsec. (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.

**AMENDMENTS**

**2012**—Subsec. (a)(2). Pub. L. 112–142 inserted "(other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a

trust established by any such entity in connection with the retirement income account)" after "403(b) of title 26" and "(other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26)" after "(ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26".

Subsec. (b). Pub. L. 112-106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added pars. (2) to (5).

**2010**—Subsec. (a)(4). Pub. L. 111-203 substituted "individual," for "individual;".

**2004**—Subsec. (a)(2). Pub. L. 108-359 struck out "or" before "(C) a governmental plan" and substituted "or (D) a 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, other than any plan described in subparagraph (A), (B), (C), or (D)" for "other than any plan described in clause (A), (B), or (C)".

**2000**—Subsec. (a)(14). Pub. L. 106-554 added par. (14).

**1999**—Subsec. (a)(2). Pub. L. 106-102 substituted "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940" for "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian".

**1996**—Subsec. (a)(13). Pub. L. 104-290 added par. (13).

**1995**—Subsec. (a)(4). Pub. L. 104-62 inserted at end "or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;".

**1994**—Subsec. (a)(12). Pub. L. 103-325 added par. (12).

**1987**—Subsec. (a)(1). Pub. L. 100-181, §203, substituted "Reserved." for "Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;".

Subsec. (a)(5)(A). Pub. L. 100-181, §204, struck out ", except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security" after "any such institution".

**1986**—Subsec. (a)(2), (5). 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.

**1982**—Subsec. (a)(6). Pub. L. 97-261 struck out provisions relating to any security issued by a motor carrier subject to provisions of section 314 [11302] of title 49.

**1980**—Subsec. (a)(2). Pub. L. 96-477, §701, provided that single trust funds did not have to be maintained by banks in order to qualify for exemption from the provisions of this subchapter, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, provided that an interest, participation, or security could be issued in connection with certain governmental plans as defined in section 414(d) of title 26 and qualify for exemption from the provisions of this subchapter, and excluded from exemption plans described in cls. (A), (B), or (C) of par. (2) which were funded by annuity contracts described in section 403(b) of title 26.

Subsec. (b). Pub. L. 96-477, §301, substituted "\$5,000,000" for "\$2,000,000".

**1978**—Subsec. (a)(7). Pub. L. 95-598, §306(a), substituted "or debtor in possession in a case under title 11" for "in bankruptcy".

Subsec. (a)(9), (10). Pub. L. 95-598, §306(b), substituted "Except with respect to a security exchanged in a case under title 11, any" for "Any".

Subsec. (b). Pub. L. 95-425 substituted "\$2,000,000" for "\$1,500,000".

Pub. L. 95-283 substituted "\$1,500,000" for "\$500,000".

**1976**—Subsec. (a)(6). Pub. L. 94-210 substituted provisions relating to any security issued by a motor carrier subject to the provisions of section 314 of title 49 or any interest in a railroad equipment trust, and provisions defining "interest in a railroad equipment trust", for provisions relating to any security issued by a common or contract carrier, subject to the provisions of section 20a of title 49.

**1970**—Subsec. (a)(2). Pub. L. 91-567 exempted any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian, any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26, any interest or participation in a single or collective trust fund maintained by a bank or in

a separate account maintained by an insurance company which interest or participation is issued in connection with a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, directed the Commission to exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors, and provided that for the purposes of this paragraph a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank, and that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940.

Pub. L. 91-547, §27(b), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and exempted from registration provisions interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity interests or participations in bank collective trust funds maintained for funding of employees' stock bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and interests or participations issued by bank collective trust funds or insurance company separate accounts for funding certain stock-bonus, pension, profit-sharing, or annuity plans when the Commission by rule, regulation, or order determines this to be necessary in the public interest; provided that a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; substituted where first appearing "security issued or guaranteed by any bank" for "security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official", the latter provision now incorporated in a separate definition of term "bank"; and made the Investment Company Act definition of bank applicable as in the case of a common trust fund or similar fund, or a collective trust fund.

Pub. L. 91-373 inserted reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26.

Subsec. (a)(5). Pub. L. 91-547, §27(c), designated existing provisions as cl. (A), included cooperative bank issues, required the issuer to be an institution which is supervised and examined by State or Federal authority having supervision over such institution, struck out "substantially all the business of which is confined to the making of loans to members" after "similar institution" and substituted provisions designated as cl. (B) for prior provision relating to a security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932.

Subsec. (b). Pub. L. 91-565 substituted "\$500,000" for "\$300,000".

**1958**—Subsec. (c). Pub. L. 85-699 added subsec. (c).

**1954**—Subsec. (a)(11). Act Aug. 10, 1954, inserted "offered and" before "sold".

**1945**—Subsec. (b). Act May 15, 1945, substituted "\$300,000" for "\$100,000".

**1938**—Subsec. (a)(6). Act June 29, 1938, reenacted par. (6) without change.

**1935**—Subsec. (a)(6). Act Feb. 4, 1887, as added by act Aug. 9, 1935, included a security issued by a contract carrier.

**1934**—Subsec. (a). Act June 6, 1934, amended pars. (2), (4), and (8) and added pars. (9) to (11).

## **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**

Pub. L. 106-102, title II, §225, Nov. 12, 1999, 113 Stat. 1402, provided that: "This subtitle [subtitle B (§§211-225) of title II of Pub. L. 106-102, enacting section 80b-10a of this title and amending this section and sections 78c, 80a-2, 80a-3, 80a-9, 80a-10, 80a-17, 80a-26, 80a-34, and 80b-2 of this title] shall take effect 18 months after the date of the enactment of this Act [Nov. 12, 1999]."

### **EFFECTIVE DATE OF 1995 AMENDMENT**

Pub. L. 104–62, §7, Dec. 8, 1995, 109 Stat. 686, provided that: "This Act [enacting section 80a–3a of this title, amending this section and sections 78c, 78l, 80a–3, 80a–7, and 80b–3 of this title, and enacting provisions set out as a note under section 80a–51 of this title] and the amendments made by this Act shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act [Dec. 8, 1995], as a defense to any claim that any person, security, interest, or participation of the type described in this Act and the amendments made by this Act is subject to the provisions 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.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or any State statute or regulation preempted as provided in section 6 of this Act [enacting section 80a–3a of this title], except as otherwise specifically provided in such Acts or State law."

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Pub. L. 97–261, §31, Sept. 20, 1982, 96 Stat. 1129, provided that:

"(a) Except as provided in subsections (b) and (c) of this section, this Act [see Tables for classification] shall take effect on the 60th day after the date of enactment of this Act [Sept. 20, 1982].

"(b) The amendment made by section 10(e)(4) of this Act [amending provisions set out as a note under former section 10706 of Title 49, Transportation] shall take effect on October 1, 1982.

"(c) The provisions of sections 6(g) and 30 of this Act [amending former sections 10922 and 10525 of Title 49, respectively] shall take effect on the date of enactment of this Act [Sept. 20, 1982]."

### **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 1976 AMENDMENT**

Pub. L. 94–210, §308(d)(1), Feb. 5, 1976, 90 Stat. 57, provided that: "The amendments made by subsection (a) of this section [amending this section, section 77s of this title, and section 314 of former Title 49, Transportation] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976], but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day."

### **EFFECTIVE DATE OF 1970 AMENDMENTS**

Pub. L. 91–567, §6(d), Dec. 22, 1970, 84 Stat. 1499, provided that: "The amendments made by this section [amending this section and sections 77ddd and 78c of this title] shall apply with respect to securities sold after January 1, 1970."

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.

Pub. L. 91–373, title IV, §401(c), Aug. 10, 1970, 84 Stat. 718, provided that: "The amendments made by this section [amending this section and section 78c of this title] shall apply with respect to securities sold after January 1, 1970."

### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

### **REPEALS**

Section 214 of act Feb. 4, 1887 (the Interstate Commerce Act), as added Aug. 9, 1935, ch. 498, 49 Stat. 557, cited as a credit to this section, was repealed by Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2443, 2444.

### **FURTHER PROMOTING THE ADOPTION OF THE NAIC MODEL REGULATIONS THAT ENHANCE PROTECTION OF SENIORS AND OTHER CONSUMERS**

Pub. L. 111–203, title IX, §989J, July 21, 2010, 124 Stat. 1949, provided that:

"(a) IN GENERAL.—The Commission shall treat as exempt securities described under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance or endowment policy or annuity contract or optional annuity contract—

"(1) the value of which does not vary according to the performance of a separate account;

"(2) that—



"(A) satisfies standard nonforfeiture laws or similar requirements of the applicable State at the time of issue; or

"(B) in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners; and

"(3) that is issued—

"(A) on and after June 16, 2013, in a State, or issued by an insurance company that is domiciled in a State, that—

"(i) adopts rules that govern suitability requirements in the sale of an insurance or endowment policy or annuity contract or optional annuity contract, which shall substantially meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation adopted by the National Association of Insurance Commissioners in March 2010; and

"(ii) adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulations described in subparagraph (A) within 5 years of the adoption by the Association of any further successors thereto; or

"(B) by an insurance company that adopts and implements practices on a nationwide basis for the sale of any insurance or endowment policy or annuity contract or optional annuity contract that meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto, and is therefore subject to examination by the State of domicile of the insurance company, or by any other State where the insurance company conducts sales of such products, for the purpose of monitoring compliance under this section.

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect whether any insurance or endowment policy or annuity contract or optional annuity contract that is not described in this section is or is not an exempt security under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8))."

[For definitions of terms used in section 989J of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

## **SECURITIES AND INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959**

Pub. L. 91–547, §29, Dec. 14, 1970, 84 Stat. 1436, provided that: "The provisions of the Securities Act of 1933 [this subchapter] and the Investment Company Act of 1940 [section 80a–1 et seq. of this title] shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other fund providing for the sharing of income or gains and losses, and any interest or participation in such account or fund) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses. Nothing herein contained shall be taken to imply that any such interest or participation constitutes a 'security' under any other laws of the United States."

## **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.

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§77d. Exempted transactions**

### **(a) In general**

The provisions of section 77e of this title shall not apply to—

- (1) transactions by any person other than an issuer, underwriter, or dealer.
- (2) transactions by an issuer not involving any public offering.
- (3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 77c(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 77d–1(a) of this title; and

(D) the issuer complies with the requirements of section 77d–1(b) of this title.

(7) transactions meeting the requirements of subsection (d).

#### **(b) Offers and sales exempt under 17 CFR 230.506**

Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public

offerings under the Federal securities laws as a result of general advertising or general solicitation.

**(c) Securities offered and sold in compliance with Rule 506 of Regulation D**

(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 78o(a)(1) of this title, <sup>1</sup> solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 78c(a)(39) of this title <sup>1</sup> and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term "ancillary services" means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

**(d) Certain accredited investor transactions**

The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

(1) ACCREDITED INVESTOR REQUIREMENT.—Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.—Neither the seller, nor any person acting on the seller's behalf, offers or sells securities by any form of general solicitation or general advertising.

(3) INFORMATION REQUIREMENT.—In the case of a transaction involving the securities of an issuer that is neither subject to section 78m or 78o(d) of this title, nor exempt from reporting pursuant to section 240.12g3–2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

(A) The exact name of the issuer and the issuer's predecessor (if any).

(B) The address of the issuer's principal executive offices.

(C) The exact title and class of the security.

(D) The par or stated value of the security.

(E) The number of shares or total amount of the securities outstanding as of the end of the

issuer's most recent fiscal year.

(F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.

(G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.

(H) The names of the officers and directors of the issuer.

(I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person's participation in the offer or sale of the securities.

(J) The issuer's most recent balance sheet and profit and loss statement and similar financial statements, which shall—

(i) be for such part of the 2 preceding fiscal years as the issuer has been in operation;

(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

(iii) be presumed reasonably current if—

(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer's balance sheet; and

(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

(4) **ISSUERS DISQUALIFIED.**—The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.

(5) **BAD ACTOR PROHIBITION.**—Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 CFR 230.506(d)(1)) or is subject to a statutory disqualification described under section 78c(a)(39) of this title.

(6) **BUSINESS REQUIREMENT.**—The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer's primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(7) **UNDERWRITER PROHIBITION.**—The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

(8) **OUTSTANDING CLASS REQUIREMENT.**—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

#### **(e) Additional requirements**

(1) **IN GENERAL.**—With respect to an exempted transaction described under subsection

(a)(7):

(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

(B) Such transaction shall be deemed not to be a distribution for purposes of section 77b(a)(11) of this title.

(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 CFR 230.144).

(2) **RULE OF CONSTRUCTION.**—The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 77e of this title.

(May 27, 1933, ch. 38, title I, §4, 48 Stat. 77; June 6, 1934, ch. 404, title II, §203, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, §6, 68 Stat. 684; Pub. L. 88–467, §12, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94–29, §30, June 4, 1975, 89 Stat. 169; Pub. L. 96–477, title VI, §602, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 111–203, title IX, §944(a), July 21, 2010, 124 Stat. 1897; Pub. L. 112–106, title II, §201(b), (c), title III, §302(a), title IV, §401(c), Apr. 5, 2012, 126 Stat. 314, 315, 325; Pub. L. 114–94, div. G, title LXXVI, §76001(a), Dec. 4, 2015, 129 Stat. 1787.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Section 201 of the Jumpstart Our Business Startups Act, referred to in subsec. (b), is section 201 of Pub. L. 112–106, which amended this section and enacted provisions set out as a note under this section.

Section 78o(a)(1) of this title, referred to in subsec. (c)(1), was in the original "section 15(a)(1) of this title" and was translated as meaning section 15(a)(1) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

Section 78c(a)(39) of this title, referred to in subsec. (c)(2)(C), was in the original "section 3(a)(39) of this title" and was translated as meaning section 3(a)(39) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

## **AMENDMENTS**

**2015**—Subsec. (a)(7). Pub. L. 114–94, §76001(a)(1), added par. (7).

Subsec. (c). Pub. L. 114–94, §76001(a)(2), redesignated subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D as (c).

Subsecs. (d), (e). Pub. L. 114–94, §76001(a)(3), added subsecs. (d) and (e).

**2012**—Pub. L. 112–106, §201(b)(1), (c)(1), made identical amendments, designating existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 112–106, §401(c), which directed amendment of this section by substituting "section 77c(b)(1)" for "section 77c(b)" in par. (5), was executed by making the substitution in subsec. (a)(5) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (a)(6). Pub. L. 112–106, §302(a), which directed amendment of this section by adding par. (6) at the end, was executed by making the addition at the end of subsec. (a) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (b). Pub. L. 112–106, §201(c)(2), added subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter.

Pub. L. 112–106, §201(b)(2), added subsec. (b) relating to offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations.

**2010**—Pars. (5), (6). Pub. L. 111–203 redesignated par. (6) as (5) and struck out former par. (5) which related to exemption for certain transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and exemption for certain transactions between entities involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years.

**1980**—Par. (6). Pub. L. 96–477 added par. (6).

**1975**—Par. (5). Pub. L. 94–29 added par. (5).

**1964**—Pub. L. 88–467 substituted "shall not apply to—" for "shall not apply to any of the following transactions:" in introductory text.

Par. (1). Pub. L. 88-467 reenacted existing first provision of par. (1) and struck out second and third provisions, which are incorporated in pars. (2) and (3)(A) to (C).

Par. (2). Pub. L. 88-467 redesignated existing second provision of par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 88-467 redesignated existing third provision of par. (1) as (3), designated the excepted transactions as cls. (A) to (C), inserted in cl. (B) "or such shorter period as the Commission may specify by rules and regulations or order" and inserted sentence relating to the applicable period to transactions referred to in clause (B).

Par. (4). Pub. L. 88-467 redesignated former par. (2) as (4) and substituted "over-the-counter market" for "open or counter market".

**1954**—Act Aug. 10, 1954, reduced from 1 year to 40 days the period during which the delivery of a prospectus is required in trading transactions as distinguished from initial distribution of the new securities.

**1934**—Act June 6, 1934, among other changes, repealed par. (3), provisions of which were replaced by section 77c(9), (10) of this title.

## **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 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.

### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

## **MODIFICATION OF EXEMPTION RULES**

Pub. L. 112-106, title II, §201(a), Apr. 5, 2012, 126 Stat. 313, provided that:

"(1) Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 ([now] 15 U.S.C. 77d[(a)](2)).

"(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer."

## **RULEMAKING**

Pub. L. 112-106, title III, §302(c), Apr. 5, 2012, 126 Stat. 320, provided that: "Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission (in this title [enacting section 77d-1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] referred to as the 'Commission') shall issue such rules as the Commission determines may be necessary or appropriate for the protection of

investors to carry out sections 4(6) [probably means "section 4(a)(6)"] and section 4A of the Securities Act of 1933 [15 U.S.C. 77d(a)(6), 77d-1], as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association."

### **DISQUALIFICATION**

Pub. L. 112-106, title III, §302(d), Apr. 5, 2012, 126 Stat. 320, provided that:

"(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the [Securities and Exchange] Commission shall, by rule, establish disqualification provisions under which—

"(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) [probably means "section 4(a)(6)"] of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)], as added by this title; and

"(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

"(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

"(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

"(B) disqualify any offering or sale of securities by a person that—

"(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

"(I) bars the person from—

"(aa) association with an entity regulated by such commission, authority, agency, or officer;

"(bb) engaging in the business of securities, insurance, or banking; or

"(cc) engaging in savings association or credit union activities; or

"(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

"(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission."

### **DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS**

Pub. L. 111-203, title IX, §926, July 21, 2010, 124 Stat. 1851, provided that: "Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

"(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

"(2) disqualify any offering or sale of securities by a person that—

"(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

"(i) bars the person from—

"(I) association with an entity regulated by such commission, authority, agency, or officer;

"(II) engaging in the business of securities, insurance, or banking; or

"(III) engaging in savings association or credit union activities; or

"(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

"(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission."

[For definitions of terms used in section 926 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.

<sup>1</sup> [See References in Text note below.](#)

## **§77d–1. Requirements with respect to certain small transactions**

### **(a) Requirements on intermediaries**

A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 77d(6) <sup>1</sup> of this title shall—

(1) register with the Commission as—

(A) a broker; or

(B) a funding portal (as defined in section 78c(a)(80) <sup>2</sup> of this title);

(2) register with any applicable self-regulatory organization (as defined in section 78c(a)(26) of this title);

(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

(4) ensure that each investor—

(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

(C) answers questions demonstrating—

(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(ii) an understanding of the risk of illiquidity; and

(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 77d(6) <sup>1</sup> of this title that, in the aggregate, from all issuers, exceed the investment limits set forth in section 77d(6)(B) <sup>1</sup> of this title;

(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

(11) prohibit its directors, officers, or partners (or any person occupying a similar status or



performing a similar function) from having any financial interest in an issuer using its services; and

(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

**(b) Requirements for issuers**

For purposes of section 77d(6) <sup>1</sup> of this title, an issuer who offers or sells securities shall—

(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

(A) the name, legal status, physical address, and website address of the issuer;

(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

(C) a description of the business of the issuer and the anticipated business plan of the issuer;

(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 77d(6) <sup>1</sup> of this title within the preceding 12-month period, have, in the aggregate, target offering amounts of—

(i) \$100,000 or less—

(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

(H) a description of the ownership and capital structure of the issuer, including—

(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

**(c) Liability for material misstatements and omissions**

**(1) Actions authorized**

**(A) In general**

Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 77d(6) <sup>1</sup> of this title may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

**(B) Liability**

An action brought under this paragraph shall be subject to the provisions of section 77l(b) of this title and section 77m of this title, as if the liability were created under section 77l(a)(2) of this title.

**(2) Applicability**

An issuer shall be liable in an action under paragraph (1), if the issuer—

(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 77d(6) <sup>1</sup> of this title, makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

**(3) Definition**

As used in this subsection, the term "issuer" includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 77d(6) <sup>1</sup> of this title, and any person who offers or sells the security in such offering.

**(d) Information available to States**

The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

**(e) Restrictions on sales**

Securities issued pursuant to a transaction described in section 77d(6) <sup>1</sup> of this title—

(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

(A) to the issuer of the securities;

(B) to an accredited investor;

(C) as part of an offering registered with the Commission; or

(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

**(f) Applicability**

Section 77d(6) <sup>1</sup> of this title shall not apply to transactions involving the offer or sale of securities by any issuer that—

(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

(2) is subject to the requirement to file reports pursuant to section 78m of this title or section 78o(d) of this title;

(3) is an investment company, as defined in section 80a–3 of this title, or is excluded from the definition of investment company by section 80a–3(b) of this title or section 80a–3(c) of this title; or

(4) the Commission, by rule or regulation, determines appropriate.

**(g) Rule of construction**

Nothing in this section or section 77d(6) <sup>1</sup> of this title shall be construed as preventing an issuer from raising capital through methods not described under section 77d(6) <sup>1</sup> of this title.

**(h) Certain calculations**

**(1) Dollar amounts**

Dollar amounts in section 77d(6) <sup>1</sup> of this title and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

**(2) Income and net worth**

The income and net worth of a natural person under section 77d(6)(B) <sup>1</sup> of this title shall be calculated in accordance with any rules of the Commission under this subchapter regarding the calculation of the income and net worth, respectively, of an accredited investor.

(May 27, 1933, ch. 38, title I, §4A, as added Pub. L. 112–106, title III, §302(b), Apr. 5, 2012, 126 Stat. 315.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 77d(6) of this title, referred to in text, was redesignated section 77d(a)(6) of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

<sup>1</sup> *See References in Text note below.*

<sup>2</sup> *So in original. Two pars. (a)(80) of section 78c have been enacted.*

## **§77e. Prohibitions relating to interstate commerce and the mails**

### **(a) Sale or delivery after sale of unregistered securities**

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

### **(b) Necessity of prospectus meeting requirements of section 77j of this title**

It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

### **(c) Necessity of filing registration statement**

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

### **(d) Limitation**

Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

### **(e) Security-based swaps**

Notwithstanding the provisions of section 77c or 77d of this title, unless a registration statement meeting the requirements of section 77j(a) of this title is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of title 7.

(May 27, 1933, ch. 38, title I, §5, 48 Stat. 77; June 6, 1934, ch. 404, title II, §204, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, §7, 68 Stat. 684; Pub. L. 111–203, title VII, §768(b), July 21, 2010, 124 Stat. 1801; Pub. L. 112–106, title I, §105(c), Apr. 5, 2012, 126 Stat. 311.)

## EDITORIAL NOTES

### AMENDMENTS

**2012**—Subsecs. (d), (e). Pub. L. 112–106 added subsec. (d) and redesignated former subsec. (d) as (e).

**2010**—Subsec. (d). Pub. L. 111–203 added subsec. (d).

**1954**—Subsec. (a)(1). Act Aug. 10, 1954, struck out "or offer to buy" after "to sell".

Subsec. (b). Act Aug. 10, 1954, in par. (1) substituted "with respect to which a registration statement has been filed" for "registered" and in par. (2) omitted "to" after "to carry or" and inserted "subsection (a) of" before "section 77j of this title".

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

**1934**—Act June 6, 1934, repealed subsec. (c), the provisions of which were replaced by section 77c(a)(11) of this title.

## 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 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

### ENCOURAGING EMPLOYEE OWNERSHIP

Pub. L. 115–174, title V, §507, May 24, 2018, 132 Stat. 1363, provided that: "Not later than 60 days after the date of the enactment of this Act [May 24, 2018], the Securities and Exchange Commission shall revise section 230.701(e) of title 17, Code of Federal Regulations, so as to increase from \$5,000,000 to \$10,000,000 the aggregate sales price or amount of securities sold during any consecutive 12-month period in excess of which the issuer is required under such section to deliver an additional disclosure to investors. The Commission shall index for inflation such aggregate sales price or amount every 5 years to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, rounding to the nearest \$1,000,000."

### FAIR ACCESS TO INVESTMENT RESEARCH

Pub. L. 115–66, Oct. 6, 2017, 131 Stat. 1196, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Fair Access to Investment Research Act of 2017'.

"SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

"(a) EXPANSION OF THE SAFE HARBOR.—Not later than the end of the 180-day period beginning on the date of enactment of this Act [Oct. 6, 2017], the Securities and Exchange Commission shall propose, and not later than the end of the 270-day period beginning on such date, the Commission shall adopt, upon such terms, conditions, or requirements as the Commission may determine necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation, revisions to section 230.139 of title 17, Code of Federal Regulations, to provide that a covered investment fund research report that is published or distributed by a broker or dealer, other than a broker or dealer that is an investment adviser to the fund or an affiliated person of the investment adviser to the fund—

"(1) shall be deemed, for purposes of sections 2(a)(10) and 5(c) of the Securities Act of 1933 (15 U.S.C. 77b(a)(10), 77e(c)), not to constitute an offer for sale or an offer to sell a security that is the subject of an offering pursuant to a registration statement that is effective, even if the broker or dealer is participating or will participate in the registered offering of the covered investment fund's securities; and

"(2) shall be deemed to satisfy the conditions of paragraph (1) or (2) of section 230.139(a) of title 17, Code of Federal Regulations, or any successor provisions, for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization.

"(b) IMPLEMENTATION OF SAFE HARBOR.—In implementing the safe harbor pursuant to subsection (a), the Commission shall—

"(1) not, in the case of a covered investment fund with a class of securities in substantially continuous distribution, condition the safe harbor on whether the broker's or dealer's publication or distribution of a covered investment fund research report constitutes such broker's or dealer's initiation or reinitiation of research coverage on such covered investment fund or its securities;

"(2) not—

"(A) require the covered investment fund to have been registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) for any period exceeding the period of time referenced under section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations; or

"(B) impose a minimum float provision exceeding that referenced in section 230.139(a)(1)(i)(A)(1)(i) of title 17, Code of Federal Regulations;

"(3) provide that a self-regulatory organization may not maintain or enforce any rule that would—

"(A) prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or

"(B) prohibit the ability of a member to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities; and

"(4) provide that a covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)) or the rules and regulations thereunder, except that such report may still be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

"(c) RULES OF CONSTRUCTION.—Nothing in this Act shall be construed as in any way limiting—

"(1) the applicability of the antifraud or antimanipulation provisions of the Federal securities laws and rules adopted thereunder to a covered investment fund research report, including section 17 of the Securities Act of 1933 (15 U.S.C. 77q), section 34(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–33(b)), and sections 9 and 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78i, 78j); or

"(2) the authority of any self-regulatory organization to examine or supervise a member's practices in connection with such member's publication or distribution of a covered investment fund research report for compliance with applicable provisions of the Federal securities laws or self-regulatory organization rules related to research reports, including those contained in rules governing communications with the public, or to require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds.

"(d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

"(1) IN GENERAL.—From and after the 270-day period beginning on the date of enactment of this Act, if the Commission has not adopted revisions to section 230.139 of title 17, Code of Federal Regulations, as required by subsection (a), and until such time as the Commission has done so, a broker or dealer distributing or publishing a covered investment fund research report after such date shall be able to rely on the provisions of section 230.139 of title 17, Code of Federal Regulations, and the broker or dealer's publication of such report shall be deemed to satisfy the conditions of paragraph (1) or (2) of section 230.139(a) of title 17, Code of Federal Regulations, if the covered investment fund that is the subject of such report satisfies the reporting history requirements (without regard to Form S–3 or Form F–3 eligibility) and minimum float provisions of such subsections for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization, as if revised and implemented in accordance with subsections (a) and (b).

"(2) STATUS OF COVERED INVESTMENT FUND.—After such period and until the Commission has adopted revisions to section 230.139 of title 17, Code of Federal Regulations, and FINRA has revised rule 2210, for purposes of subsection (c)(7)(O) of such rule, a covered investment fund shall be deemed to be a security that is listed on a national securities exchange and that is not subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)).

"(3) COVERED INVESTMENT FUNDS COMMUNICATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), communications that concern only covered investment funds that fall within the scope of section 24(b) of the Investment Company Act

of 1940 (15 U.S.C. 80a-24(b)) shall not be required to be filed with FINRA.

"(B) EXCEPTION.—FINRA may require the filing of communications with the public if the purpose of those communications is not to provide research and analysis of covered investment funds.

"(e) EXCEPTION.—The safe harbor under subsection (a) shall not apply to the publication or distribution by a broker or a dealer of a covered investment fund research report, the subject of which is a business development company or a registered closed-end investment company, during the time period described in section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations, except where expressly permitted by the rules and regulations of the Securities and Exchange Commission under the Federal securities laws.

"(f) DEFINITIONS.—For purposes of this Act:

"(1) The term 'affiliated person' 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 'covered investment fund' means—

"(A) an investment company registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and that has filed a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

"(B) a trust or other person—

"(i) issuing securities in an offering registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and which class of securities is listed for trading on a national securities exchange;

"(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

"(iii) that provides in its registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

"(3) The term 'covered investment fund research report' means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.

"(4) The term 'FINRA' means the Financial Industry Regulatory Authority.

"(5) The term 'investment adviser' has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

"(6) The term 'research report' has the meaning given that term under section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)), except that such term shall not include an oral communication.

"(7) The term 'self-regulatory organization' has the meaning given that term under section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26))."

## INCREASED ACCESS TO FOREIGN BUSINESS INFORMATION

Pub. L. 104-290, title I, §109, Oct. 11, 1996, 110 Stat. 3426, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall adopt rules under the Securities Act of 1933 [15 U.S.C. 77a et seq.] concerning the status under the registration provisions of the Securities Act of 1933 of foreign press conferences and foreign press releases by persons engaged in the offer and sale of securities."

## §77f. Registration of securities

### (a) Method of registration

Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States;



except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this subchapter. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

**(b) Registration fee**

**(1) Fee payment required**

At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to \$92 <sup>1</sup> per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

**(2) Annual adjustment**

For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target fee collection amount for such fiscal year.

**(3) Pro rata application**

The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

**(4) Review and effective date**

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 (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

**(5) Publication**

The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 78m(e) and 78n(g) <sup>2</sup> of this title for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

**(6) Definitions**

For purposes of this subsection:

**(A) Target fee collection amount**

The target fee collection amount for each fiscal year is determined according to the following table:

<b>Fiscal year:</b>	<b>Target fee collection amount</b>
2002	\$377,000,000
2003	\$435,000,000
2004	\$467,000,000
2005	\$570,000,000
2006	\$689,000,000
2007	\$214,000,000



2008	\$234,000,000
2009	\$284,000,000
2010	\$334,000,000
2011	\$394,000,000
2012	\$425,000,000
2013	\$455,000,000
2014	\$485,000,000
2015	\$515,000,000
2016	\$550,000,000
2017	\$585,000,000
2018	\$620,000,000
2019	\$660,000,000
2020	\$705,000,000
2021 and each fiscal year thereafter	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.

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**(B) Baseline estimate of the aggregate maximum offering prices**

The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission 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 projections pursuant to section 907 of title 2.

**(c) Time registration effective**

The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement 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 subsection (b).

**(d) Information available to public**

The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

**(e) Emerging growth companies**

**(1) In general**

Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto. An issuer that was an emerging growth company at the time it submitted a confidential registration statement or, in lieu thereof, a publicly filed registration statement for review under this subsection but ceases to be an emerging growth company thereafter shall continue to be treated as an emerging market

growth company for the purposes of this subsection through the earlier of the date on which the issuer consummates its initial public offering pursuant to such registrations statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company.

## **(2) Confidentiality**

Notwithstanding any other provision of this subchapter, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. 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. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 78x(b)(2) of this title.

(May 27, 1933, ch. 38, title I, §6, 48 Stat. 78; Pub. L. 89–289, §1, Oct. 22, 1965, 79 Stat. 1051; Pub. L. 100–181, title II, §205, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104–290, title IV, §404, Oct. 11, 1996, 110 Stat. 3441; Pub. L. 107–123, §4, Jan. 16, 2002, 115 Stat. 2393; Pub. L. 111–203, title IX, §991(b)(1), July 21, 2010, 124 Stat. 1951; Pub. L. 112–106, title I, §106(a), Apr. 5, 2012, 126 Stat. 312; Pub. L. 114–94, div. G, title LXXI, §§71001, 71002, Dec. 4, 2015, 129 Stat. 1783.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Sections 78m(e) and 78n(g) of this title, referred to in subsec. (b)(5), were in the original, "sections 13(e) and 14(g)" and were translated as meaning sections 13(e) and 14(g) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

### **AMENDMENTS**

**2015**—Subsec. (e)(1). Pub. L. 114–94 substituted "15 days" for "21 days" and inserted at end "An issuer that was an emerging growth company at the time it submitted a confidential registration statement or, in lieu thereof, a publicly filed registration statement for review under this subsection but ceases to be an emerging growth company thereafter shall continue to be treated as an emerging market growth company for the purposes of this subsection through the earlier of the date on which the issuer consummates its initial public offering pursuant to such registrations statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company."

**2012**—Subsec. (e). Pub. L. 112–106 added subsec. (e).

**2010**—Subsec. (b). Pub. L. 111–203, §991(b)(1)(A)–(G), in par. (5), substituted "target fee" for "target offsetting" and, in par. (11)(A), substituted "Target fee" for "Target offsetting" in heading and table and "target fee" for "target offsetting" in introductory provisions, redesignated pars. (2), (5), (7), (10), and (11) as (1), (2), (3), (5), and (6), respectively, and struck out former pars. (1), (3), (4), (6), (8), and (9) which related to recovery of cost of services, offsetting collections, prohibition of treatment of fees as general revenues, final rate adjustment, review and effective date of rates, and rate during lapse of appropriation, respectively.

Subsec. (b)(1). Pub. L. 111–203, §991(b)(1)(H), substituted "paragraph (2)." for "paragraph (5) or (6)."

Subsec. (b)(2). Pub. L. 111–203, §991(b)(1)(I), substituted "For each fiscal year" for "For each of the fiscal years 2003 through 2011" and "paragraph (1)" for "paragraph (2)".

Subsec. (b)(4). Pub. L. 111–203, §991(b)(1)(J), added par. (4). Former par. (4) struck out.

Subsec. (b)(5). Pub. L. 111–203, §991(b)(1)(K), substituted "August 31" for "April 30".

Subsec. (b)(6)(A). Pub. L. 111–203, §991(b)(1)(L), substituted "each fiscal year" for "each of the fiscal years 2002 through 2011" in introductory provisions and, in table, added items for fiscal years 2012 to 2021 and each fiscal year thereafter.

**2002**—Subsec. (b)(2) to (11). Pub. L. 107–123 added pars. (2) to (11) and struck out former pars. (2) to (5), which required fee payment, set out rates for general revenue and offsetting collection fees, and required pro rata rates for amounts and balances equal to less than \$1,000,000.

**1996**—Subsec. (b). Pub. L. 104–290 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: "At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than \$100."

**1987**—Subsec. (e). Pub. L. 100–181 struck out subsec. (e) which provided that no registration statement should be filed within the first 40 days following May 27, 1933.

1965—Subsec. (b). Pub. L. 89–289 substituted "one-fiftieth" for "one one-hundredth" and "\$100" for "\$25".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title IX, §991(b)(4), July 21, 2010, 124 Stat. 1953, provided that: "The amendments made by this subsection [amending this section and sections 78m and 78n of this title] shall take effect on October 1, 2011, except that for fiscal year 2012, the [Securities and Exchange] Commission shall publish the rate established under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), as amended by this Act, on August 31, 2011."

### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, except that authorities provided by subsec. (b)(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 1965 AMENDMENT

Pub. L. 89–289, §2, Oct. 22, 1965, 79 Stat. 1051, provided that: "The amendment made by the first section of this Act [amending this section] shall take effect January 1, 1966."

### INCREASE IN REGISTRATION FEES AND DEPOSIT INTO TREASURY

Pub. L. 105–46, §113, Sept. 30, 1997, 111 Stat. 1156, provided that the amount made available to the Securities and Exchange Commission, under the heading Salaries and Expenses, was to include, in addition to direct appropriations, the amount collected under the fee rate and offsetting collection authority contained in Public Law 104–208, which fee rate and offsetting collection authority was to remain in effect during the period of Pub. L. 105–46 which provided continuing appropriations for fiscal year 1998.

Pub. L. 104–208, div. A, title I, §101(a) [title V], Sept. 30, 1996, 110 Stat. 3009, 3009–61, which provided in part that on Sept. 30, 1996, the rate of fees under subsec. (b) of this section were increased from one-fiftieth of one percentum to one-thirty-third of one percentum, and such increase was to be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover costs of services of the securities registration process, was from the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–134, title I, §101[(a)] [title V], Apr. 26, 1996, 110 Stat. 1321, 1321–60; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 104–99, title II, §209, Jan. 26, 1996, 110 Stat. 37.

Pub. L. 104–56, §119, Nov. 20, 1995, 109 Stat. 552.

Pub. L. 104–54, §119, Nov. 19, 1995, 109 Stat. 544.

Pub. L. 104–31, §120, Sept. 30, 1995, 109 Stat. 282.

Pub. L. 103–352, Oct. 10, 1994, 108 Stat. 3148.

Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1168.

Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1848.

Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 798.

Pub. L. 101–515, title V, Nov. 5, 1990, 104 Stat. 2139.

Pub. L. 101–162, title V, Nov. 21, 1989, 103 Stat. 1022.

### ADJUSTMENT OF REGISTRATION FEE RATE

By order dated Aug. 25, 2023, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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. (b) 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.

<sup>1</sup> [\*See Adjustment of Registration Fee Rate notes below.\*](#)

<sup>2</sup> [\*See References in Text note below.\*](#)

## §77g. Information required in registration statement

### (a) Information required in registration statement

#### (1) In general

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A of section 77aa of this title, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B of section 77aa of this title; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

## **(2) Treatment of emerging growth companies**

An emerging growth company—

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and

(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

## **(b) Registration statement for blank check companies**

(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors—

(A) require such issuers to provide timely disclosure, prior to or after such statement becomes effective under section 77h of this title, of (i) information regarding the company to be acquired and the specific application of the proceeds of the offering, or (ii) additional information necessary to prevent such statement from being misleading;

(B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and

(C) provide a right of rescission to shareholders of such securities.

(2) The Commission may, as it determines consistent with the public interest and the protection of investors, by rule or order exempt any issuer or class of issuers from the rules prescribed under paragraph (1).

(3) For purposes of paragraph (1) of this subsection, the term "blank check company" means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title) and that—

(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.

## **(c) Disclosure requirements**

### **(1) In general**

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

### **(2) Content of regulations**

In adopting regulations under this subsection, the Commission shall—

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

(i) data having unique identifiers relating to loan brokers or originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

(iii) the amount of risk retention by the originator and the securitizer of such assets.

### **(3) Data standards for asset-backed securities disclosures**

#### **(A) Requirement**

The Commission shall, by rule, adopt data standards for all disclosures required under this subsection.

#### **(B) Consistency**

The data standards required 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.

#### **(d) Registration statement for asset-backed securities**

Not later than 180 days after July 21, 2010, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 78c(a)(77) <sup>1</sup> of this title) that require any issuer of an asset-backed security—

- (1) to perform a review of the assets underlying the asset-backed security; and
- (2) to disclose the nature of the review under paragraph (1).

(May 27, 1933, ch. 38, title I, §7, 48 Stat. 78; Pub. L. 101–429, title V, §508, Oct. 15, 1990, 104 Stat. 956; Pub. L. 111–203, title IX, §§942(b), 945, July 21, 2010, 124 Stat. 1897, 1898; Pub. L. 112–106, title I, §102(b)(1), Apr. 5, 2012, 126 Stat. 309; Pub. L. 117–263, div. E, title LVIII, §5821(d), Dec. 23, 2022, 136 Stat. 3425.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Section 78c(a)(77) of this title, referred to in subsec. (d), was redesignated section 78c(a)(79) of this title by Pub. L. 112–106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307.

#### **AMENDMENTS**

**2022**—Subsec. (c)(3). Pub. L. 117–263 added par. (3).

**2012**—Subsec. (a). Pub. L. 112–106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

**2010**—Subsec. (c). Pub. L. 111–203, §942(b), added subsec. (c).

Subsec. (d). Pub. L. 111–203, §945, added subsec. (d).

**1990**—Pub. L. 101–429 designated existing provision as subsec. (a) and 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 1990 AMENDMENT**

Pub. L. 101–429, §1(c), Oct. 15, 1990, 104 Stat. 931, provided that:

"(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the amendments made by this Act [enacting sections 77h–1, 78q–2, 78u–2, and 78u–3 of this title, amending this section and sections 77t, 78c, 78o, 78o–3, 78o–4, 78q–1, 78u, 78u–1, 78w, 78cc, 80a–9, 80a–41, 80b–3, 80b–9, and 80b–14 of this title, and enacting provisions set out as notes under sections 78a, 78o, and 78s of this title] shall be effective upon enactment [Oct. 15, 1990].

"(2) **CIVIL PENALTIES.**—

"(A) **IN GENERAL.**—No civil penalty may be imposed pursuant to the amendments made by this Act on the basis of conduct occurring before the date of enactment of this Act [Oct. 15, 1990].

"(B) **ACCOUNTING AND DISGORGEMENT.**—Subparagraph (A) shall not operate to preclude the Securities and Exchange Commission from ordering an accounting or disgorgement pursuant to the

amendments made by this Act.

"(3) SPECIAL RULES FOR TITLE V.—

"(A) SECTIONS 503 AND 504.—Except as provided in subparagraph (C), sections 503 [amending section 78c of this title] and 504 [amending section 78o of this title and enacting provisions set out as a note under section 78o of this title] shall be effective 12 months after the date of enactment of this Act [Oct. 15, 1990] or upon the issuance of final regulations initially implementing such section [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

"(B) SECTIONS 505 AND 508.—Except as provided in subparagraph (C), sections 505 [amending section 78o of this title] and 508 [amending this section] shall be effective 18 months after the date of enactment of this Act or upon the issuance of final regulations initially implementing such sections [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

"(C) COMMENCEMENT OF RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Commission shall commence rulemaking proceedings to implement sections 503, 505, and 508."

### **RULEMAKING**

Pub. L. 117–263, div. E, title LVIII, §5821(i), Dec. 23, 2022, 136 Stat. 3427, provided that:

"(1) IN GENERAL.—The rules that the Securities and Exchange Commission are required to issue under the amendments made by this section [enacting sections 77z–4 and 78rr of this title and amending this section and sections 78m, 78n, 78o–7, 80a–8, 80a–29, and 80b–4 of this title] shall take effect 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.

"(2) SCALING OF REGULATORY REQUIREMENTS; MINIMIZING DISRUPTION.—In issuing the rules required under the amendments made by this section, as described in paragraph (1), the Securities and Exchange Commission—

"(A) may scale data reporting requirements in order to reduce any unjustified burden on emerging growth companies, lending institutions, accelerated filers, smaller reporting companies, and other smaller issuers, as determined by any study required under section 5825(b) [set out in a note below], while still providing searchable information to investors; and

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

### **IMPROVEMENT OF REGULATION S–K**

Pub. L. 114–94, div. G, title LXXII, §72002, Dec. 4, 2015, 129 Stat. 1784, provided that: "Not later than the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 4, 2015], the Securities and Exchange Commission shall take all such actions to revise regulation S–K (17 CFR 229.10 et seq.)—

"(1) to further scale or eliminate requirements of regulation S–K, in order to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors;

"(2) to eliminate provisions of regulation S–K, required for all issuers, that are duplicative, overlapping, outdated, or unnecessary; and

"(3) for which the Commission determines that no further study under section 72203 [probably means section 72003 of Pub. L. 114–94, set out as a note under section 77s of this title] is necessary to determine the efficacy of such revisions to regulation S–K."

### **RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS**

Pub. L. 117–263, div. E, title LVIII, §5826, Dec. 23, 2022, 136 Stat. 3430, provided that: "Nothing in this subtitle [subtitle B (§§5821–5826) of title LVIII of div. E of Pub. L. 117–263, enacting sections 77z–4 and 78rr of this title, amending this section and sections 78d, 78m, 78n, 78o–3, 78o–4, 78o–7, 80a–8, 80a–29, and 80b–4 of this title, and enacting provisions set out as notes under this section and sections 78o–3 and 78o–4 of this title], or the amendments made by this subtitle, shall be construed to require the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, or any national securities association to collect or make publicly available additional information under the provisions of law amended by this subtitle (or under any provision of law referenced in an amendment made by this subtitle), beyond information that was collected or made publicly available under any such provision, as of the day before the date of enactment of this Act [Dec. 23, 2022]."

### **SHORTER-TERM BURDEN REDUCTION AND DISCLOSURE SIMPLIFICATION AT THE SECURITIES AND EXCHANGE COMMISSION; SUNSET**

Pub. L. 117–263, div. E, title LVIII, §5825, Dec. 23, 2022, 136 Stat. 3429, provided that:

"(a) BETTER ENFORCEMENT OF THE QUALITY OF CORPORATE FINANCIAL DATA SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION.—

"(1) DATA QUALITY IMPROVEMENT PROGRAM.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 23, 2022], the Securities and Exchange Commission shall establish a program to improve the quality of corporate financial data filed or furnished by issuers 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.), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

"(B) CONTENTS.—The program established under subparagraph (A) shall include the following:

"(i) The designation of an official in the Office of the Chairman of the Securities and Exchange Commission responsible for the improvement of the quality of data filed with or furnished to the Commission by issuers.

"(ii) The issuance by the Division of Corporation Finance of the Securities and Exchange Commission of comment letters requiring correction of errors in data filings and submissions, where necessary.

"(2) GOALS.—In establishing the program required under this subsection, the Securities and Exchange Commission shall seek to—

"(A) improve the quality of data filed with or furnished to the Commission to a commercially acceptable level; and

"(B) make data filed with or furnished to the Commission useful to investors.

"(b) REPORT ON THE USE OF MACHINE-READABLE DATA FOR CORPORATE DISCLOSURES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, and once every 180 days thereafter, the Securities and Exchange 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 regarding the public and internal use of machine-readable data for corporate disclosures.

"(2) CONTENT.—Each report required under paragraph (1) shall include—

"(A) an identification of which corporate disclosures required under section 7 of the Securities Act of 1933 (15 U.S.C. 77g), section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), and section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) are expressed as machine-readable data and which are not;

"(B) an analysis of the costs and benefits of the use of machine-readable data in corporate disclosure to investors, markets, the Securities and Exchange Commission, and issuers;

"(C) a summary of enforcement actions that result from the use or analysis of machine-readable data collected under the provisions of law described in subparagraph (A); and

"(D) an analysis of how the Securities and Exchange Commission uses the machine-readable data collected by the Commission.

"(c) SUNSET.—Beginning on the date that is 7 years after the date of enactment of this Act [Dec. 23, 2022], this section shall have no force or effect."

**FORWARD INCORPORATION BY REFERENCE FOR FORM S–1**

Pub. L. 114–94, div. G, title LXXXIV, §84001, Dec. 4, 2015, 129 Stat. 1797, provided that: "Not later than 45 days after the date of the enactment of this Act [Dec. 4, 2015], the Securities and Exchange Commission shall revise Form S–1 so as to permit a smaller reporting company (as defined in section 230.405 of title 17, Code of Federal Regulations) to incorporate by reference in a registration statement filed on such form any documents that such company files with the Commission after the effective date of such registration statement."

**OTHER DISCLOSURES**

Pub. L. 112–106, title I, §102(c), Apr. 5, 2012, 126 Stat. 310, provided that: "An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations, or any successor thereto, by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than \$75,000,000."



## SIMPLIFIED DISCLOSURE REQUIREMENTS

Pub. L. 112–106, title I, §102(d), as added by Pub. L. 114–94, div. G, title LXXI, §71003, Dec. 4, 2015, 129 Stat. 1783, provided that: "With respect to an emerging growth company (as such term is defined under section 2 of the Securities Act of 1933 [15 U.S.C. 77b]):

"(1) **REQUIREMENT TO INCLUDE NOTICE ON FORMS S–1 AND F–1.**—Not later than 30 days after the date of enactment of this subsection [Dec. 4, 2015], the Securities and Exchange Commission shall revise its general instructions on Forms S–1 and F–1 to indicate that a registration statement filed (or submitted for confidential review) by an issuer prior to an initial public offering may omit financial information for historical periods otherwise required by regulation S–X (17 CFR 210.1–01 et seq.) as of the time of filing (or confidential submission) of such registration statement, provided that—

"(A) the omitted financial information relates to a historical period that the issuer reasonably believes will not be required to be included in the Form S–1 or F–1 at the time of the contemplated offering; and

"(B) prior to the issuer distributing a preliminary prospectus to investors, such registration statement is amended to include all financial information required by such regulation S–X at the date of such amendment.

"(2) **RELIANCE BY ISSUERS.**—Effective 30 days after the date of enactment of this subsection, an issuer filing a registration statement (or submitting the statement for confidential review) on Form S–1 or Form F–1 may omit financial information for historical periods otherwise required by regulation S–X (17 CFR 210.1–01 et seq.) as of the time of filing (or confidential submission) of such registration statement, provided that—

"(A) the omitted financial information relates to a historical period that the issuer reasonably believes will not be required to be included in the Form S–1 or Form F–1 at the time of the contemplated offering; and

"(B) prior to the issuer distributing a preliminary prospectus to investors, such registration statement is amended to include all financial information required by such regulation S–X at the date of such amendment."

## 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.

<sup>1</sup> [\*See References in Text note below.\*](#)

## §77h. Taking effect of registration statements and amendments thereto

### (a) Effective date of registration statement

Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

### (b) Incomplete or inaccurate registration statement

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of

confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

**(c) Effective date of amendment to registration statement**

An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

**(d) Untrue statements or omissions in registration statement**

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.

**(e) Examination for issuance of stop order**

The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

**(f) Notice requirements**

Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

(May 27, 1933, ch. 38, title I, §8, 48 Stat. 79; Aug. 22, 1940, ch. 686, title III, §301, 54 Stat. 857.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1940**—Subsec. (a). Act Aug. 22, 1940, amended subsec. (a) generally.

**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.

## **§77h–1. 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 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.

### **(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 proceeding. 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**

This subsection 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.

### **(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 77i(a) 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 77q(a)(1) 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.

**(g) Authority to impose money penalties**

**(1) Grounds**

In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

(A) 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 thereunder; and

(B) such penalty is in the public interest.

**(2) Maximum amount of penalty**

**(A) First tier**

The maximum amount of a penalty for each act or omission described in paragraph (1) shall be \$7,500 for a natural person or \$75,000 for any other person.

**(B) Second tier**

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$75,000 for a natural person or \$375,000 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 \$150,000 for a natural person or \$725,000 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—

(I) substantial losses or created a significant risk of substantial losses to other persons; or

(II) substantial pecuniary gain to the person who committed the act or omission.

**(3) 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 ability of the respondent 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 the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.

(May 27, 1933, ch. 38, title I, §8A, as added Pub. L. 101–429, title I, §102, Oct. 15, 1990, 104 Stat. 933; amended Pub. L. 107–204, title XI, §1105(b), July 30, 2002, 116 Stat. 809; Pub. L. 111–203, title IX, §929P(a)(1), July 21, 2010, 124 Stat. 1862.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Subsec. (g). Pub. L. 111–203 added subsec. (g).

**2002**—Subsec. (f). Pub. L. 107–204 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) and (2) of Pub. L. 101–429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

**§77i. Court review of orders**

(a) Any person aggrieved by an order of the Commission may obtain a review of such order in the court of appeals of the United States, 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 be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, 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. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show 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 hearing 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 such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any 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) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(May 27, 1933, ch. 38, title I, §9, 48 Stat. 80; Pub. L. 85-791, §9, Aug. 28, 1958, 72 Stat. 945; Pub. L. 100-181, title II, §206, Dec. 4, 1987, 101 Stat. 1252.)

## EDITORIAL NOTES

### AMENDMENTS

**1987**—Subsec. (a). Pub. L. 100-181 substituted "court of appeals" for "Circuit Court of Appeals", "United States Court of Appeals for the District of Columbia, by filing in such Court" for "Court of Appeals of the District of Columbia, by filing in such court", and "section 1254 of title 28" for "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)".

**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".

## 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.

## §77j. Information required in prospectus

### (a) Information in registration statement; documents not required

Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e)—

(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A of section 77aa of this title;

(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include

the documents referred to in paragraphs (13) and (14) of schedule B of section 77aa of this title;

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

(4) there may be omitted from any prospectus any of the information required under this subsection which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

**(b) Summarizations and omissions allowed by rules and regulations**

In addition to the prospectus permitted or required in subsection (a), the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 77e of this title which omits in part or summarizes information in the prospectus specified in subsection (a). A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 77k of this title. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection, if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

**(c) Additional information required by rules and regulations**

Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

**(d) Classification of prospectuses**

In the exercise of its powers under subsections (a), (b), or (c), the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

**(e) Information in conspicuous part of prospectus**

The statements or information required to be included in a prospectus by or under authority of subsections (a), (b), (c), or (d), when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

**(f) Prospectus consisting of radio or television broadcast**

In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this subchapter.

(May 27, 1933, ch. 38, title I, §10, 48 Stat. 81; June 6, 1934, ch. 404, title II, §205, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, §8, 68 Stat. 685.)

## EDITORIAL NOTES

### AMENDMENTS

**1954**—Act Aug. 10, 1954, complemented changes in section 77e of this title by act Aug. 10, 1954, permitted offering activities in the waiting period and in so doing rearranged the sequence of the subsections, added new text contained in subsec. (b), and renumbered subsecs. (c) and (d) as (e) and (f), respectively.

**1934**—Subsec. (b)(1). Act June 6, 1934, amended par. (1).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 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.

## **§77k. Civil liabilities on account of false registration statement**

### **(a) Persons possessing cause of action; persons liable**

In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions) or partner in the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

### **(b) Persons exempt from liability upon proof of issues**

Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as



provided therein who shall sustain the burden of proof—

(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1) of this subsection, and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3) that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

**(c) Standard of reasonableness**

In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

**(d) Effective date of registration statement with regard to underwriters**

If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

**(e) Measure of damages; undertaking for payment of costs**

The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided*, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this subchapter the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

**(f) Joint and several liability; liability of outside director**

(1) Except as provided in paragraph (2), all or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(2)(A) The liability of an outside director under subsection (e) shall be determined in accordance with section 78u-4(f) of this title.

(B) For purposes of this paragraph, the term "outside director" shall have the meaning given such term by rule or regulation of the Commission.

**(g) Offering price to public as maximum amount recoverable**

In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

(May 27, 1933, ch. 38, title I, §11, 48 Stat. 82; June 6, 1934, ch. 404, title II, §206, 48 Stat. 907; Pub. L. 104-67, title II, §201(b), Dec. 22, 1995, 109 Stat. 762; Pub. L. 105-353, title III, §301(a)(2), Nov. 3, 1998, 112 Stat. 3235.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1998**—Subsec. (f)(2)(A). Pub. L. 105-353 made technical amendment to reference in original act which appears in text as reference to section 78u-4(f) of this title.

**1995**—Subsec. (f). Pub. L. 104-67 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), all" for "All", and added par. (2).

**1934**—Subsec. (a). Act June 6, 1934, inserted last par.

Subsecs. (b)(3), (c) to (e). Act June 6, 1934, amended subsecs. (b)(3) and (c) to (e).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-67, title II, §202, Dec. 22, 1995, 109 Stat. 762, provided that: "The amendments made by this title [amending this section and section 78u-4 of this title] shall not affect or apply to any private action arising under the securities laws commenced before and pending on the date of enactment of this Act [Dec. 22, 1995]."

### 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 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 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.

## **§77l. Civil liabilities arising in connection with prospectuses and communications**

### **(a) In general**

Any person who—

- (1) offers or sells a security in violation of section 77e of this title, or
- (2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

### **(b) Loss causation**

In an action described in subsection (a)(2), if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.

(May 27, 1933, ch. 38, title I, §12, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, §9, 68 Stat. 686; Pub. L. 104-67, title I, §105, Dec. 22, 1995, 109 Stat. 757; Pub. L. 106-554, §1(a)(5) [title II, §208(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435.)

## EDITORIAL NOTES

### AMENDMENTS

**2000**—Subsec. (a)(2). Pub. L. 106–554 substituted "paragraphs (2) and (14)" for "paragraph (2)".

**1995**—Pub. L. 104–67 designated existing provisions as subsec. (a), inserted heading, inserted ", subject to subsection (b)," after "shall be liable" in concluding provisions, and added subsec. (b).

**1954**—Act Aug. 10, 1954, inserted "offers or" before "sells" in pars. (1) and (2).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1995 AMENDMENT**

Pub. L. 104–67, title I, §108, Dec. 22, 1995, 109 Stat. 758, provided that: "The amendments made by this title [enacting sections 77z–1, 77z–2, 78u–4, and 78u–5 of this title and amending this section and sections 77t, 78o, 78t, and 78u of this title and section 1964 of Title 18, Crimes and Criminal Procedure] shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or title I of the Securities Act of 1933 [15 U.S.C. 77a et seq.], commenced before and pending on the date of enactment of this Act [Dec. 22, 1995]."

### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b 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 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of this title.

## **§77m. Limitation of actions**

No action shall be maintained to enforce any liability created under section 77k or 77l(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77l(a)(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 77k or 77l(a)(1) of this title more than three years after the security was bona fide offered to the public, or under section 77l(a)(2) of this title more than three years after the sale.

(May 27, 1933, ch. 38, title I, §13, 48 Stat. 84; June 6, 1934, ch. 404, title II, §207, 48 Stat. 908; Pub. L. 105–353, title III, §301(a)(3), Nov. 3, 1998, 112 Stat. 3235.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1998**—Pub. L. 105–353 substituted "77l(a)(2)" for "77l(2)" in two places and "77l(a)(1)" for "77l(1)" in two places.

**1934**—Act June 6, 1934, substituted "one year" for "two years", "three years" for "ten years", and inserted "or under section 77l(2) of this title more than three years after the sale".

## **§77n. Contrary stipulations void**

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this subchapter or of the rules and regulations of the Commission shall be void.

(May 27, 1933, ch. 38, title I, §14, 48 Stat. 84.)

## 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.

### **§77o. Liability of controlling persons**

#### **(a) Controlling persons**

Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77l of this title, 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, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

#### **(b) Prosecution of persons who aid and abet violations**

For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 77t 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.

(May 27, 1933, ch. 38, title I, §15, 48 Stat. 84; June 6, 1934, ch. 404, title II, §208, 48 Stat. 908; Pub. L. 111–203, title IX, §929M(a), July 21, 2010, 124 Stat. 1861.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Pub. L. 111–203 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

**1934**—Act June 6, 1934, exempted from liability controlling persons having no knowledge or reasonable grounds for belief.

## 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.

### **§77p. Additional remedies; limitation on remedies**

#### **(a) Remedies additional**

Except as provided in subsection (b), the rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

#### **(b) 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—

(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

**(c) Removal of covered class actions**

Any covered class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

**(d) Preservation of certain actions**

**(1) Actions under State law of State of incorporation**

**(A) Actions preserved**

Notwithstanding subsection (b) or (c), a covered class action described in subparagraph (B) of this paragraph 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.

**(B) Permissible actions**

A covered class action is described in this subparagraph 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 the issuer that—

(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(II) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

**(2) State actions**

**(A) In general**

Notwithstanding any other provision of this section, nothing in this section 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.

**(B) "State pension plan" defined**

For purposes of this paragraph, the term "State pension plan" means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

**(3) Actions under contractual agreements between issuers and indenture trustees**

Notwithstanding subsection (b) or (c), 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.

**(4) Remand of removed actions**

In an action that has been removed from a State court pursuant to subsection (c), 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.

**(e) 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.

**(f) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) 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.

**(2) Covered class action**

**(A) In general**

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.

**(B) Exception for derivative actions**

Notwithstanding subparagraph (A), the term "covered class action" does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

**(C) 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.

**(D) 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.

**(3) 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 77r(b) of this title 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 this subchapter pursuant to rules issued by the Commission under section 77d(2) <sup>1</sup> of this title.

(May 27, 1933, ch. 38, title I, §16, 48 Stat. 84; Pub. L. 105–353, title I, §101(a)(1), Nov. 3, 1998, 112 Stat. 3227.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 77d(2) of this title, referred to in subsec. (f)(3), was redesignated section 77d(a)(2) of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

## AMENDMENTS

**1998**—Pub. L. 105–353 amended section catchline and text generally. Prior to amendment, text read as follows: "The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity."

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–353, title I, §101(c), Nov. 3, 1998, 112 Stat. 3233, provided that: "The amendments made by this section [amending this section and sections 77v, 77z–1, 78u–4, and 78bb of this title] shall not affect or apply to any action commenced before and pending on the date of enactment of this Act [Nov. 3, 1998]."

<sup>1</sup> [\*See References in Text note below.\*](#)

## §77q. Fraudulent interstate transactions

### (a) Use of interstate commerce for purpose of fraud or deceit

It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) <sup>1</sup> of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

- (1) to employ any device, scheme, or artifice to defraud, or
- (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

### (b) Use of interstate commerce for purpose of offering for sale

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

### (c) Exemptions of section 77c not applicable to this section

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

### (d) Authority with respect to security-based swap agreements

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 78c(a)(78) of this title) shall be subject to the restrictions and limitations of section 77b–1(b) of this title.

(May 27, 1933, ch. 38, title I, §17, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, §10, 68 Stat. 686; Pub. L. 106–554, §1(a)(5) [title III, §302(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–452; Pub. L. 111–203, title VII, §762(c)(2), July 21, 2010, 124 Stat. 1759.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 78c(a)(78) of this title, referred to in subsec. (a), was in the original "section 3(a)(78) of the



Securities Exchange Act", and was translated as meaning section 3(a)(78) of act June 6, 1934, ch. 404, to reflect the probable intent of Congress.

#### AMENDMENTS

**2010**—Subsec. (a). Pub. L. 111–203, §762(c)(2)(A), in introductory provisions, inserted "(including security-based swaps)" after "securities" and substituted "(as defined in section 78c(a)(78) of this title)" for "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

Subsec. (d). Pub. L. 111–203, §762(c)(2)(B), substituted "78c(a)(78) of this title" for "206B of the Gramm-Leach-Bliley Act".

**2000**—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title III, §302(b)], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Subsec. (d). Pub. L. 106–554, §1(a)(5) [title III, §302(c)], added subsec. (d).

**1954**—Subsec. (a). Act Aug. 10, 1954, inserted "offer or" before "sale" in introductory text.

#### 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 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

<sup>1</sup> [\*See References in Text note below.\*](#)

### §77r. Exemption from State regulation of securities offerings

#### (a) Scope of exemption

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o–3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

**(b) Covered securities**

For purposes of this section, the following are covered securities:

**(1) Exclusive Federal registration of nationally traded securities**

A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

**(2) Exclusive Federal registration of investment companies**

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

**(3) Sales to qualified purchasers**

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

**(4) Exemption in connection with certain exempt offerings**

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

(A) paragraph (1) or (3) of section 77d <sup>1</sup> of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;

(B) section 77d(4) <sup>1</sup> of this title;

(C) section 77d(6) <sup>1</sup> of this title;

(D) a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 77d(2) <sup>1</sup> of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2) <sup>1</sup> of this title that are in effect on September 1, 1996; or

(G) section 77d(a)(7) of this title.

**(c) Preservation of authority**

**(1) Fraud authority**

Consistent with this section, 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, in connection with securities or securities transactions <sup>2</sup>

(A) with respect to—

- (i) fraud or deceit; or
- (ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to <sup>3</sup> a transaction described under section 77d(6) <sup>1</sup> of this title, with respect to—

- (i) fraud or deceit; or
- (ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

## **(2) Preservation of filing requirements**

### **(A) Notice filings permitted**

Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

### **(B) Preservation of fees**

#### **(i) In general**

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

#### **(ii) Schedule**

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

### **(C) Availability of preemption contingent on payment of fees**

#### **(i) In general**

During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

#### **(ii) Delays**

For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

### **(D) Fees not permitted on listed securities**

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

### **(F) <sup>4</sup> Fees not permitted on crowd-funded securities**

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be

such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

### **(3) Enforcement of requirements**

Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

### **(d) Definitions**

For purposes of this section, the following definitions shall apply:

#### **(1) Offering document**

The term "offering document"—

(A) has the meaning given the term "prospectus" in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

#### **(2) Prepared by or on behalf of the issuer**

Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

#### **(3) State**

The term "State" has the same meaning as in section 78c of this title.

#### **(4) Senior security**

The term "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.

(May 27, 1933, ch. 38, title I, §18, 48 Stat. 85; Pub. L. 104–290, title I, §102(a), Oct. 11, 1996, 110 Stat. 3417; Pub. L. 105–353, title III, §§301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub. L. 111–203, title IX, §985(a)(2), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title III, §305(a), (b)(2), (c), (d)(2), title IV, §401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325; Pub. L. 114–94, div. G, title LXXVI, §76001(b), Dec. 4, 2015, 129 Stat. 1789; Pub. L. 115–174, title V, §501, May 24, 2018, 132 Stat. 1361.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Investment Company Act of 1940, referred to in subsec. (b)(2), 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.

Section 77d(1), (2), (3), (4), and (6) of this title, referred to in subsecs. (b)(4)(A) to (C), (E) and (c)(1)(B), were redesignated section 77d(a)(1), (2), (3), (4), and (6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

## **AMENDMENTS**

**2018**—Subsec. (b)(1)(A). Pub. L. 115–174, §501(1), (4), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);".

Subsec. (b)(1)(B). Pub. L. 115–174, §501(4), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 115–174, §501(2), inserted "a security designated as qualified for trading in the national market system pursuant to section 78k–1(a)(2) of this title that is" before "listed" and struck out "that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A)" after "(or tier or segment thereof)".

Subsec. (b)(1)(C). Pub. L. 115–174, §501(4), redesignated subpar. (C) as (B).

Pub. L. 115–174, §501(3), struck out "or (B)" after "described in subparagraph (A)".

**2015**—Subsec. (b)(4)(E). Pub. L. 114–94, §76001(b)(1), which directed amendment of subsec. (b)(4) by redesignating "the second subparagraph (D)" as (E), was executed by making the redesignation for the subpar. (D) relating to section 77c(a) of this title to reflect the probable intent of Congress. Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 114–94, §76001(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(4)(G). Pub. L. 114–94, §76001(b)(2)–(4), added subpar. (G).

**2012**—Subsec. (b)(4)(C). Pub. L. 112–106, §305(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(4)(D). Pub. L. 112–106, §401(b), added subpar. (D) relating to section 77c(b)(2) of this title.

Pub. L. 112–106, §305(a)(1), redesignated subpar. (C), relating to section 77c(a) of this title, as (D). Former subpar (D) redesignated (E).

Subsec. (b)(4)(E). Pub. L. 112–106, §305(a)(1), redesignated subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 112–106, §305(b)(2), substituted ", in connection with securities or securities transactions" for "with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." and added subpars. (A) and (B).

Subsec. (c)(1)(A)(ii). Pub. L. 112–106, §305(d)(2), which directed amendment of subsec. (c)(1) by substituting ", dealer, or funding portal" for "or dealer", was executed by making the substitution in subpar. (A)(ii) as added by Pub. L. 112–106, §305(b)(2).

Subsec. (c)(2)(F). Pub. L. 112–106, §305(c), added subpar. (F).

**2010**—Subsec. (b)(1)(C). Pub. L. 111–203, §985(a)(2)(A), substituted "(C) a security" for "(C) is a security".

Subsec. (c)(2)(B)(i). Pub. L. 111–203, §985(a)(2)(B), substituted "State or" for "State, or".

**1998**—Subsec. (b)(1)(A). Pub. L. 105–353, §301(a)(4)(A), inserted ", or authorized for listing," after "Exchange, or listed".

Subsec. (b)(4)(C). Pub. L. 105–353, §302, substituted "paragraph (4), (10), or (11)" for "paragraph (4) or (11)".

Subsec. (c)(2)(B)(i), (C)(i). Pub. L. 105–353, §301(a)(4)(B), (C), made technical amendments to references in original act which appear in text as references to October 11, 1996.

Subsec. (d)(1)(A). Pub. L. 105–353, §301(a)(4)(D), substituted "section 77b(a)(10)" for "section 77b(10)" and "subparagraphs (a) and (b)" for "subparagraphs (A) and (B)".

Subsec. (d)(2). Pub. L. 105–353, §301(a)(4)(E), made technical amendment to reference in original act which appears in text as reference to October 11, 1996.

Subsec. (d)(4). Pub. L. 105–353, §301(a)(4)(F), substituted "The term" for "For purposes of this paragraph, the term".

**1996**—Pub. L. 104–290 substituted "Exemption from State regulation of securities offerings" for "State control of securities" as section catchline and amended text generally. Prior to amendment, text read as follows: "Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person."

## 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.

### CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY

Pub. L. 112–106, title III, §305(b)(1), Apr. 5, 2012, 126 Stat. 322, provided that: The amendments made by subsection (a) [amending this section] relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of [the] Securities Act of 1933 (15 U.S.C. 77r(a)), and shall

have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) [probably means "section 4(a)(6)"] of that Act [15 U.S.C. 77d(a)(6)]."

## **STUDY AND REPORT ON UNIFORMITY OF STATE REGULATORY REQUIREMENTS**

Pub. L. 104–290, title I, §102(b), Oct. 11, 1996, 110 Stat. 3420, provided that: "The Commission shall conduct a study, after consultation with States, issuers, brokers, and dealers, on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933 [15 U.S.C. 77r], as amended by paragraph (1) of this subsection). Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of such study."

## **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.

<sup>1</sup> *See References in Text note below.*

<sup>2</sup> *So in original. The comma after "enforcement actions" probably should be a hyphen and the words "in connection with securities or securities transactions" probably should be part of subpar. (A).*

<sup>3</sup> *So in original. Probably should be "with".*

<sup>4</sup> *So in original. No subpar. (E) has been enacted.*

## **§77r–1. Preemption of State law**

### **(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States**

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

- (A) offered and sold pursuant to section 77d(5) <sup>1</sup> of this title,
- (B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),
- (C) small business related securities (as defined in section 78c(a)(53) of this title), or
- (D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

- (A) offered and sold pursuant to section 77d(5) <sup>1</sup> of this title,
- (B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),
- (C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

**(b) Exception; validity of contracts under prior law**

The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after October 3, 1984, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

**(c) Registration and qualification requirements; exemption; subsequent enactment by State**

Any securities that are offered and sold pursuant to section 77d(5) <sup>1</sup> of this title, that are mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or that are small business related securities (as defined in section 78c(a)(53) of this title) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after October 3, 1984, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

**(d) Implementation**

**(1) Limitation**

The provisions of subsections (a) and (b) concerning small business related securities shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of 7 years after September 23, 1994, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

**(2) State registration or qualification requirements**

Any State may, not later than 7 years after September 23, 1994, enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.

(Pub. L. 98-440, title I, §106, Oct. 3, 1984, 98 Stat. 1691; Pub. L. 103-325, title II, §207, Sept. 23, 1994, 108 Stat. 2199.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 77d(5) of this title, referred to in subsecs. (a)(1)(A), (2)(A) and (c), was redesignated section 77d(a)(5) of this title by Pub. L. 112-106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.



## CODIFICATION

Section was enacted as part of the Secondary Mortgage Market Enhancement Act of 1984, and not as part of the Securities Act of 1933, which comprises this subchapter.

## AMENDMENTS

**1994**—Subsec. (a)(1)(B) to (D). Pub. L. 103–325, §207(a), struck out "or" at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (a)(2)(B) to (D). Pub. L. 103–325, §207(b), struck out "or" at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c). Pub. L. 103–325, §207(c), in first sentence substituted ", that" for "or that" before "are mortgage related securities" and inserted ", or that are small business related securities (as defined in section 78c(a)(53) of this title)" before "shall be exempt".

Subsec. (d). Pub. L. 103–325, §207(d), added subsec. (d).

<sup>1</sup> [\*See References in Text note below.\*](#)

## §77s. Special powers of Commission

### (a) Rules and regulations

The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

### (b) Recognition of accounting standards

#### (1) In general

In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], the Commission may recognize, as "generally accepted" for purposes of the securities laws, any accounting principles established by a standard setting body—

(A) that—

(i) is organized as a private entity;

(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

(iii) is funded as provided in section 7219 of this title;

(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and



(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

## **(2) Annual report**

A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.

## **(c) Production of evidence**

For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this subchapter, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

## **(d) Federal and State cooperation**

(1) The Commission is authorized to cooperate with any association composed of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission, could assist in effectuating greater uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an association for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

(2) It is the declared policy of this subsection that there should be greater Federal and State cooperation in securities matters, including—

- (A) maximum effectiveness of regulation,
- (B) maximum uniformity in Federal and State regulatory standards,
- (C) minimum interference with the business of capital formation, and
- (D) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital (particularly by small business) and to diminish the costs of the administration of the Government programs involved.

(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas:

- (A) the sharing of information regarding the registration or exemption of securities issues applied for in the various States;
- (B) the development and maintenance of uniform securities forms and procedures; and
- (C) the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government. The Commission shall have the authority to adopt such an exemption as agreed upon for Federal purposes. Nothing in this chapter shall be construed as authorizing preemption of State law.

(4) In order to carry out these policies and purposes, the Commission shall conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private

organizations involved in capital formation shall be invited to participate.

(5) For fiscal year 1982, and for each of the three succeeding fiscal years, there are authorized to be appropriated such amounts as may be necessary and appropriate to carry out the policies, provisions, and purposes of this subsection. Any sums so appropriated shall remain available until expended.

(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or by chapter 5 of title 5, in connection with cooperation, coordination, or consultation with—

(A) any association referred to in paragraph (1) or (3) or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

(B) any forum, agency, or organization, or group referred to in section 80c-1 of this title, while such forum, agency, organization, or group is carrying out activities in furtherance of the provisions of such section 80c-1.

As used in this paragraph, the terms "association", "conference", "meeting", "forum", "agency", "organization", and "group" include any committee, subgroup, or representative of such entities.

#### **(e) Evaluation of rules or programs**

For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

(1) gather information from and communicate with investors or other members of the public;

(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

(3) consult with academics and consultants, as necessary to carry out this subsection.

#### **(f) Rule of construction**

For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.

#### **(g) Funding for the GASB**

##### **(1) In general**

The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4), require a national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] to establish—

(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the "GASB"); and

(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

##### **(2) Annual budget**

For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

##### **(3) Use of funds**

Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

#### **(4) Limitation on fee**

The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

#### **(5) Rules of construction**

##### **(A) Fees not public monies**

Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

##### **(B) Limitation on authority of the Commission**

Nothing in this subsection shall be construed to—

- (i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or
- (ii) affect the setting of generally accepted accounting principles by the GASB.

##### **(C) Noninterference with States**

Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.

(May 27, 1933, ch. 38, title I, §19, 48 Stat. 85; June 6, 1934, ch. 404, title II, §209, 48 Stat. 908; Pub. L. 94–210, title III, §308(a)(2), Feb. 5, 1976, 90 Stat. 57; Pub. L. 96–477, title V, §505, Oct. 21, 1980, 94 Stat. 2292; Pub. L. 100–181, title II, §207, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 107–204, title I, §108(a), July 30, 2002, 116 Stat. 768; Pub. L. 111–203, title IX, §§912, 978(a), 985(a)(3), July 21, 2010, 124 Stat. 1824, 1924, 1933.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The Paperwork Reduction Act, referred to in subsec. (f), probably means chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents. See Short Title note set out under section 3501 of Title 44.

The Securities Exchange Act of 1934, referred to in subsec. (g)(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**

**2010**—Subsec. (d)(6)(A). Pub. L. 111–203, §985(a)(3), which directed substitution of "in paragraph (1) or (3)" for "in paragraph (1) of (3)", could not be executed because the phrase "in paragraph (1) of (3)" did not appear.

Subsecs. (e), (f). Pub. L. 111–203, §912, added subsecs. (e) and (f).

Subsec. (g). Pub. L. 111–203, §978(a), added subsec. (g).

**2002**—Subsecs. (b) to (d). Pub. L. 107–204 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

**1987**—Subsec. (c)(6). Pub. L. 100–181 added par. (6).

**1980**—Subsec. (c). Pub. L. 96–477 added subsec. (c).

**1976**—Subsec. (a). Pub. L. 94–210 struck out provisions relating to rules and regulations applicable to any common carrier subject to the provisions of section 20 of title 49.

**1934**—Subsec. (a). Act June 6, 1934, inserted "technical" in first sentence and inserted last sentence.

### **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. 96-477 effective Jan. 1, 1981, see section 507 of Pub. L. 96-477, set out as an Effective Date note under section 80c of this title.

### **EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-210 effective on 60th day after Feb. 5, 1976, but not applicable to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day, see section 308(d)(1) of Pub. L. 94-210, set out as a note under section 77c of this title.

### **PARITY FOR REGISTERED INDEX-LINKED ANNUITIES REGARDING REGISTRATION RULES**

Pub. L. 117-328, div. AA, title I, §101, Dec. 29, 2022, 136 Stat. 5528, provided that:

"(a) DEFINITIONS.—In this section:

"(1) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(2) INVESTMENT COMPANY.—The term 'investment company' has the meaning given the term in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

"(3) MARKET VALUE ADJUSTMENT.—The term 'market value adjustment' means, with respect to a registered index-linked annuity, after an early withdrawal or contract discontinuance—

"(A) an adjustment to the value of that annuity based on calculations using a predetermined formula; or

"(B) a change in interest rates (or other factor, as determined by the Commission) that apply to that annuity.

"(4) PURCHASER.—The term 'purchaser' means a purchaser of a registered index-linked annuity.

"(5) REGISTERED INDEX-LINKED ANNUITY.—The term 'registered index-linked annuity' means an annuity—

"(A) that is deemed to be a security;

"(B) that is registered with the Commission in accordance with section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

"(C) that is issued by an insurance company that is subject to the supervision of—

"(i) the insurance commissioner or bank commissioner of any State; or

"(ii) any agency or officer performing like functions as a commissioner described in clause

(i);

"(D) that is not issued by an investment company; and

"(E) the returns of which—

"(i) are based on the performance of a specified benchmark index or rate (or a registered exchange traded fund that seeks to track the performance of a specified benchmark index or rate); and

"(ii) may be subject to a market value adjustment if amounts are withdrawn before the end of the period during which that market value adjustment applies.

"(6) SECURITY.—The term 'security' has the meaning given the term in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

"(b) RULES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 29, 2022], the Commission shall propose, and, not later than 18 months after the date of enactment of this Act, the Commission shall prepare and finalize, new or amended rules, as appropriate, to establish a new form in accordance with paragraph (2) on which an issuer of a registered index-linked annuity may register that registered index-linked annuity, subject to conditions the Commission determines appropriate, which may include requiring the issuer to take the steps described in section 240.12h-7(e) of title 17, Code of Federal Regulations, or any successor regulation, with respect to the registered index-linked annuity.

"(2) DESIGN OF FORM.—In developing the form required to be established under paragraph (1), the Commission shall—

"(A) design the form to ensure that a purchaser using the form receives the information necessary to make knowledgeable decisions, taking into account—

"(i) the availability of information;

"(ii) the knowledge and sophistication of that class of purchasers;

"(iii) the complexity of the registered index-linked annuity; and

"(iv) any other factor the Commission determines appropriate;

"(B) engage in investor testing; and

"(C) incorporate the results of the testing required under subparagraph (B) in the design of the form, with the goal of ensuring that key information is conveyed in terms that a purchaser is able to

understand.

"(c) TREATMENT IF RULES NOT PREPARED AND FINALIZED IN A TIMELY MANNER.—

"(1) IN GENERAL.—If, as of the date that is 18 months after the date of enactment of this Act, the Commission has failed to prepare and finalize the rules required under subsection (b)(1), any registered index-linked annuity may be registered on the form described in section 239.17b of title 17, Code of Federal Regulations, or any successor regulation.

"(2) PREPARATION.—A registration described in paragraph (1) shall be prepared pursuant to applicable provisions of the form described in that paragraph.

"(3) TERMINATION.—This subsection shall terminate upon the establishment by the Commission of the form described in subsection (b).

"(d) RULES OF CONSTRUCTION.—Nothing in this section may be construed to—

"(1) limit the authority of the Commission to—

"(A) determine the information to be requested in the form described in subsection (b); or

"(B) extend the eligibility for the form described in subsection (b) to a product that is similar to, but is not, a registered index-linked annuity; or

"(2) preempt any State law, regulation, rule, or order."

### **STUDY ON MODERNIZATION AND SIMPLIFICATION OF REGULATION S–K**

Pub. L. 114–94, div. G, title LXXII, §72003, Dec. 4, 2015, 129 Stat. 1785, provided that:

"(a) STUDY.—The Securities and Exchange Commission shall carry out a study of the requirements contained in regulation S–K (17 CFR 229.10 et seq.). Such study shall—

"(1) determine how best to modernize and simplify such requirements in a manner that reduces the costs and burdens on issuers while still providing all material information;

"(2) emphasize a company by company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across registrants; and

"(3) evaluate methods of information delivery and presentation and explore methods for discouraging repetition and the disclosure of immaterial information.

"(b) CONSULTATION.—In conducting the study required under subsection (a), the Commission shall consult with the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies.

"(c) REPORT.—Not later than the end of the 360-day period beginning on the date of enactment of this Act [Dec. 4, 2015], the Commission shall issue a report to the Congress containing—

"(1) all findings and determinations made in carrying out the study required under subsection (a);

"(2) specific and detailed recommendations on modernizing and simplifying the requirements in regulation S–K in a manner that reduces the costs and burdens on companies while still providing all material information; and

"(3) specific and detailed recommendations on ways to improve the readability and navigability of disclosure documents and to discourage repetition and the disclosure of immaterial information.

"(d) RULEMAKING.—Not later than the end of the 360-day period beginning on the date that the report is issued to the Congress under subsection (c), the Commission shall issue a proposed rule to implement the recommendations of the report issued under subsection (c).

"(e) RULE OF CONSTRUCTION.—Revisions made to regulation S–K by the Commission under section 202 [probably means section 72002 of Pub. L. 114–94, set out as a note under section 77g of this title] shall not be construed as satisfying the rulemaking requirements under 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.

## **§77t. Injunctions and prosecution of offenses**

### **(a) Investigation of violations**

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 authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

**(b) Action for injunction or criminal prosecution in district court**

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, 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 to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

**(c) Writ of mandamus**

Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

**(d) 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 77h-1 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 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 77v of this title, actions under this section 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 77h-1 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 such an order, each day of the failure to comply with the order shall be deemed a separate offense.

**(e) Authority of court to prohibit persons from serving as officers and directors**

In any proceeding under subsection (b), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 77q(a)(1) of this title 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.

**(f) 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 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.

**(g) Authority of a court to prohibit persons from participating in an offering of penny stock**

**(1) In general**

In any proceeding under subsection (a) 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.

**(2) Definition**

For purposes of this subsection, 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.

(May 27, 1933, ch. 38, title I, §20, 48 Stat. 86; Pub. L. 100–181, title II, §208, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 101–429, title I, §101, Oct. 15, 1990, 104 Stat. 932; Pub. L. 104–67, title I, §103(b)(1), Dec. 22, 1995, 109 Stat. 756; Pub. L. 107–204, title III, §§305(a)(2), 308(d)(3), title VI, §603(b), July 30, 2002, 116 Stat. 779, 785, 795; Pub. L. 111–203, title IX, §923(a)(1), July 21, 2010, 124 Stat. 1849.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsec. (d)(3)(A). Pub. L. 111–203 inserted "and section 78u–6 of this title" after "section 7246 of this title".

**2002**—Subsec. (d)(3)(A). Pub. L. 107–204, §308(d)(3), inserted ", except as otherwise provided in section 7246 of this title" before period at end.

Subsec. (e). Pub. L. 107–204, §305(a)(2), substituted "unfitness" for "substantial unfitness".

Subsec. (g). Pub. L. 107–204, §603(b), added subsec. (g).

**1995**—Subsec. (f). Pub. L. 104–67 added subsec. (f).

**1990**—Subsecs. (d), (e). Pub. L. 101–429 added subsecs. (d) and (e).

**1987**—Subsec. (b). Pub. L. 100–181, §208(a), inserted first sentence and struck out former first sentence containing similar provisions.

Subsec. (c). Pub. L. 100–181, §208(b), amended subsec. (c) generally.

## **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 1995 AMENDMENT**

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a 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) and (2) of Pub. L. 101–429, set out in a note under section 77g 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 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 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.

## **§77u. Hearings by Commission**

All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.



(May 27, 1933, ch. 38, title I, §21, 48 Stat. 86.)

## 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.

### **§77v. Jurisdiction of offenses and suits**

#### **(a) Federal and State courts; venue; service of process; review; removal; costs**

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, 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 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. Except as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

#### **(b) Contumacy or refusal to obey subpoena; contempt**

In case of contumacy or refusal to obey a subpoena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

#### **(c) 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 77q(a) of this title 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.

(May 27, 1933, ch. 38, title I, §22, 48 Stat. 86; 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; Aug. 10, 1954, ch. 667, title I, §11, 68 Stat. 686; Pub. L. 91-452, title II, §213, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title

II, §209, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 105–353, title I, §101(a)(3), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 111–203, title IX, §§929E(a), 929P(b)(1), July 21, 2010, 124 Stat. 1853, 1864.)

## **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.

### **CODIFICATION**

As originally enacted subsec. (a) 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 reference 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**—Subsec. (a). Pub. L. 111–203, §929E(a), inserted after second sentence "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."

Subsec. (c). Pub. L. 111–203, §929P(b)(1), added subsec. (c).

**1998**—Subsec. (a). Pub. L. 105–353 inserted "except as provided in section 77p of this title with respect to covered class actions," after "Territorial courts," in first sentence and substituted "Except as provided in section 77p(c) of this title, no case" for "No case" in penultimate sentence.

**1987**—Subsec. (a). Pub. L. 100–181 substituted "United States and" for "United States, the", struck out ", and the United States District Court for the District of Columbia" after "Territory", 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.

**1970**—Subsec. (c). Pub. L. 91–452 struck out subsec. (c) 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.

**1954**—Subsec. (a). Act Aug. 10, 1954, inserted "offer or" before "sale" in second sentence.

## **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 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 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.

### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this

title.

### **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.

### **§77w. Unlawful representations**

Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made to any prospective purchaser any representation contrary to the foregoing provisions of this section.

(May 27, 1933, ch. 38, title I, §23, 48 Stat. 87.)

### **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.

### **§77x. Penalties**

Any person who willfully violates any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this subchapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title I, §24, 48 Stat. 87; Pub. L. 94-29, §27(a), June 4, 1975, 89 Stat. 163.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1975**—Pub. L. 94-29 substituted "\$10,000" for "\$5,000".

### **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.

### **§77y. Jurisdiction of other Government agencies over securities**

Nothing in this subchapter shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that may be required by any provision of law.

(May 27, 1933, ch. 38, title I, §25, 48 Stat. 87.)

### **§77z. Separability**

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(May 27, 1933, ch. 38, title I, §26, 48 Stat. 88.)

### **§77z–1. Private securities litigation**

#### **(a) Private class actions**

##### **(1) In general**

The provisions of this subsection shall apply to each private action arising under this subchapter 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 subchapter;
- (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 subchapter, 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, or served, 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 subchapter 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 subchapter 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 subparagraph.

##### **(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 subchapter 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 the 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 subchapter, 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 subchapter, 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.

**(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) 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) Stay of discovery; preservation of evidence**

**(1) In general**

In any private action arising under this subchapter, 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.

**(2) Preservation of evidence**

During the pendency of any stay of discovery pursuant to this subsection, 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.

**(3) Sanction for willful violation**

A party aggrieved by the willful failure of an opposing party to comply with paragraph (2) may apply to the court for an order awarding appropriate sanctions.

**(4) 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 subsection.

**(c) Sanctions for abusive litigation**

**(1) Mandatory review by court**

In any private action arising under this subchapter, 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 subchapter in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, 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.

(May 27, 1933, ch. 38, title I, §27, as added Pub. L. 104–67, title I, §101(a), Dec. 22, 1995, 109 Stat. 737; amended Pub. L. 105–353, title I, §101(a)(2), title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3230, 3235.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in subsecs. (a)(1), (3)(A)(iii), (B)(iii)(I)(cc), (vi), (b)(2), and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.



## AMENDMENTS

**1998**—Pub. L. 105–353, §301(a)(5), made technical correction relating to placement of section in subchapter.

Subsec. (b)(4). Pub. L. 105–353, §101(a)(2), added par. (4).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(a)(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

Section not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a 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 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a note under section 78j–1 of this title.

## §77z–2. 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) 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 the 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 rollout 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 subchapter 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, 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) 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 could 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 differ materially 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 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 subchapter, 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 subchapter, 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) Penny stock**

The term "penny stock" has the same meaning as in section 78c(a)(51) of this title, and the rules and regulations, or orders issued pursuant to that section.

**(4) 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.

**(5) Securities laws**

The term "securities laws" has the same meaning as in section 78c of this title.

**(6) Person acting on behalf of an issuer**

The term "person acting on behalf of an issuer" means an officer, director, or employee of the issuer.

**(7) 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.

(May 27, 1933, ch. 38, title I, §27A, as added Pub. L. 104-67, title I, §102(a), Dec. 22, 1995, 109 Stat. 749; amended Pub. L. 105-353, title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 111-203, title IX, §985(a)(4), July 21, 2010, 124 Stat. 1933.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Subsec. (c)(1)(B)(ii). Pub. L. 111-203 substituted comma for semicolon after "entity" in introductory provisions.

**1998**—Pub. L. 105-353 made technical correction relating to placement of section in subchapter.

**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 not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a 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 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 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a note under section 78j-1 of this title.

**§77z-2a. Conflicts of interest relating to certain securitizations**

**(a) In general**

An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 78c of this title, which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for

a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

**(b) Rulemaking**

Not later than 270 days after July 21, 2010, the Commission shall issue rules for the purpose of implementing subsection (a).

**(c) Exception**

The prohibitions of subsection (a) shall not apply to—

(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or

(2) purchases or sales of asset-backed securities made pursuant to and consistent with—

(A) commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

(B) bona fide market-making in the asset backed security.

**(d) Rule of construction**

This subsection <sup>1</sup> shall not otherwise limit the application of section 78o–11 of this title.

(May 27, 1933, ch. 38, title I, §27B, as added Pub. L. 111–203, title VI, §621(a), July 21, 2010, 124 Stat. 1631.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Pub. L. 111–203, title VI, §621(b), July 21, 2010, 124 Stat. 1632, provided that: "Section 27B of the Securities Act of 1933 [15 U.S.C. 77z–2a], as added by this section, shall take effect on the effective date of final rules issued by the [Securities and Exchange] Commission under subsection (b) of such section 27B, except that subsections (b) and (d) of such section 27B shall take effect on the date of enactment of this Act [July 21, 2010]."

<sup>1</sup> *So in original. Probably should be "section".*

**§77z–3. General exemptive authority**

The Commission, by rule or regulation, 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 issued under this subchapter, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(May 27, 1933, ch. 38, title I, §28, as added Pub. L. 104–290, title I, §105(a), Oct. 11, 1996, 110 Stat. 3424; amended Pub. L. 105–353, title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3235.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1998**—Pub. L. 105–353 made technical correction relating to placement of section in subchapter.

**§77z–4. Data standards**

**(a) Requirement**

The Commission shall, by rule, adopt data standards for all registration statements, and for all prospectuses included in registration statements, required to be filed with the Commission under this subchapter, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

**(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.

(May 27, 1933, ch. 38, title I, §29, as added Pub. L. 117–263, div. E, title LVIII, §5821(e), Dec. 23, 2022, 136 Stat. 3426.)

**EDITORIAL NOTES**

**CODIFICATION**

Section 5821(e) of Pub. L. 117–263 directed that this section be added at the end of title I of the Securities Act of 1933, which is classified to this subchapter. For purposes of codification, however, this section was added after section 77z–3 of this title and before Schedules A and B set out at section 77aa of this title.

**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.

**§77aa. Schedule of information required in registration statement**

**SCHEDULE A**

- (1) The name under which the issuer is doing or intends to do business;
- (2) the name of the State or other sovereign power under which the issuer is organized;
- (3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;
- (4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;
- (5) the names and addresses of the underwriters;
- (6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;
- (7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;
- (8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded \$25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of \$2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of \$20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or, if identical agreements are used, the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;



(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this subchapter, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

## **SCHEDULE B**

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities,

contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

(May 27, 1933, ch. 38, title I, schedules A, B, 48 Stat. 88, 91; Pub. L. 105-353, title III, §301(a)(6), Nov. 3, 1998, 112 Stat. 3235.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1998**—Schedule A, par. (28). Pub. L. 105-353 substituted "identical" for "identic".

## **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.

## **SUBCHAPTER II—FOREIGN SECURITIES**

### **§77bb. "Corporation of Foreign Security Holders"; creation; principal office; branch offices**

For the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default, there is hereby created a body corporate with the name "Corporation of Foreign Security Holders" (herein called the "Corporation"). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

(May 27, 1933, ch. 38, title II, §201, 48 Stat. 92.)

### **§77cc. Directors of Corporation; appointment, term of office, and removal**

The control and management of the Corporation shall be vested in a board of six directors, who shall be appointed and hold office in the following manner: As soon as practicable after the date this chapter takes effect the Federal Trade Commission (hereinafter in this subchapter called "Commission") shall appoint six directors, and shall designate a chairman and a vice chairman from among their number. After the directors designated as chairman and vice chairman cease to be

directors, their successors as chairman and vice chairman shall be elected by the board of directors itself. Of the directors first appointed, two shall continue in office for a term of two years, two for a term of four years, and two for a term of six years, from the date this chapter takes effect, the term of each to be designated by the Commission at the time of appointment. Their successors shall be appointed by the Commission, each for a term of six years from the date of the expiration of the term for which his predecessor was appointed, except that any person 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 unexpired term of such predecessor. No person shall be eligible to serve as a director who within the five years preceding has had any interest, direct or indirect, in any corporation, company, partnership, bank, or association which has sold or offered for sale any foreign securities. The office of a director shall be vacated if the board of directors shall, at a meeting specially convened for that purpose, by resolution passed by a majority of at least two-thirds of the board of directors, remove such member from office, provided that the member whom it is proposed to remove shall have seven days' notice sent to him of such meeting, and that he may be heard.

(May 27, 1933, ch. 38, title II, §202, 48 Stat. 93.)

### **§77dd. Powers and duties of Corporation, generally**

The Corporation shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to require from trustees, financial agents, or dealers in foreign securities information relative to the original or present holders of foreign securities and such other information as may be required, and to issue subpoenas therefor; to take over the functions of any fiscal and paying agents of any foreign securities in default; to borrow money for the purposes of this subchapter, and to pledge as collateral for such loans any securities deposited with the Corporation pursuant to this subchapter; by and with the consent and approval of the Commission to select, employ, and fix the compensation of officers, directors, members of committees, employees, attorneys, and agents of the Corporation, without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, together with provisions for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under this subchapter. The board of directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.

(May 27, 1933, ch. 38, title II, §203, 48 Stat. 93.)

### **§77ee. Directors of Corporation, powers and duties generally**

The board of directors may—

- (1) Convene meetings of holders of foreign securities.
- (2) Invite the deposit and undertake the custody of foreign securities which have defaulted in the payment either of principal or interest, and issue receipts or certificates in the place of securities so deposited.
- (3) Appoint committees from the directors of the Corporation and/or all other persons to represent holders of any class or classes of foreign securities which have defaulted in the payment either of principal or interest and determine and regulate the functions of such committees. The chairman and vice chairman of the board of directors shall be ex officio chairman and vice chairman of each committee.
- (4) Negotiate and carry out, or assist in negotiating and carrying out, arrangements for the

resumption of payments due or in arrears in respect of any foreign securities in default or for rearranging the terms on which such securities may in future be held or for converting and exchanging the same for new securities or for any other object in relation thereto; and under this paragraph any plan or agreement made with respect to such securities shall be binding upon depositors, providing that the consent of holders resident in the United States of 60 per centum of the securities deposited with the Corporation shall be obtained.

(5) Undertake, superintend, or take part in the collection and application of funds derived from foreign securities which come into the possession of or under the control or management of the Corporation.

(6) Collect, preserve, publish, circulate, and render available in readily accessible form, when deemed essential or necessary, documents, statistics, reports, and information of all kinds in respect of foreign securities, including particularly records of foreign external securities in default and records of the progress made toward the payment of past-due obligations.

(7) Take such steps as it may deem expedient with the view of securing the adoption of clear and simple forms of foreign securities and just and sound principles in the conditions and terms thereof.

(8) Generally, act in the name and on behalf of the holders of foreign securities the care or representation of whose interests may be entrusted to the Corporation; conserve and protect the rights and interests of holders of foreign securities issued, sold, or owned in the United States; adopt measures for the protection, vindication, and preservation or reservation of the rights and interests of holders of foreign securities either on any default in or on breach or contemplated breach of the conditions on which such foreign securities may have been issued, or otherwise; obtain for such holders such legal and other assistance and advice as the board of directors may deem expedient; and do all such other things as are incident or conducive to the attainment of the above objects.

(May 27, 1933, ch. 38, title II, §204, 48 Stat. 94.)

#### **§77ff. Accounts and annual balance sheet of Corporation; audits**

The board of directors shall cause accounts to be kept of all matters relating to or connected with the transactions and business of the Corporation, and cause a general account and balance sheet of the Corporation to be made out in each year, and cause all accounts to be audited by one or more auditors who shall examine the same and report thereon to the board of directors.

(May 27, 1933, ch. 38, title II, §205, 48 Stat. 94.)

#### **§77gg. Annual report by Corporation; printing and distribution**

The Corporation shall make, print, and make public an annual report of its operations during each year, send a copy thereof, together with a copy of the account and balance sheet and auditor's report, to the Commission and to both Houses of Congress, and provide one copy of such report but not more than one on the application of any person and on receipt of a sum not exceeding \$1: *Provided*, That the board of directors in its discretion may distribute copies gratuitously.

(May 27, 1933, ch. 38, title II, §206, 48 Stat. 95.)

#### **§77hh. Assessments by Corporation on holders of foreign securities**

The Corporation may in its discretion levy charges, assessed on a pro rata basis, on the holders of foreign securities deposited with it: *Provided*, That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 per centum of the face value of such

securities: *Provided further*, That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 77dd and 77ee of this title and shall not exceed 1 per centum of the face value of such securities.

(May 27, 1933, ch. 38, title II, §207, 48 Stat. 95.)

### **§77ii. Subscriptions accepted by Corporation as loans; repayment**

The Corporation may receive subscriptions from any person, foundation with a public purpose, or agency of the United States Government, and such subscriptions may, in the discretion of the board of directors, be treated as loans repayable when and as the board of directors shall determine.

(May 27, 1933, ch. 38, title II, §208, 48 Stat. 95.)

### **§77jj. Loans to Corporation from Reconstruction Finance Corporation authorized**

The Reconstruction Finance Corporation is authorized to loan out of its funds not to exceed \$75,000 for the use of the Corporation.

(May 27, 1933, ch. 38, title II, §209, 48 Stat. 95.)

## **EXECUTIVE DOCUMENTS**

### **ABOLITION OF RECONSTRUCTION FINANCE CORPORATION**

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished the Reconstruction Finance Corporation.

### **§77kk. Representations by Corporation as acting for Department of State or United States forbidden; interference with foreign negotiations forbidden**

Notwithstanding the foregoing provisions of this subchapter, it shall be unlawful for, and nothing in this subchapter shall be taken or construed as permitting or authorizing, the Corporation in this subchapter created, or any committee of said Corporation, or any person or persons acting for or representing or purporting to represent it—

(a) to claim or assert or pretend to be acting for or to represent the Department of State or the United States Government;

(b) to make any statements or representations of any kind to any foreign government or its officials or the officials of any political subdivision of any foreign government that said Corporation or any committee thereof or any individual or individuals connected therewith were speaking or acting for the said Department of State or the United States Government; or

(c) to do any act directly or indirectly which would interfere with or obstruct or hinder or which might be calculated to obstruct, hinder, or interfere with the policy or policies of the said Department of State or the Government of the United States or any pending or contemplated diplomatic negotiations, arrangements, business or exchanges between the Government of the United States or said Department of State and any foreign government or any political subdivision thereof.

(May 27, 1933, ch. 38, title II, §210, 48 Stat. 95.)

### **§77ll. Effective date of subchapter**

This subchapter shall not take effect until the President finds that its taking effect is in the public interest and by proclamation so declares.

(May 27, 1933, ch. 38, title II, §211, 48 Stat. 95.)

### **§77mm. Short title**

This subchapter may be cited as the "Corporation of Foreign Bondholders Act, 1933."  
(May 27, 1933, ch. 38, title II, §212, 48 Stat. 95.)

## **SUBCHAPTER III—TRUST INDENTURES**

### **§77aaa. Short title**

This subchapter may be cited as the "Trust Indenture Act of 1939."  
(May 27, 1933, ch. 38, title III, §301, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SHORT TITLE OF 1990 AMENDMENT**

Pub. L. 101–550, title IV, §401, Nov. 15, 1990, 104 Stat. 2721, provided that: "This title [amending sections 77ccc to 77eee, 77iii to 77rrr, and 77vvv of this title] may be cited as the 'Trust Indenture Reform Act of 1990'."

### **§77bbb. Necessity for regulation**

#### **(a) Practices adversely affecting public**

Upon the basis of facts disclosed by the reports of the Securities and Exchange Commission made to the Congress pursuant to section 78jj of this title and otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public, are adversely affected—

(1) when the obligor fails to provide a trustee to protect and enforce the rights and to represent the interests of such investors, notwithstanding the fact that (A) individual action by such investors for the purpose of protecting and enforcing their rights is rendered impracticable by reason of the disproportionate expense of taking such action, and (B) concerted action by such investors in their common interest through representatives of their own selection is impeded by reason of the wide dispersion of such investors through many States, and by reason of the fact that information as to the names and addresses of such investors generally is not available to such investors;

(2) when the trustee does not have adequate rights and powers, or adequate duties and responsibilities, in connection with matters relating to the protection and enforcement of the rights of such investors; when, notwithstanding the obstacles to concerted action by such investors, and the general and reasonable assumption by such investors that the trustee is under an affirmative duty to take action for the protection and enforcement of their rights, trust indentures (A) generally provide that the trustee shall be under no duty to take any such action, even in the event of default, unless it receives notice of default, demand for action, and indemnity, from the holders of substantial percentages of the securities outstanding thereunder, and (B) generally relieve the trustee from liability even for its own negligent action or failure to act;

(3) when the trustee does not have resources commensurate with its responsibilities, or has any relationship to or connection with the obligor or any underwriter of any securities of the obligor,

or holds, beneficially or otherwise, any interest in the obligor or any such underwriter, which relationship, connection, or interest involves a material conflict with the interests of such investors;

(4) when the obligor is not obligated to furnish to the trustee under the indenture and to such investors adequate current information as to its financial condition, and as to the performance of its obligations with respect to the securities outstanding under such indenture; or when the communication of such information to such investors is impeded by the fact that information as to the names and addresses of such investors generally is not available to the trustee and to such investors;

(5) when the indenture contains provisions which are misleading or deceptive, or when full and fair disclosure is not made to prospective investors of the effect of important indenture provisions; or

(6) when, by reason of the fact that trust indentures are commonly prepared by the obligor or underwriter in advance of the public offering of the securities to be issued thereunder, such investors are unable to participate in the preparation thereof, and, by reason of their lack of understanding of the situation, such investors would in any event be unable to procure the correction of the defects enumerated in this subsection.

### **(b) Declaration of policy**

Practices of the character above enumerated have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is hereby declared to be the policy of this subchapter, in accordance with which policy all the provisions of this subchapter shall be interpreted, to meet the problems and eliminate the practices, enumerated in this section, connected with such public offerings.

(May 27, 1933, ch. 38, title III, §302, as added Aug. 3, 1939, ch. 411, 53 Stat. 1150.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Section 78jj of this title, referred to in subsec. (a), was omitted from the Code.

## **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.

## **§77ccc. Definitions**

When used in this subchapter, unless the context otherwise requires—

(1) Any term defined in section 2 of the Securities Act of 1933 [15 U.S.C. 77b], and not otherwise defined in this section shall have the meaning assigned to such term in such section 2 [15 U.S.C. 77b].

(2) The terms "sale", "sell", "offer to sell", "offer for sale", and "offer" shall include all transactions included in such terms as provided in paragraph (3) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that an offer or sale of a certificate of interest or participation shall be deemed an offer or sale of the security or securities in which such certificate evidences an interest or participation if and only if such certificate gives the holder thereof the right to convert the same into such security or securities.

(3) The term "prospectus" shall have the meaning assigned to such term in paragraph (10) of

section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that in the case of securities which are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], such term shall not include any communication (A) if it is proved that prior to or at the same time with such communication a written statement if any required by section 77fff of this title was sent or given to the persons to whom the communication was made, or (B) if such communication states from whom such statement may be obtained (if such statement is required by rules or regulations under paragraphs (1) or (2) of subsection (b) of section 77fff of this title) and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(4) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers 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 distributors' or sellers' commission.

(5) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(7) The term "indenture" means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which securities are outstanding or are to be issued, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder.

(8) The term "application" or "application for qualification" means the application provided for in section 77eee of this title or section 77ggg of this title, and includes any amendment thereto and any report, document, or memorandum accompanying such application or incorporated therein by reference.

(9) The term "indenture to be qualified" means (A) the indenture under which there has been or is to be issued a security in respect of which a particular registration statement has been filed, or (B) the indenture in respect of which a particular application has been filed.

(10) The term "indenture trustee" means each trustee under the indenture to be qualified, and each successor trustee.

(11) The term "indenture security" means any security issued or issuable under the indenture to be qualified.

(12) The term "obligor", when used with respect to any such indenture security, means every person (including a guarantor) who is liable thereon, and, if such security is a certificate of interest or participation, such term means also every person (including a guarantor) who is liable upon the security or securities in which such certificate evidences an interest or participation; but such term shall not include the trustee under an indenture under which certificates of interest or participation, equipment trust certificates, or like securities are outstanding.

(13) The term "paying agent", when used with respect to any such indenture security, means any person authorized by an obligor thereon (A) to pay the principal of or interest on such security on behalf of such obligor, or (B) if such security is a certificate of interest or participation, equipment trust certificate, or like security, to make such payment on behalf of the trustee.

(14) The term "State" means any State of the United States.

(15) The term "Commission" means the Securities and Exchange Commission.

(16) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or



agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person; and a specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(17) The terms "Securities Act of 1933" [15 U.S.C. 77a et seq.] and "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.] shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter.

(18) The term "Bankruptcy Act" means the Bankruptcy Act or title 11.

(May 27, 1933, ch. 38, title III, §303, as added Aug. 3, 1939, ch. 411, 53 Stat. 1151; amended Aug. 10, 1954, ch. 667, title III, §301, 68 Stat. 686; Pub. L. 95-598, title III, §307, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 100-181, title V, §§501, 502, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 101-550, title IV, §402, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 105-353, title III, §301(e)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111-203, title IX, §986(b)(1), July 21, 2010, 124 Stat. 1935.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Securities Act of 1933, referred to in pars. (3) and (17), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. 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 par. (17), 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 Bankruptcy Act, referred to in par. (18), 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.

### **AMENDMENTS**

**2010**—Par. (17). Pub. L. 111-203 added par. (17) and struck out former par. (17) which read as follows: "The terms 'Securities Act of 1933,' 'Securities Exchange Act of 1934,' and 'Public Utility Holding Company Act of 1935' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter."

**1998**—Pars. (2), (3). Pub. L. 105-353 substituted "section 2(a)" for "section 2".

**1990**—Par. (8). Pub. L. 101-550 inserted "section 77eee of this title or" after "provided for in".

**1987**—Par. (4). Pub. L. 100-181, §501, substituted "undertaking" for "undertakng".

Par. (12). Pub. L. 100-181, §502, inserted "(including a guarantor)" after "person" in two places.

**1978**—Par. (18). Pub. L. 95-598 substituted "Bankruptcy Act or title 11" for "Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended, whether amended prior to or after August 3, 1939".

**1954**—Pars. (1) to (4). Act Aug. 10, 1954, made formal changes in order to conform to amendments made by act Aug. 10, 1954, to sections 77b, 77e, and 77j of this title.

## **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 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 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 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.

## §77ddd. Exempted securities and transactions

### (a) Specific securities exempted

The provisions of this subchapter shall not apply to any of the following securities:

(1) any security other than (A) a note, bond, debenture, or evidence of indebtedness, whether or not secured, or (B) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (C) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate;

(2) any certificate of interest or participation in two or more securities having substantially different rights and privileges, or a temporary certificate for any such certificate;

(3) Repealed. Pub. L. 101-550, title IV, §403(1)(A), Nov. 15, 1990, 104 Stat. 2722.

(4)(A) any security exempted from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] by paragraphs (2) to (8), (11), or (13) of section 3(a) thereof [15 U.S.C. 77c(a)];

(B) any security exempted from the provisions of the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], by paragraph (2) of subsection 3(a) thereof, as amended by section 401 of the Employment Security Amendments of 1970 [15 U.S.C. 77c(a)(2)];

(5) any security issued under a mortgage indenture as to which a contract of insurance under the National Housing Act [12 U.S.C. 1701 et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2) of such Act [15 U.S.C. §77c(a)(2)];

(6) any note, bond, debenture, or evidence of indebtedness issued or guaranteed by a foreign government or by a subdivision, department, municipality, agency, or instrumentality thereof;

(7) any guarantee of any security which is exempted by this subsection;

(8) any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 [15 U.S.C. 77c(b)] limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations;

(9) any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to \$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations, but this exemption shall not be applied within a period of thirty-six consecutive months to more than \$10,000,000 aggregate principal amount of securities of the same issuer, or such lesser amount as the Commission may establish by its rules and regulations; or

(10) any security issued under a mortgage or trust deed indenture as to which a contract of insurance under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2), as amended, of the Securities Act of 1933 [15 U.S.C. 77c(a)(2)].

In computing the aggregate principal amount of securities to which the exemptions provided by paragraphs (8) and (9) of this subsection may be applied, securities to which the provisions of

sections 77eee and 77fff of this title would not have applied, irrespective of the provisions of those paragraphs, shall be disregarded.

**(b) Application of sections 77eee and 77fff**

The provisions of sections 77eee and 77fff of this title shall not apply (1) to any of the transactions exempted from the provisions of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] by section 4 thereof [15 U.S.C. 77d] or (2) to any transaction which would be so exempted but for the last sentence of paragraph (11) of section 2(a) of such Act [15 U.S.C. 77b(a)].

**(c) Securities issued or proposed to be issued under indenture**

The Commission shall, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more provisions of this subchapter any security issued or proposed to be issued under any indenture under which, at the time such application is filed, securities referred to in paragraph (3) of subsection (a) of this section are outstanding or on January 1, 1959, such securities were outstanding, if and to the extent that the Commission finds that compliance with such provision or provisions, through the execution of a supplemental indenture or otherwise—

(1) would require, by reason of the provisions of such indenture, or the provisions of any other indenture or agreement made prior to August 3, 1939, or the provisions of any applicable law, the consent of the holders of securities outstanding under any such indenture or agreement; or

(2) would impose an undue burden on this issuer, having due regard to the public interest and the interests of investors.

**(d) Exemptions in public interest**

The Commission may, by rules or regulations upon its own motion, or by order on application by an interested person, exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions, from any one or more of the provisions of this subchapter, 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 this subchapter. The Commission shall by rules and regulations determine the procedures under which an exemption under this subsection shall be granted, and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.

**(e) Securities issued by small investment company**

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title III, §304, as added Aug. 3, 1939, ch. 411, 53 Stat. 1153; amended Aug. 10, 1954, ch. 667, title III, §302, 68 Stat. 687; Pub. L. 85–699, title III, §307(b), Aug. 21, 1958, 72 Stat. 694; Pub. L. 86–760, Sept. 13, 1960, 74 Stat. 902; Pub. L. 89–754, title V, §504(b), Nov. 3, 1966, 80 Stat. 1278; Pub. L. 91–567, §6(c), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 96–477, title III, §302, Oct. 21, 1980, 94 Stat. 2291; Pub. L. 101–550, title IV, §403, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 104–290, title V, §508(e), Oct. 11, 1996, 110 Stat. 3448; Pub. L. 105–353, title III, §301(e)(2), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §985(c)(1), July 21, 2010, 124 Stat. 1934.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Securities Act of 1933, referred to in subsec. (a)(4), (5), and (10), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The National Housing Act, referred to in subsec. (a)(5), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified generally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Provisions of that act relating to insurance of mortgages are contained in section 1707 et seq. of Title 12. Title XI of the National Housing Act, is classified to subchapter IX-B (§1749aaa et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (e), 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

**2010**—Subsec. (b). Pub. L. 111-203 substituted "section 2(a) of such Act" for "section 2 of such Act".

**1998**—Subsec. (a)(4)(A). Pub. L. 105-353 substituted "(13) of section" for "(14) of subsection".

**1996**—Subsec. (a)(4)(A). Pub. L. 104-290 substituted "(11), or (14)" for "or (11)".

**1990**—Subsec. (a)(3). Pub. L. 101-550, §403(1)(A), struck out par. (3) which read as follows: "any security which, prior to or within six months after August 3, 1939, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer subsequent to such six months;".

Subsec. (a)(4)(A). Pub. L. 101-550, §403(1)(B), struck out ", as heretofore amended," after "1933".

Subsec. (d). Pub. L. 101-550, §403(2), added subsec. (d) and struck out former subsec. (d) which read as follows: "The Commission may, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more of the provisions of this subchapter any security issued or proposed to be issued by a person organized and existing under the laws of a foreign government or a political subdivision thereof, if and to the extent that the Commission finds that compliance with such provision or provisions is not necessary in the public interest and for the protection of investors."

**1980**—Subsec. (a)(8). Pub. L. 96-477, §302(a), substituted "an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations" for "more than \$250,000 aggregate principal amount of any securities of the same issuer".

Subsec. (a)(9). Pub. L. 96-477, §302(b), substituted "\$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations" for "\$1,000,000 or less", "more than \$10,000,000" for "more than \$1,000,000", and inserted ", or such lesser amount as the Commission may establish by its rules and regulations" after "same issuer".

**1970**—Subsec. (a)(4). Pub. L. 91-567 designated existing provisions as cl. (A) and added cl. (B).

**1966**—Subsec. (a)(10). Pub. L. 89-754 added par. (10).

**1960**—Subsec. (c). Pub. L. 86-760 inserted "or on January 1, 1959, such securities were outstanding".

**1958**—Subsec. (e). Pub. L. 85-699 added subsec. (e).

**1954**—Subsec. (b). Act Aug. 10, 1954, struck out "as heretofore 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 1970 AMENDMENT

Amendment by Pub. L. 91-567 applicable with respect to securities sold after Jan. 1, 1970, see section 6(d) of Pub. L. 91-567, set out as a note under section 77c of this title.

##### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 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.

## **§77eee. Securities required to be registered under Securities Act**

### **(a) Information required**

Subject to the provisions of section 77ddd of this title, a registration statement relating to a security shall include the following information and documents, as though such inclusion were required by the provisions of section 7 of the Securities Act of 1933 [15 U.S.C. 77g]—

(1) such information and documents as the Commission may by rules and regulations prescribe in order to enable the Commission to determine whether any person designated to act as trustee under the indenture under which such security has been or is to be issued is eligible to act as such under subsection (a) of section 77jjj of this title; and

(2) an analysis of any provisions of such indenture with respect to (A) the definition of what shall constitute a default under such indenture, and the withholding of notice to the indenture security holders of any such default, (B) the authentication and delivery of the indenture securities and the application of the proceeds thereof, (C) the release or the release and substitution of any property subject to the lien of the indenture, (D) the satisfaction and discharge of the indenture, and (E) the evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture.

The information and documents required by paragraph (1) of this subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such registration statement, which part shall be signed by such person. Such part of the registration statement shall be deemed to be a document filed pursuant to this subchapter, and the provisions of sections 11, 12, 17, and 24 of the Securities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x] shall not apply to statements therein or omissions therefrom.

### **(b) Refusal of registration statement**

(1) Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue an order prior to the effective date of registration refusing to permit such a registration statement to become effective, if it finds that—

(A) the security to which such registration statement relates has not been or is not to be issued under an indenture; or

(B) any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title;

but no such order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If and when the Commission deems that the objections on which such order was based have been met, the Commission shall enter an order rescinding such refusal order, and the registration shall become effective at the time provided in section 8(a) of the Securities Act of 1933 [15 U.S.C. 77h(a)], or upon the date of such rescission, whichever shall be the later.

(2) In the case of securities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], which securities are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, the Commission shall not be required to issue an order pursuant to paragraph (1) of subsection (b) of this section for failure to designate a trustee eligible to act under subsection (a) of section 77jjj of this title if, in accordance with such rules and regulations as may be prescribed by the Commission, the issuer of such securities files an application for the purpose of determining such trustee's eligibility under subsection (a) of section 77jjj of this title. The Commission shall issue an order prior to the effective date of such application refusing to permit the application to become effective, if it finds that any person designated as trustee under such indenture is not eligible to act as

such under subsection (a) of section 77jjj of this title, but no order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If after notice and opportunity for hearing the Commission issues an order under this provision, the obligor shall within 5 calendar days appoint a trustee meeting the requirements of subsection (a) of section 77jjj of this title. No such appointment shall be effective and such refusal order shall not be rescinded by the Commission until a person eligible to act as trustee under subsection (a) of section 77jjj of this title has been appointed. If no order is issued, an application filed pursuant to this paragraph shall be effective the tenth day after filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of information provided therein, the public interest, and the protection of investors.

**(c) Information required in prospectus**

A prospectus relating to any such security shall include to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, as though such inclusion were required by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], a written statement containing the analysis set forth in the registration statement, of any indenture provisions with respect to the matters specified in paragraph (2) of subsection (a) of this section, together with a supplementary analysis, prepared by the Commission, of such provisions and of the effect thereof, if, in the opinion of the Commission, the inclusion of such supplementary analysis is necessary or appropriate in the public interest or for the protection of investors, and the Commission so declares by order after notice and, if demanded by the issuer, opportunity for hearing thereon. Such order shall be entered prior to the effective date of registration, except that if opportunity for hearing thereon is demanded by the issuer such order shall be entered within a reasonable time after such opportunity for hearing.

**(d) Applicability of other statutory provisions**

The provisions of sections 11, 12, 17, and 24 of the Securities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x], and the provisions of sections 77www and 77yyy of this title, shall not apply to statements in or omissions from any analysis required under the provisions of this section or section 77fff or 77ggg of this title.

(May 27, 1933, ch. 38, title III, §305, as added Aug. 3, 1939, ch. 411, 53 Stat. 1154; amended Aug. 10, 1954, ch. 667, title III, §303, 68 Stat. 687; Pub. L. 101-550, title IV, §404, Nov. 15, 1990, 104 Stat. 2722.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

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

**AMENDMENTS**

**1990**—Subsec. (a)(1). Pub. L. 101-550, §404(1), struck out "or has a conflicting interest as defined in subsection (b) of section 77jjj of this title" after "section 77jjj of this title".

Subsec. (b). Pub. L. 101-550, §404(2), designated existing provisions as par. (1), substituted "Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue" for "The Commission shall issue", redesignated former par. (1) as subpar. (a) and inserted "or" at end, struck out former par. (2) which authorized Commission to prohibit a registration statement from taking effect if it finds that such indenture does not conform to requirements of sections 77jjj to 77rrr of this title, redesignated former par. (3) as subpar. (B) and struck out "or has any conflicting interest as defined in subsection (b) of section 77jjj of this title" after "section 77jjj of this title", and added par. (2).

**1954**—Subsec. (c). Act Aug. 10, 1954, authorized the Commission to prescribe by rule and regulation the extent to which summaries of indenture provisions must be contained in prospectuses.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 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.

## **§77fff. Securities not registered under Securities Act**

### **(a) Prohibitions affecting unregistered securities not issued under indenture**

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification is effective as to such indenture, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

### **(b) Prohibitions affecting unregistered securities issued under indenture**

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], but which has been or is to be issued under an indenture as to which an application for qualification is effective, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any such security, unless such prospectus, to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, includes or is accompanied by a written statement that contains the information specified in subsection (c) of section 77eee of this title; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless, to the extent the Commission may prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors, accompanied or preceded by a written statement that contains the information specified in subsection (c) of section 77eee of this title.

### **(c) Necessity of issuance under indenture; application for qualification**

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification has been filed as to such indenture, or while the application is the subject of a refusal order or stop order or (prior to qualification) any public proceeding or examination under section 77ggg(c) of this title.

(May 27, 1933, ch. 38, title III, §306, as added Aug. 3, 1939, ch. 411, 53 Stat. 1155; amended Aug.

10, 1954, ch. 667, title III, §304, 68 Stat. 687.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

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

### **AMENDMENTS**

**1954**—Subsec. (b). Act Aug. 10, 1954, authorized the Commission to prescribe the extent to which summaries of indenture provisions must be used in the sale of specified types of securities.

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 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.

## **§77ggg. Qualification of indentures covering securities not required to be registered**

### **(a) Application; information required; availability of information to public**

In the case of any security which is not required to be registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which subsection (a) of section 77fff of this title is applicable notwithstanding the provisions of section 77ddd of this title, an application for qualification of the indenture under which such security has been or is to be issued shall be filed with the Commission by the issuer of such security. Each such application shall be in such form, and shall be signed in such manner, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. Each such application shall include the information and documents required by subsection (a) of section 77eee of this title. The information and documents required by paragraph (1) of such subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such application, which part shall be signed by such person. Each such application shall also include such of the other information and documents which would be required to be filed in order to register such indenture security under the Securities Act of 1933 as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An application may be withdrawn by the applicant at any time prior to the effective date thereof. Subject to the provisions of section 77uuu of this title, the information and documents contained in or filed with any application shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant therefor at such reasonable charge as the Commission may prescribe.

### **(b) Filing of application**

The filing with the Commission of an application, or of an amendment to an application, shall be



deemed to have taken place upon the receipt thereof by the Commission.

**(c) Applicability of other statutory provisions**

The provisions of section 77h of this title and the provisions of subsection (b) of section 77eee of this title shall apply with respect to every such application, as though such application were a registration statement filed pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(May 27, 1933, ch. 38, title III, §307, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156; amended Pub. L. 107–123, §7, Jan. 16, 2002, 115 Stat. 2397.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

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

**AMENDMENTS**

**2002**—Subsec. (b). Pub. L. 107–123 substituted "Commission" for "Commission, but, in the case of an application, only if it is accompanied or preceded by payment to the Commission of a filing fee in the amount of \$100, such payment to be made in cash or by United States postal money order or certified or bank check, or in such other medium of payment as the Commission may authorize by rule and regulation".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee 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.

**§77hhh. Integration of procedure with Securities Act and other Acts**

**(a) Incorporation by reference**

The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall authorize the filing of any information or documents required to be filed with the Commission under this subchapter, or under 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.], by incorporating by reference any information or documents on file with the Commission under this subchapter or under any such Act.

**(b) Consolidation of applications, reports, etc.**

The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall provide for the consolidation of applications, reports, and proceedings under this subchapter with registration statements, applications, reports, and proceedings under 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.].

(May 27, 1933, ch. 38, title III, §308, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156; amended Pub.

L. 111–203, title IX, §986(b)(2), July 21, 2010, 124 Stat. 1936.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Securities Act of 1933, referred to in subsecs. (a) and (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. 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. (a) and (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**

**2010**—Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" in subsecs. (a) and (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.

## **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.

## **§77iii. Effective time of qualification**

### **(a) Effective time of registration or application for qualification of indenture**

The indenture under which a security has been or is to be issued shall be deemed to have been qualified under this subchapter—

- (1) when registration becomes effective as to such security; or
- (2) when an application for the qualification of such indenture becomes effective, pursuant to section 77ggg of this title.

### **(b) Stop orders after effective time of qualification**

After qualification has become effective as to the indenture under which a security has been or is to be issued, no stop order shall be issued pursuant to section 77h(d) of this title, suspending the effectiveness of the registration statement relating to such security or of the application for qualification of such indenture, except on one or more of the grounds specified in section 77h of this title, or the failure of the issuer to file an application as provided for by section 77eee(b)(2) of this title.

### **(c) Effect of subsequent rule or regulation on qualification**

The making, amendment, or rescission of a rule, regulation, or order under the provisions of this subchapter (except to the extent authorized by subsection (a) of section 77nnn of this title with respect to rules and regulations prescribed pursuant to such subsection) shall not affect the qualification, form, or interpretation of any indenture as to which qualification became effective prior to the making, amendment, or rescission of such rule, regulation, or order.

**(d) Liability of trustee under qualified indenture**

No trustee under an indenture which has been qualified under this subchapter shall be subject to any liability because of any failure of such indenture to comply with any of the provisions of this subchapter, or any rule, regulation, or order thereunder.

**(e) Power of Commission to conduct investigation**

Nothing in this subchapter shall be construed as empowering the Commission to conduct an investigation or other proceeding for the purpose of determining whether the provisions of an indenture which has been qualified under this subchapter are being complied with, or to enforce such provisions.

(May 27, 1933, ch. 38, title III, §309, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157; amended Pub. L. 101-550, title IV, §405, Nov. 15, 1990, 104 Stat. 2723.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1990**—Subsec. (b). Pub. L. 101-550 inserted before period at end ", or the failure of the issuer to file an application as provided for by section 77eee(b)(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.

**§77jjj. Eligibility and disqualification of trustee**

**(a) Persons eligible for appointment as trustee**

(1) There shall at all times be one or more trustees under every indenture qualified or to be qualified pursuant to this subchapter, at least one of whom shall at all times be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia or a corporation or other person permitted to act as trustee by the Commission (referred to in this subchapter as the institutional trustee), which (A) is authorized under such laws to exercise corporate trust powers, and (B) is subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this subchapter, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government.

(2) Such institution <sup>1</sup>trustee shall have at all times a combined capital and surplus of a specified minimum amount, which shall not be less than \$150,000. If such institutional trustee publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, the indenture may provide that, for the purposes of this paragraph, the combined capital and surplus of such trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(3) If the indenture to be qualified requires or permits the appointment of one or more co-trustees

in addition to such institutional trustee, the rights, powers, duties, and obligations conferred or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by such institutional trustee, or such institutional trustee and such co-trustees jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, such institutional trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties, and obligations shall be exercised and performed by such co-trustees.

(4) In the case of certificates of interest or participation, the indenture trustee or trustees shall have the legal power to exercise all of the rights, powers, and privileges of a holder of the security or securities in which such certificates evidence an interest or participation.

(5) No obligor upon the indenture securities or person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as trustee upon such indenture securities.

**(b) Disqualification of trustee**

If any indenture trustee has or shall acquire any conflicting interest as hereinafter defined—

(i) then, within 90 days after ascertaining that it has such conflicting interest, and if the default (as defined in the next sentence) to which such conflicting interest relates has not been cured or duly waived or otherwise eliminated before the end of such 90-day period, such trustee shall either eliminate such conflicting interest or, except as otherwise provided below in this subsection, resign, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture;

(ii) in the event that such trustee shall fail to comply with the provisions of clause (i) of this subsection, such trustee shall, within 10 days after the expiration of such 90-day period, transmit notice of such failure to the indenture security holders in the manner and to the extent provided in subsection (c) of section 77mmm of this title; and

(iii) subject to the provisions of subsection (e) of section 77ooo of this title, unless such trustee's duty to resign is stayed as provided below in this subsection, any security holder who has been a bona fide holder of indenture securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such trustee, and the appointment of a successor, if such trustee fails, after written request thereof by such holder to comply with the provisions of clause (i) of this subsection.

For the purposes of this subsection, an indenture trustee shall be deemed to have a conflicting interest if the indenture securities are in default (as such term is defined in such indenture, but exclusive of any period of grace or requirement of notice) and—

(1) such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of an obligor upon the indenture securities are outstanding or is trustee for more than one outstanding series of securities, as hereafter defined, under a single indenture of an obligor, unless—

(A) the indenture securities are collateral trust notes under which the only collateral consists of securities issued under such other indenture,

(B) such other indenture is a collateral trust indenture under which the only collateral consists of indenture securities, or

(C) such obligor has no substantial unmortgaged assets and is engaged primarily in the business of owning, or of owning and developing and/or operating, real estate, and the indenture to be qualified and such other indenture are secured by wholly separate and distinct parcels of real estate:

*Provided*, That the indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to contain a provision excluding from the operation of this paragraph other series under such indenture, and any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such an obligor are outstanding, if—

(i) the indenture to be qualified and any such other indenture or indentures (and all series of

securities issuable thereunder) are wholly unsecured and rank equally, and such other indenture or indentures (and such series) are specifically described in the indenture to be qualified or are thereafter qualified under this subchapter, unless the Commission shall have found and declared by order pursuant to subsection (b) of section 77eee of this title or subsection (c) of section 77ggg of this title that differences exist between the provisions of the indenture (or such series) to be qualified and the provisions of such other indenture or indentures (or such series) which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures, or

(ii) the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture to be qualified and such other indenture or under more than one outstanding series under a single indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures or with respect to such series;

(2) such trustee or any of its directors or executive officers is an underwriter for an obligor upon the indenture securities;

(3) such trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with an underwriter for an obligor upon the indenture securities;

(4) such trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of an obligor upon the indenture securities, or of an underwriter (other than the trustee itself) for such an obligor who is currently engaged in the business of underwriting, except that—

(A) one individual may be a director and/or an executive officer of the trustee and a director and/or an executive officer of such obligor, but may not be at the same time an executive officer of both the trustee and of such obligor,

(B) if and so long as the number of directors of the trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the trustee and a director of such obligor, and

(C) such trustee may be designated by any such obligor or by any underwriter for any such obligor, to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depository, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10 per centum or more of the voting securities of such trustee is beneficially owned either by an obligor upon the indenture securities or by any director, partner or executive officer thereof, or 20 per centum or more of such voting securities is beneficially owned, collectively by any two or more of such persons; or 10 per centum or more of the voting securities of such trustee is beneficially owned either by an underwriter for any such obligor or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(6) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined—

(A) 5 per centum or more of the voting securities, or 10 per centum or more of any other class of security, of an obligor upon the indenture securities, not including indentures <sup>2</sup> securities and securities issued under any other indenture under which such trustee is also trustee, or

(B) 10 per centum or more of any class of security of an underwriter for any such obligor;

(7) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 5 per centum or more of the voting securities of any person who, to the knowledge of the trustee, owns 10 per centum or more of the voting securities of, or

controls directly or indirectly or is under direct or indirect common control with, an obligor upon the indenture securities;

(8) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 10 per centum or more of any class of security of any person who, to the knowledge of the trustee, owns 50 per centum or more of the voting securities of an obligor upon the indenture securities;

(9) such trustee owns, on the date of default upon the indenture securities (as such term is defined in such indenture but exclusive of any period of grace or requirement of notice) or any anniversary of such default while such default upon the indenture securities remains outstanding, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25 per centum or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under paragraph (6), (7), or (8) of this subsection. As to any such securities of which the indenture trustee acquired ownership through becoming executor, administrator or testamentary trustee of an estate which include them, the provisions of the preceding sentence shall not apply for a period of not more than 2 years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25 per centum of such voting securities or 25 per centum of any such class of security. Promptly after the dates of any such default upon the indenture securities and annually in each succeeding year that the indenture securities remain in default the trustee shall make a check of its holding of such securities in any of the above-mentioned capacities as of such dates. If the obligor upon the indenture securities fails to make payment in full of principal or interest under such indenture when and as the same becomes due and payable, and such failure continues for 30 days thereafter, the trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such 30-day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of paragraphs (6), (7), and (8) of this subsection; or

(10) except under the circumstances described in paragraphs <sup>3</sup>(1), (3), (4), (5) or (6) of section 77kkk(b) of this title, the trustee shall be or shall become a creditor of the obligor.

For purposes of paragraph (1) of this subsection, and of section 77ppp(a) of this title, the term "series of securities" or "series" means a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the indenture trustee, or otherwise take action pursuant to a vote of such holders, separately from holders of another such series: *Provided*, That "series of securities" or "series" shall not include any series of securities issuable under an indenture if all such series rank equally and are wholly unsecured.

The specification of percentages in paragraphs (5) to (9), inclusive, of this subsection shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subsection.

For the purposes of paragraphs (6), (7), (8), and (9) of this subsection—

(A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness;

(B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty days or more, and shall not have been cured; and

(C) the indenture trustee shall not be deemed the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for any obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under the indenture to be

qualified, irrespective of any default thereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent or depository, or in any similar representative capacity.

For the purposes of this subsection, the term "underwriter" when used with reference to an obligor upon the indenture securities means every person who, within one year prior to the time as of which the determination is made, was an underwriter of any security of such obligor outstanding at the time of the determination.

Except in the case of a default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the indenture trustee shall not be required to resign as provided by this subsection if such trustee shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that—

(i) the default under the indenture may be cured or waived during a reasonable period and under the procedures described in such application, and

(ii) a stay of the trustee's duty to resign will not be inconsistent with the interests of holders of the indenture securities. The filing of such an application shall automatically stay the performance of the duty to resign until the Commission orders otherwise.

Any resignation of an indenture trustee shall become effective only upon the appointment of a successor trustee and such successor's acceptance of such an appointment.

(May 27, 1933, ch. 38, title III, §310, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157; amended Pub. L. 101-550, title IV, §§406-408, Nov. 15, 1990, 104 Stat. 2723, 2724; Pub. L. 111-203, title IX, §986(b)(3), July 21, 2010, 124 Stat. 1936.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (c). Pub. L. 111-203 struck out subsec. (c). Text read as follows: "The Public Utility Holding Company Act of 1935 shall not be held to establish or authorize the establishment of any standards regarding the eligibility and qualifications of any trustee or prospective trustee under an indenture to be qualified under this subchapter, or regarding the provisions to be included in any such indenture with respect to the eligibility and qualifications of the trustee thereunder, other than those established by the provisions of this section."

**1990**—Subsec. (a)(1). Pub. L. 101-550, §406(1)-(4), substituted "There shall" for "The indenture to be qualified shall require that there shall", and "under every indenture qualified or to be qualified pursuant to this subchapter" for "thereunder", inserted "or a corporation or other person permitted to act as trustee by the Commission" before "(referred to)", and inserted at end "The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this subchapter, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government."

Subsec. (a)(2). Pub. L. 101-550, §406(5), which directed the substitution of "Such institution" for "The indenture to be qualified shall require that such institution", was executed by making the substitution for "The indenture to be qualified shall require that such institutional", as the probable intent of Congress.

Subsec. (a)(3). Pub. L. 101-550, §406(6), struck out "such indenture shall provide that" before "the rights".

Subsec. (a)(4). Pub. L. 101-550, §406(7), (8), struck out "the indenture to be qualified shall require that" before "the indenture" and inserted "shall" after "trustee or trustees".

Subsec. (a)(5). Pub. L. 101-550, §407, added par. (5).

Subsec. (b). Pub. L. 101-550, §408, amended subsec. (b) generally.



## 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.

<sup>1</sup> *So in original. Probably should be "institutional".*

<sup>2</sup> *So in original. Probably should be "indenture".*

<sup>3</sup> *So in original. Probably should be "paragraph".*

## §77kkk. Preferential collection of claims against obligor

### (a) Trustee as creditor of obligor

Subject to the provisions of subsection (b) of this section, if the indenture trustee shall be, or shall become, a creditor, directly or indirectly, secured or unsecured, of an obligor upon the indenture securities, within three months prior to a default as defined in the last paragraph of this subsection, or subsequent to such a default, then, unless and until such default shall be cured, such trustee shall set apart and hold in a special account for the benefit of the trustee individually and the indenture security holders—

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such three months' period and valid as against such obligor and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this subsection, or from the exercise of any right of setoff which the trustee could have exercised if a petition in bankruptcy had been filed by or against such obligor upon the date of such default; and

(2) all property received in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such three months' period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of such obligor and its other creditors in such property or such proceeds.

Nothing herein contained shall affect the right of the indenture trustee—

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than such obligor) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such three months' period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such three months' period and such property was received as security therefor simultaneously with the creation thereof, and if the trustee shall sustain the burden of proving that



at the time such property was so received the trustee had no reasonable cause to believe that a default as defined in the last paragraph of this subsection would occur within three months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C) of this subsection, against the release of any property held as security for such claim as provided in said paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C), and (D) of this subsection, property substituted after the beginning of such three months' period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any preexisting claim of the indenture trustee as such creditor, such claim shall have the same status as such preexisting claim.

If the trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the trustee and the indenture security holders in such manner that the trustee and the indenture security holders realize, as a result of payments from such special account and payments of dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the trustee and the indenture security holders dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership, or proceeding for reorganization is pending shall have jurisdiction (i) to apportion between the indenture trustee and the indenture security holders, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the indenture trustee and the indenture security holders with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any indenture trustee who has resigned or been removed after the beginning of such three months' period shall be subject to the provisions of this subsection as though such resignation or removal had not occurred. Any indenture trustee who has resigned or been removed prior to the beginning of such three months' period shall be subject to the provisions of this subsection if and only if the following conditions exist—

(i) the receipt of property or reduction of claim which would have given rise to the obligation to account, if such indenture trustee had continued as trustee, occurred after the beginning of such three months' period; and

(ii) such receipt of property or reduction of claim occurred within three months after such resignation or removal.

As used in this subsection, the term "default" means any failure to make payment in full of principal or interest, when and as the same becomes due and payable, under any indenture which has been qualified under this subchapter, and under which the indenture trustee is trustee and the person

of whom the indenture trustee is directly or indirectly a creditor is an obligor; and the term "indenture security holder" means all holders of securities outstanding under any such indenture under which any such default exists. In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months.

**(b) Exclusion of creditor relationship arising from specified classes**

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions excluding from the operation of subsection (a) of this section a creditor relationship arising from—

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the indenture trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by the indenture, for the purpose of preserving the property subject to the lien of the indenture or of discharging tax liens or other prior liens or encumbrances on the trust estate, if notice of such advance and of the circumstances surrounding the making thereof is given to the indenture security holders, at the time and in the manner provided in the indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in the indenture;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of section 25(a) <sup>1</sup> of the Federal Reserve Act, as amended [12 U.S.C. 611 et seq.], which is directly or indirectly a creditor of an obligor upon the indenture securities; or

(6) the acquisition, ownership, acceptance, or negotiation of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper as defined in the indenture.

(May 27, 1933, ch. 38, title III, §311, as added Aug. 3, 1939, ch. 411, 53 Stat. 1161; amended Pub. L. 101–550, title IV, §409, Nov. 15, 1990, 104 Stat. 2728; Pub. L. 111–203, title IX, §986(b)(4), July 21, 2010, 124 Stat. 1936.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 25(a) of the Federal Reserve Act, as amended, referred to in subsec. (b)(5), which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

**AMENDMENTS**

**2010**—Subsec. (c). Pub. L. 111–203 struck out subsec. (c) which related to issue or sale of securities by a registered holding company.

**1990**—Subsec. (a). Pub. L. 101–550, §409(1)–(4), struck out "the indenture to be qualified shall provide that" before "if" in first par., substituted "If" for "The indenture to be qualified shall provide that, if" in third par., substituted "three months" for "four months" and "three months' " for "four months' " wherever appearing, and inserted at end "In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months."

Subsec. (b). Pub. L. 101–550, §409(5), substituted "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "may".

**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.

<sup>1</sup> [\*See References in Text note below.\*](#)

## §77III. Bondholders' lists

### (a) Periodic filing of information by obligor with trustee

Each obligor upon the indenture securities shall furnish or cause to be furnished to the institutional trustee thereunder at stated intervals of not more than six months, and at such other times as such trustee may request in writing, all information in the possession or control of such obligor, or of any of its paying agents, as to the names and addresses of the indenture security holders, and requiring such trustee to preserve, in as current a form as is reasonably practicable, all such information so furnished to it or received by it in the capacity of paying agent.

### (b) Access of information to security holders

Within five business days after the receipt by the institutional trustee of a written application by any three or more indenture security holders stating that the applicants desire to communicate with other indenture security holders with respect to their rights under such indenture or under the indenture securities, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned an indenture security for a period of at least six months preceding the date of such application, such institutional trustee shall, at its election, either—

(1) afford to such applicants access to all information so furnished to or received by such trustee; or

(2) inform such applicants as to the approximate number of indenture security holders according to the most recent information so furnished to or received by such trustee, and as to the approximate cost of mailing to such indenture security holders the form of proxy or other communication, if any, specified in such application.

If such trustee shall elect not to afford to such applicants access to such information, such trustee shall, upon the written request of such applicants, mail to all such indenture security holders copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to such trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five days after such tender, such trustee shall mail to such applicants, and file with the Commission together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of such trustee, such mailing would be contrary to the best interests of the indenture security holders or would be in violation of applicable law. Such written statement shall specify 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 such trustee 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, such trustee shall mail copies of such material to all such indenture security holders with reasonable promptness after the entry of such order and the renewal of such tender.

**(c) Disclosure of information deemed not violative of any law**

The disclosure of any such information as to the names and addresses of the indenture security holders in accordance with the provisions of this section, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or of any law hereafter enacted which does not specifically refer to this section, nor shall such trustee be held accountable by reason of mailing any material pursuant to a request made under subsection (b) of this section.

(May 27, 1933, ch. 38, title III, §312, as added Aug. 3, 1939, ch. 411, 53 Stat. 1164; amended Pub. L. 101-550, title IV, §410, Nov. 15, 1990, 104 Stat. 2728.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1990**—Subsec. (a). Pub. L. 101-550, §410(1), (2), substituted "Each obligor" for "The indenture to be qualified shall contain provisions requiring each obligor" and "indenture securities shall" for "indenture securities to".

Subsec. (b). Pub. L. 101-550, §410(3), substituted "Within" for "The indenture to be qualified shall also contain provisions requiring that, within".

**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.

**§77mmm. Reports by indenture trustee**

**(a) Report to security holders; time; contents**

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):— <sup>1</sup>

(1) any change to its eligibility and its qualifications under section 77jjj of this title;

(2) the creation of or any material change to a relationship specified in paragraph <sup>2</sup>(1) through (10) of section 77jjj(b) of this title;

(3) the character and amount of any advances made by it, as indenture trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, if such advances so remaining unpaid aggregate more than one-half of 1 per centum of the principal amount of the indenture securities outstanding on such date;

(4) any change to the amount, interest rate, and maturity date of all other indebtedness owing to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4), or (6) of subsection (b) of section 77kkk of this title;

(5) any change to the property and funds physically in its possession as indenture trustee on the

date of such report;

(6) any release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) which it has not previously reported;

(7) any additional issue of indenture securities which it has not previously reported; and

(8) any action taken by it in the performance of its duties under the indenture which it has not previously reported and which in its opinion materially affects the indenture securities or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with an indenture provision authorized by subsection (b) of section 77000 of this title.

**(b) Additional reports to security holders**

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, within the times hereinafter specified, a brief report with respect to—

(1) the release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by paragraph (1) of subsection (d) of section 77nnn of this title, is less than 10 per centum of the principal amount of indenture securities outstanding at the time of such release, or such release and substitution, such report to be so transmitted within 90 days after such time; and

(2) the character and amount of any advances made by it as such since the date of the last report transmitted pursuant to the provisions of subsection (a) (or if no such report has yet been so transmitted, since the date of execution of the indenture), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, and which it has not previously reported pursuant to this paragraph, if such advances remaining unpaid at any time aggregate more than 10 per centum of the principal amount of indenture securities outstanding at such time, such report to be so transmitted within 90 days after such time.

**(c) Additional parties to whom reports to be transmitted**

Reports pursuant to this section shall be transmitted by mail—

(1) to all registered holders of indenture securities, as the names and addresses of such holders appear upon the registration books of the obligor upon the indenture securities;

(2) to such holders of indenture securities as have, within the two years preceding such transmission, filed their names and addresses with the indenture trustee for that purpose; and

(3) except in the case of reports pursuant to subsection (b) of this section, to all holders of indenture securities whose names and addresses have been furnished to or received by the indenture trustee pursuant to section 77lll of this title.

**(d) Filing of report with stock exchanges**

A copy of each such report shall, at the time of such transmission to indenture security holders, be filed with each stock exchange upon which the indenture securities are listed, and also with the Commission.

(May 27, 1933, ch. 38, title III, §313, as added Aug. 3, 1939, ch. 411, 53 Stat. 1165; amended Pub. L. 101-550, title IV, §§411, 412, Nov. 15, 1990, 104 Stat. 2729; Pub. L. 105-353, title III, §301(e)(3), Nov. 3, 1998, 112 Stat. 3237.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1998**—Subsec. (a)(4). Pub. L. 105-353, §301(e)(3)(A), inserted "any change to" before "the amount".

Subsec. (a)(6). Pub. L. 105-353, §301(e)(3)(B), struck out "any change to" before "any release".

**1990**—Subsec. (a). Pub. L. 101-550, §411(1), (2), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and inserted "any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):" after "a brief report with respect to".

Subsec. (a)(1). Pub. L. 101-550, §411(3), (4), inserted "any change to" before "its eligibility" and struck out

", or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under such section, a written statement to such effect" after "of this title".

Subsec. (a)(2). Pub. L. 101-550, §411(5), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3), (4). Pub. L. 101-550, §411(5)(A), redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 101-550, §411(5)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6). Pub. L. 101-550, §411(3), inserted "any change to" after the paragraph designation.

Subsec. (a)(6). Pub. L. 101-550, §411(5)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7). Pub. L. 101-550, §411(3), inserted "any change to" after the paragraph designation.

Subsec. (a)(7), (8). Pub. L. 101-550, §411(5)(A), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (b). Pub. L. 101-550, §412(1), substituted "The indenture trustee shall" for "The indenture to be qualified shall also contain provisions requiring the indenture trustee to".

Subsec. (c). Pub. L. 101-550, §412(2), substituted "Reports" for "The indenture to be qualified shall also provide that reports".

Subsec. (d). Pub. L. 101-550, §412(3), substituted "A copy" for "The indenture to be qualified shall also provide that a copy".

## 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.

<sup>1</sup> *So in original. The colon probably should not appear.*

<sup>2</sup> *So in original. Probably should be "paragraphs".*

## §77nnn. Reports by obligor; evidence of compliance with indenture provisions

### (a) Periodic reports

Each person who, as set forth in the registration statement or application, is or is to be an obligor upon the indenture securities covered thereby shall—

(1) file with the indenture trustee copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which such obligor is required to file with the Commission pursuant to section 78m or 78o(d) of this title; or, if the obligor is not required to file information, documents, or reports pursuant to either of such sections, then to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such of the supplementary and periodic information, documents, and reports which may be required pursuant to section 78m of this title, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(2) file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents, and reports with respect to compliance by such obligor with the conditions and covenants provided for in the indenture, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of subsection (e) of this section, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to any matter specified in clauses (A), (B), or (C) of paragraph (3) of subsection (c);

(3) transmit to the holders of the indenture securities upon which such person is an obligor, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, such

summaries of any information, documents, and reports required to be filed by such obligor pursuant to the provisions of paragraph (1) or (2) of this subsection as may be required by rules and regulations prescribed by the Commission; and

(4) furnish to the indenture trustee, not less often than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of such obligor's compliance with all conditions and covenants under the indenture. For purposes of this paragraph, such compliance shall be determined without regard to any period of grace or requirement of notice provided under the indenture.

The rules and regulations prescribed under this subsection shall be such as are necessary or appropriate in the public interest or for the protection of investors, having due regard to the types of indentures, and the nature of the business of the class of obligors affected thereby, and the amount of indenture securities outstanding under such indentures, and, in the case of any such rules and regulations prescribed after the indentures to which they apply have been qualified under this subchapter, the additional expense, if any, of complying with such rules and regulations. Such rules and regulations may be prescribed either before or after qualification becomes effective as to any such indenture.

#### **(b) Evidence of recording of indenture**

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, the obligor upon the indenture securities shall furnish to the indenture trustee—

(1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and

(2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and refiling of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.

#### **(c) Evidence of compliance with conditions precedent**

The obligor upon the indenture securities shall furnish to the indenture trustee evidence of compliance with the conditions precedent, if any, provided for in the indenture (including any covenants compliance with which constitutes a condition precedent) which relate to the authentication and delivery of the indenture securities, to the release or the release and substitution of property subject to the lien of the indenture, to the satisfaction and discharge of the indenture, or to any other action to be taken by the indenture trustee at the request or upon the application of such obligor. Such evidence shall consist of the following:

(1) certificates or opinions made by officers of such obligor who are specified in the indenture, stating that such conditions precedent have been complied with;

(2) an opinion of counsel (who may be of counsel for such obligor) stating that in his opinion such conditions precedent have been complied with; and

(3) in the case of conditions precedent compliance with which is subject to verification by accountants (such as conditions with respect to the preservation of specified ratios, the amount of net quick assets, negative-pledge clauses, and other similar specific conditions), a certificate or opinion of an accountant, who, in the case of any such conditions precedent to the authentication and delivery of indenture securities, and not otherwise, shall be an independent public accountant selected or approved by the indenture trustee in the exercise of reasonable care, if the aggregate principal amount of such indenture securities and of other indenture securities authenticated and delivered since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required, or with respect to which a



certificate or opinion of an independent public accountant has previously been furnished) is 10 per centum or more of the aggregate amount of the indenture securities at the time outstanding; but no certificate or opinion need be made by any person other than an officer or employee of such obligor who is specified in the indenture, as to (A) dates or periods not covered by annual reports required to be filed by the obligor, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (B) the amount and value of property additions, except as provided in paragraph (3) of subsection (d), or (C) the adequacy of depreciation, maintenance, or repairs.

**(d) Certificates of fair value**

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property or securities, the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value—

(1) of any property or securities to be released from the lien of the indenture, which certificate or opinion shall state that in the opinion of the person making the same the proposed release will not impair the security under such indenture in contravention of the provisions thereof, and requiring further that such certificate or opinion shall be made by an independent engineer, appraiser, or other expert, if the fair value of such property or securities and of all other property or securities released since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding; but such a certificate or opinion of an independent engineer, appraiser, or other expert shall not be required in the case of any release of property or securities, if the fair value thereof as set forth in the certificate or opinion required by this paragraph is less than \$25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding;

(2) to such obligor of any securities (other than indenture securities and securities secured by a lien prior to the lien of the indenture upon property subject to the lien of the indenture), the deposit of which with the trustee is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate or the release of property or securities subject to the lien of the indenture, and requiring further that if the fair value to such obligor of such securities and of all other such securities made the basis of any such authentication and delivery, withdrawal, or release since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to such obligor of all other such securities so deposited since the commencement of the current calendar year as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished; but such a certificate of an independent engineer, appraiser, or other expert shall not be required with respect to any securities so deposited, if the fair value thereof to such obligor as set forth in the certificate or opinion required by this paragraph is less than \$25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding; and

(3) to such obligor of any property the subjection of which to the lien of the indenture is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of the indenture, and requiring further that if

(A) within six months prior to the date of acquisition thereof by such obligor, such property has been used or operated, by a person or persons other than such obligor, in a business similar to that in which it has been or is to be used or operated by such obligor, and

(B) the fair value to such obligor of such property as set forth in such certificate or opinion is not less than \$25,000 and not less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding,



such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to the obligor of any property so used or operated which has been so subjected to the lien of the indenture since the commencement of the then current calendar year, and as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished.

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that any such certificate or opinion may be made by an officer or employee of the obligor upon the indenture securities who is duly authorized to make such certificate or opinion by the obligor from time to time, except in cases in which this subsection requires that such certificate or opinion be made by an independent person. In such cases, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert selected or approved by the indenture trustee in the exercise of reasonable care.

**(e) Recitals as to basis of certificate or opinion**

Each certificate or opinion with respect to compliance with a condition or covenant provided for in the indenture (other than certificates provided pursuant to subsection (a)(4) of this section) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

**(f) Parties may provide for additional evidence**

Nothing in this section shall be construed either as requiring the inclusion in the indenture to be qualified of provisions that the obligor upon the indenture securities shall furnish to the indenture trustee any other evidence of compliance with the conditions and covenants provided for in the indenture than the evidence specified in this section, or as preventing the inclusion of such provisions in such indenture, if the parties so agree.

(May 27, 1933, ch. 38, title III, §314, as added Aug. 3, 1939, ch. 411, 53 Stat. 1167; amended Pub. L. 101-550, title IV, §413, Nov. 15, 1990, 104 Stat. 2729.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1990**—Subsec. (a). Pub. L. 101-550, §413(1)–(6), in introductory provision substituted "Each" for "The indenture to be qualified shall contain provisions requiring each" and inserted "shall" after "thereby" and in pars. (1) to (3) struck out "to" after the paragraph designation, and directed the addition of par. (4) at the end which was executed by inserting par. (4) after par. (3) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101-550, §413(7), (8), struck out "such indenture shall contain provisions requiring" before "the obligor" and substituted "securities shall furnish" for "securities to furnish".

Subsec. (c). Pub. L. 101-550, §413(9), (10), substituted "The obligor" for "The indenture to be qualified shall contain provisions requiring the obligor" and "securities shall furnish" for "securities to furnish".

Subsec. (d). Pub. L. 101-550, §413(11), (13), (14), substituted "the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value" for "such indenture shall contain provisions" in introductory provisions and "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that" for "If the indenture to be qualified so provides," and "duly authorized to make such certificate or opinion by the obligor from time to time" for "specified in the indenture" in penultimate sentence.

Subsec. (d)(1) to (3). Pub. L. 101-550, §413(12), which directed that "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser or other

expert as to the fair value" be struck out after the paragraph designations in pars. (1) to (3), was executed by striking out "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value", as the probable intent of Congress.

Subsec. (e). Pub. L. 101-550, §413(15), inserted "(other than certificates provided pursuant to subsection (a)(4) of this section)" after "indenture".

## **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.

## **§77ooo. Duties and responsibility of the trustee**

### **(a) Duties prior to default**

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to provide that, prior to default (as such term is defined in such indenture)—

(1) the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture; and

(2) the indenture trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture;

but the indenture trustee shall examine the evidence furnished to it pursuant to section 77nnn of this title to determine whether or not such evidence conforms to the requirements of the indenture.

### **(b) Notice of defaults**

The indenture trustee shall give to the indenture security holders, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, notice of all defaults known to the trustee, within ninety days after the occurrence thereof: *Provided*, That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that, except in the case of default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the trustee in good faith determine that the withholding of such notice is in the interests of the indenture security holders.

### **(c) Duties of the trustee in case of default**

The indenture trustee shall exercise in case of default (as such term is defined in such indenture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

### **(d) Responsibility of the trustee**

The indenture to be qualified shall not contain any provisions relieving the indenture trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that—

(1) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain the provisions authorized by paragraphs (1) and (2) of subsection (a) of this section;

(2) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee from liability

for any error of judgment made in good faith by a responsible officer or officers of such trustee, unless it shall be proved that such trustee was negligent in ascertaining the pertinent facts; and

(3) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (determined as provided in subsection (a) of section 77ppp of this title) relating to the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture.

**(e) Undertaking for costs**

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions to the effect that all parties thereto, including the indenture security holders, agree that the court may in its discretion require, in any suit for the enforcement of any right or remedy under such indenture, or in any suit against the trustee for any action taken or omitted by it as trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: *Provided*, That the provisions of this subsection shall not apply to any suit instituted by such trustee, to any suit instituted by any indenture security holder, or group of indenture security holders, holding in the aggregate more than 10 per centum in principal amount of the indenture securities outstanding, or to any suit instituted by any indenture security holder for the enforcement of the payment of the principal of or interest on any indenture security, on or after the respective due dates expressed in such indenture security.

(May 27, 1933, ch. 38, title III, §315, as added Aug. 3, 1939, ch. 411, 53 Stat. 1171; amended Pub. L. 101-550, title IV, §414, Nov. 15, 1990, 104 Stat. 2730.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1990**—Subsec. (a). Pub. L. 101-550, §414(1), (2), substituted "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "The indenture to be qualified may" and "the indenture trustee shall examine" for "such indenture shall contain provisions requiring the indenture trustee to examine".

Subsec. (b). Pub. L. 101-550, §414(3), (4), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and "That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to" for "That such indenture may".

Subsec. (c). Pub. L. 101-550, §414(3), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to".

Subsec. (d)(1) to (3). Pub. L. 101-550, §414(5), substituted "such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "such indenture may".

Subsec. (e). Pub. L. 101-550, §414(1), substituted "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "The indenture to be qualified may".

**§77ppp. Directions and waivers by bondholders; prohibition of impairment of holder's right to payment; record date**

**(a) Directions and waivers by bondholders**

The indenture to be qualified—

(1) shall automatically be deemed (unless it is expressly provided therein that any such

provision is excluded) to contain provisions authorizing the holders of not less than a majority in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) may contain provisions authorizing the holders of not less than 75 per centum in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77000 of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any such obligor, shall be disregarded, except that for the purposes of determining whether the indenture trustee shall be protected in relying on any such direction or consent, only indenture securities which such trustee knows are so owned shall be so disregarded.

**(b) Prohibition of impairment of holder's right to payment**

Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except—

(1) as to a postponement of an interest payment consented to as provided in paragraph (2) of subsection (a);

(2) that such indenture may contain provisions limiting or denying the right of any such holder to institute any such suit, if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver, or loss of the lien of such indenture upon any property subject to such lien; and

(3) that the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security shall not be deemed to be impaired or affected by any change occurring by the application of section 5803 of title 12 to any indenture security.

**(c) Record date**

The obligor upon any indenture qualified under this subchapter may set a record date for purposes of determining the identity of indenture security holders entitled to vote or consent to any action by vote or consent authorized or permitted by subsection (a) of this section. Unless the indenture provides otherwise, such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders furnished to the trustee pursuant to section 77111 of this title prior to such solicitation.

(May 27, 1933, ch. 38, title III, §316, as added Aug. 3, 1939, ch. 411, 53 Stat. 1172; amended Pub. L. 101-550, title IV, §415, Nov. 15, 1990, 104 Stat. 2731; Pub. L. 117-103, div. U, §108, Mar. 15, 2022, 136 Stat. 832.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2022**—Subsec. (b). Pub. L. 117-103 substituted "such holder, except—" for "such holder, except", designated remainder of existing provisions as pars. (1) and (2), and added par. (3).

**1990**—Subsec. (a). Pub. L. 101-550, §415(1)–(3), in introductory provisions struck out "may contain

provisions" after "qualified", in par. (1) inserted "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions" before "authorizing the holders" and "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities", and in par. (2) inserted "may contain provisions" before "authorizing the holders" and "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities".

Subsec. (b). Pub. L. 101–550, §415(5), which directed the substitution of "of the indenture to be qualified" for "thereof", was executed by making the substitution for "thereof" the first time appearing, as the probable intent of Congress.

Subsec. (c). Pub. L. 101–550, §415(6), added subsec. (c).

## **§77qqq. Special powers of trustee; duties of paying agents**

(a) The indenture trustee shall be authorized—

(1) in the case of a default in payment of the principal of any indenture security, when and as the same shall become due and payable, or in the case of a default in payment of the interest on any such security, when and as the same shall become due and payable and the continuance of such default for such period as may be prescribed in such indenture, to recover judgment, in its own name and as trustee of an express trust, against the obligor upon the indenture securities for the whole amount of such principal and interest remaining unpaid; and

(2) to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of such trustee and of the indenture security holders allowed in any judicial proceedings relative to the obligor upon the indenture securities, its creditors, or its property.

(b) Each paying agent shall hold in trust for the benefit of the indenture security holders or the indenture trustee all sums held by such paying agent for the payment of the principal of or interest on the indenture securities, and shall give to such trustee notice of any default by any obligor upon the indenture securities in the making of any such payment.

(May 27, 1933, ch. 38, title III, §317, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101–550, title IV, §416, Nov. 15, 1990, 104 Stat. 2731; Pub. L. 111–203, title IX, §985(c)(2), July 21, 2010, 124 Stat. 1934.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsec. (a)(1). Pub. L. 111–203 substituted "(1) in the" for "(1) , in the".

**1990**—Subsec. (a). Pub. L. 101–550, §416(1)–(3), in introductory provisions, substituted "trustee shall be authorized" for "to be qualified shall contain provisions", in par. (1) struck out "authorizing the indenture trustee" after the paragraph designation, and in par. (2) struck out "authorizing such trustee" after the paragraph designation.

Subsec. (b). Pub. L. 101–550, §416(4), substituted "Each" for "The indenture to be qualified shall provide that each".

## **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.

## **§77rrr. Effect of prescribed indenture provisions**

**(a) Imposed duties to control**

If any provision of the indenture to be qualified limits, qualifies, or conflicts with the duties imposed by operation of subsection (c) of this section, the imposed duties shall control.

**(b) Additional provisions**

The indenture to be qualified may contain, in addition to provisions specifically authorized under this subchapter to be included therein, any other provisions the inclusion of which is not in contravention of any provision of this subchapter.

**(c) Provisions governing qualified indentures**

The provisions of sections 77jjj to and including 77qqq of this title that impose duties on any person (including provisions automatically deemed included in an indenture unless the indenture provides that such provisions are excluded) are a part of and govern every qualified indenture, whether or not physically contained therein, shall be deemed retroactively to govern each indenture heretofore qualified, and prospectively to govern each indenture hereafter qualified under this subchapter and shall be deemed retroactively to amend and supersede inconsistent provisions in each such indenture heretofore qualified. The foregoing provisions of this subsection shall not be deemed to effect the inclusion (by retroactive amendment or otherwise) in the text of any indenture heretofore qualified of any of the optional provisions contemplated by section 77jjj(b)(1), 77kkk(b), 77nnn(d), 77ooo(a), 77ooo(b), 77ooo(d), 77ooo(e), or 77ppp(a)(1) of this title.

(May 27, 1933, ch. 38, title III, §318, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101-550, title IV, §417, Nov. 15, 1990, 104 Stat. 2731.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1990**—Subsec. (a). Pub. L. 101-550, §417(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "The indenture to be qualified shall provide that if any provision thereof limits, qualifies, or conflicts with another provision which is required to be included in such indenture by any of sections 77jjj to 77qqq of this title, inclusive, such required provision shall control."

Subsec. (c). Pub. L. 101-550, §417(2), added subsec. (c).

**§77sss. Rules, regulations, and orders**

**(a) Authority of Commission; subject matter of rules, etc.**

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate in the public interest or for the protection of investors to carry out the provisions of this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, (1) by rules and regulations, to prescribe for the purposes of section 77jjj(b) of this title the method (to be fixed in indentures to be qualified under this subchapter) of calculating percentages of voting securities and other securities; (2) by rules and regulations, to prescribe the definitions of the terms "cash transaction" and "self-liquidating paper" which shall be included in indentures to be qualified under this subchapter, which definitions shall include such of the creditor relationships referred to in paragraphs (4) and (6) of subsection (b) of section 77kkk of this title as to which the Commission determines that the application of subsection (a) of section 77kkk of this title is not necessary in the public interest or for the protection of investors, having due regard for the purposes of such subsection; and (3) for the purposes of this subchapter, to prescribe the form or forms in which information required in any statement, application, report, or other document filed with the Commission shall be set forth. For the purpose of its rules or regulations the Commission may classify persons, securities, indentures, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, indentures, or matters.

**(b) Rules and regulations effective upon publication**

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 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) Exemption from liability for any acts taken in good faith in conformity with rules, etc.**

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.

(May 27, 1933, ch. 38, title III, §319, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; Pub. L. 105-353, title III, §301(e)(4), Nov. 3, 1998, 112 Stat. 3237.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1998**—Subsec. (b). Pub. L. 105-353 substituted "chapter 15 of title 44" for "the Federal Register 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.

**§77ttt. 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.

(May 27, 1933, ch. 38, title III, §320, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174.)

**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.

**§77uuu. Special powers of the Commission**

**(a) Investigatory powers**

For the purpose of any investigation or any other proceeding which, in the opinion of the Commission, is necessary and proper for the enforcement of 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 the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such books, papers, correspondence, memoranda, contracts, agreements, or other records may be required from any place in the United States or in any Territory at any designated

place of investigation or hearing. In addition, the Commission shall have the powers with respect to investigations and hearings, and with respect to the enforcement of, and offenses and violations under, this subchapter and rules and regulations and orders prescribed under the authority thereof, provided in sections 77t and 77v(b), (c) of this title.

**(b) Availability of reports from other offices; restrictions**

The Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, and the Federal Deposit Insurance Corporation are authorized, under such conditions as they may prescribe, to make available to the Commission such reports, records, or other information as they may have available with respect to trustees or prospective trustees under indentures qualified or to be qualified under this subchapter, and to make through their examiners or other employees for the use of the Commission, examinations of such trustees or prospective trustees. Every such trustee or prospective trustee shall, as a condition precedent to qualification of such indenture, consent that reports of examinations by Federal, State, Territorial, or District authorities may be furnished by such authorities to the Commission upon request therefor.

Notwithstanding any provision of this subchapter, no report, record, or other information made available to the Commission under this subsection, no report of an examination made under this subsection for the use of the Commission, no report of an examination made of any trustee or prospective trustee by any Federal, State, Territorial, or District authority having jurisdiction to examine or supervise such trustee, no report made by any such trustee or prospective trustee to any such authority, and no correspondence between any such authority and any such trustee or prospective trustee, shall be divulged or made known or available by the Commission or any member, officer, agent, or employee thereof, to any person other than a member, officer, agent, or employee of the Commission: *Provided*, That the Commission may make available to the Attorney General of the United States, in confidence, any information obtained from such records, reports of examination, other reports, or correspondence, and deemed necessary by the Commission, or requested by him, for the purpose of enabling him to perform his duties under this subchapter.

**(c) Investigation of prospective trustees**

Any investigation of a prospective trustee, or any proceeding or requirement for the purpose of obtaining information regarding a prospective trustee, under any provision of this subchapter, shall be limited—

(1) to determining whether such prospective trustee is qualified to act as trustee under the provisions of subsection (b) of section 77jjj of this title;

(2) to requiring the inclusion in the registration statement or application of information with respect to the eligibility of such prospective trustee under paragraph (1) of subsection (a) of section 77jjj of this title; and

(3) to requiring the inclusion in the registration statement or application of the most recent published report of condition of such prospective trustee, as described in paragraph (2) of subsection (a) of section 77jjj of this title, or, if the indenture does not contain the provision with respect to combined capital and surplus authorized by the last sentence of paragraph (2) of subsection (a) of section 77jjj of this title, to determining whether such prospective trustee is eligible to act as such under paragraph (2) of subsection (a) of section 77jjj of this title.

**(d) Appointment and compensation of employees; lease and allocation of real property**

The provisions 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.

(May 27, 1933, ch. 38, title III, §321, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174; amended Pub. L. 101-550, title I, §104(b), Nov. 15, 1990, 104 Stat. 2714.)



## EDITORIAL NOTES

### AMENDMENTS

**1990**—Subsec. (d). Pub. L. 101–550 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this subchapter."

## 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.

### EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions of officers, agencies and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

## §77vvv. Judicial review

### (a) Review of orders

Orders of the Commission under this subchapter (including orders pursuant to the provisions of sections 77eee(b) and 77ggg(c) of this title) shall be subject to review in the same manner, upon the same conditions, and to the same extent, as provided in section 9 of the Securities Act of 1933 [15 U.S.C. 77i], with respect to orders of the Commission under such Act.

### (b) Jurisdiction of offenses and suits

Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability or duty created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 22(a) of the Securities Act of 1933 [15 U.S.C. 77v(a)].

(May 27, 1933, ch. 38, title III, §322, as added Aug. 3, 1939, ch. 411, 53 Stat. 1175; amended Pub. L. 101–550, title IV, §418, Nov. 15, 1990, 104 Stat. 2732.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

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

### AMENDMENTS

**1990**—Subsec. (b). Pub. L. 101–550 inserted "or duty" after "any liability".

## 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.

## **§77www. Liability for misleading statements**

(a) Any person who shall make or cause to be made any statement in any application, report, or document filed with the Commission pursuant to any provisions of this subchapter, or any rule, regulation, or order thereunder, 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, or who shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall be liable to any person (not knowing that such statement was false or misleading or of such omission) who, in reliance upon such statement or omission, shall have purchased or sold a security issued under the indenture to which such application, report, or document relates, 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 or of such omission. 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, having due regard to the merits and good faith of the suit or defense. 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.

(b) The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist under 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.], or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this subchapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(May 27, 1933, ch. 38, title III, §323, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Pub. L. 111–203, title IX, §986(b)(5), 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 this chapter. 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.

### **AMENDMENTS**

**2010**—Subsec. (b). Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935".

### **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.

## **§77xxx. Unlawful representations**

It shall be unlawful for any person in offering, selling or issuing any security to represent or imply in any manner whatsoever that any action or failure to act by the Commission in the administration of this subchapter means that the Commission has in any way passed upon the merits of, or given approval to, any trustee, indenture or security, or any transaction or transactions therein, or that any such action or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this subchapter or any rule, regulation, or order thereunder, has the effect of a finding by the Commission that such statement or report is true and accurate on its face or that it is not false or misleading.

(May 27, 1933, ch. 38, title III, §324, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Aug. 10, 1954, ch. 667, title III, §305, 68 Stat. 688.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1954**—Act Aug. 10, 1954, substituted "offering, selling, or issuing" for "issuing or selling".

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 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.

## **§77yyy. Penalties**

Any person who willfully violates any provision of this subchapter or any rule, regulation, or order thereunder, or any person who willfully, in any application, report, or document filed or required to be filed under the provisions of this subchapter or any rule, regulation, or order thereunder, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title III, §325, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177; amended Pub. L. 94–29, §27(d), June 4, 1975, 89 Stat. 163.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1975**—Pub. L. 94–29 substituted "\$10,000" for "\$5,000".

### **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.

## §77zzz. Effect on existing law

Except as otherwise expressly provided, 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.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] over any person, security, or contract, 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 or security, insofar as such jurisdiction does not conflict with any provision of this subchapter or any rule, regulation, or order thereunder.

(May 27, 1933, ch. 38, title III, §326, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177; amended Pub. L. 111–203, title IX, §986(b)(6), 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 this chapter. 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.

## AMENDMENTS

**2010**—Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,".

## 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.

## §77aaaa. Contrary stipulations 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.

(May 27, 1933, ch. 38, title III, §327, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

## §77bbbb. Separability

If any provision of this subchapter or the application of such provision to any person or circumstance 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.

(May 27, 1933, ch. 38, title III, §328, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

## CHAPTER 2B—SECURITIES EXCHANGES

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- 78b. Necessity for regulation.
- 78c. Definitions and application.
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- 78c–2. Securities-related derivatives.
- 78c–3. Clearing for security-based swaps.
- 78c–4. Security-based swap execution facilities.
- 78c–5. Segregation of assets held as collateral in security-based swap transactions.
- 78d. Securities and Exchange Commission.
- 78d–1. Delegation of functions by Commission.
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- 78d–3. Appearance and practice before the Commission.
- 78d–4. Additional duties of Inspector General.
- 78d–5. Deadline for completing enforcement investigations and compliance examinations and inspections.
- 78d–6. Report and certification of internal supervisory controls.
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- 78d–8. Annual financial controls audit.
- 78d–9. Report on oversight of national securities associations.
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- 78g. Margin requirements.
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- 78i. Manipulation of security prices.
- 78j. Manipulative and deceptive devices.
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## **§78a. Short title**

This chapter may be cited as the "Securities Exchange Act of 1934."  
(June 6, 1934, ch. 404, title I, §1, 48 Stat. 881.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "This Act" meaning the Securities Exchange Act of 1934, act June 6, 1934, ch. 404. The act was divided into two titles as follows: "Title I—Regulation of Securities Exchanges" and "Title II—Amendments to Securities Act of 1933." This section was section 1 of title I of the Act, which title, as amended, is set out as sections 78a to 78d–5, 78e to 78l, 78m, 78m–1, 78n to 78o, 78o–3, 78o–4, 78o–5 to 78o–7, 78o–10 to 78u–6, 78v to 78dd–1, 78ee to 78hh, 78mm, and 78pp to 78rr of this title. Sections 78kk, 78ll, 78nn, 78oo, and 78rr of this title, which were directed to be added at the end of the Securities Exchange Act of 1934, have been treated in the Code as added to title I of the Act to reflect the probable intent of Congress. See Codification notes set out under those sections. Title II of the act amended or repealed sections 77b, 77c, 77d, 77e, 77j, 77k, 77m, 77o, and 77s of this title, and added former sections 78ii and 78jj of this title. For complete classification of this Act to the Code, see Tables.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SHORT TITLE 2022 AMENDMENT**

Pub. L. 117–263, div. E, title LVIII, §5801, Dec. 23, 2022, 136 Stat. 3421, provided that: "This title [enacting sections 77z–4 and 78rr of this title and sections 14a, 253, 1772e, 1772f, 1831cc, 1831dd, 4527, 4528, 5334, 5335, 5498, and 5499 of Title 12, Banks and Banking, amending sections 77g, 78d, 78m, 78n, 78o–3, 78o–4, 78o–7, 80a–8, 80a–29, and 80b–4 of this title and sections 1467a, 1844, 5361, and 5468 of Title 12, enacting provisions set out as notes under sections 77g, 78o–3, 78o–4, and 78rr of this title and sections 14a, 253, 1772e, 1831cc, 4527, 5334, 5335, and 5498 of Title 12, and amending provisions set out as a note under section 5491 of Title 12] may be cited as the 'Financial Data Transparency Act of 2022'."

### **SHORT TITLE OF 2018 AMENDMENT**

Pub. L. 115–141, div. S, title IX, §901, Mar. 23, 2018, 132 Stat. 1143, provided that: "This title [amending section 78d of this title] may be cited as the 'Small Business Access to Capital After a Natural Disaster Act'."

### **SHORT TITLE OF 2016 AMENDMENT**

Pub. L. 114–284, §1, Dec. 16, 2016, 130 Stat. 1447, provided that: "This Act [enacting section 78qq of this title and amending sections 78d and 80c–1 of this title] may be cited as the 'SEC Small Business Advocate Act of 2016'."

### **SHORT TITLE OF 2012 AMENDMENT**

Pub. L. 112–106, §1, Apr. 5, 2012, 126 Stat. 306, provided that: "This Act [enacting section 77d–1 of this title, amending sections 77b, 77c, 77d, 77e to 77g, 77r, 78c, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under sections 77a, 77b, 77d, 77g, 77r, 78c, 78d, 78l, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title] may be cited as the 'Jumpstart Our Business Startups Act'."

### **SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–203, title IX, §901, July 21, 2010, 124 Stat. 1822, provided that: "This title [see Tables for classification] may be cited as the 'Investor Protection and Securities Reform Act of 2010'."

### **SHORT TITLE OF 2006 AMENDMENT**

Pub. L. 109–291, §1, Sept. 29, 2006, 120 Stat. 1327, provided that: "This Act [enacting section 78o–7 of this title, amending sections 78c, 78o, 78q, 78u–2, 80a–2, 80a–9, 80b–2, and 80b–3 of this title, section 4519

of Title 12, Banks and Banking, section 1087–2 of Title 20, Education, and section 181 of Title 23, Highways, and enacting provisions set out as notes under section 780–7 of this title] may be cited as the 'Credit Rating Agency Reform Act of 2006'."

#### **SHORT TITLE OF 2004 AMENDMENT**

Pub. L. 108–458, title VII, §7803(a), Dec. 17, 2004, 118 Stat. 3861, provided that: "This section [amending sections 78l and 78o–5 of this title] may be cited as the 'Emergency Securities Response Act of 2004'."

#### **SHORT TITLE OF 2002 AMENDMENTS**

Pub. L. 107–204, title XI, §1101, July 30, 2002, 116 Stat. 807, provided that: "This title [amending sections 77h–1, 78u–3, and 78ff of this title and sections 1512 and 1513 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Corporate Fraud Accountability Act of 2002'."

Pub. L. 107–123, §1, Jan. 16, 2002, 115 Stat. 2390, provided that: "This Act [enacting chapter 48 of Title 5, Government Organization and Employees, amending sections 77f, 77ggg, 78d, 78m, 78n, and 78ee of this title, sections 3132 and 5373 of Title 5, and section 1833b of Title 12, Banks and Banking, and enacting provisions set out as notes under section 78ee of this title and section 4802 of Title 5] may be cited as the 'Investor and Capital Markets Fee Relief Act'."

#### **SHORT TITLE OF 1998 AMENDMENTS**

Pub. L. 105–366, §1, Nov. 10, 1998, 112 Stat. 3302, provided that: "This Act [enacting section 78dd–3 of this title, amending sections 78dd–1, 78dd–2, and 78ff of this title, and enacting provisions set out as notes under section 78dd–1 of this title] may be cited as the 'International Anti-Bribery and Fair Competition Act of 1998'."

Pub. L. 105–353, §1, Nov. 3, 1998, 112 Stat. 3227, provided that: "This Act [amending sections 77b, 77k, 77m, 77p, 77r, 77v, 77z–1 to 77z–3, 77aa, 77ccc, 77ddd, 77mmm, 77sss, 78c, 78d, 78g, 78n, 78o, 78o–4, 78o–5, 78q, 78s, 78t, 78u–4, 78z, 78bb, 78ee, 78kk, 78ll, 80a–2, 80a–3, 80a–12, 80a–18, 80a–29, 80a–30, 80b–3, and 80b–18a of this title and enacting provisions set out as notes under this section and sections 77p and 78u of this title] may be cited as the 'Securities Litigation Uniform Standards Act of 1998'."

#### **SHORT TITLE OF 1996 AMENDMENT**

Pub. L. 104–290, §1(a), Oct. 11, 1996, 110 Stat. 3416, provided that: "This Act [enacting sections 77z–3, 78mm, and 80b–3a of this title, amending sections 77b, 77c, 77f, 77r, 77ddd, 78c, 78d, 78g, 78h, 78o, 78q, 78bb, 78ee, 78kk, 80a–2, 80a–3, 80a–6, 80a–12, 80a–24, 80a–26, 80a–27, 80a–29, 80a–30, 80a–34, 80a–54, 80a–60, 80a–63, 80b–2, 80b–3, 80b–5, and 80b–18a of this title and section 1002 of Title 29, Labor, and enacting provisions set out as notes under this section, sections 77e, 77r, 78b, 78n, 78o, 78ee, 80a–2, 80a–3, 80a–24, 80a–51, 80b–2, 80b–3a, 80b–10, and 80b–20 of this title, and section 1002 of Title 29] may be cited as the 'National Securities Markets Improvement Act of 1996'."

Pub. L. 104–290, title I, §101, Oct. 11, 1996, 110 Stat. 3417, provided that: "This title [enacting sections 77z–3 and 78mm of this title, amending sections 77b, 77r, 78c, 78g, 78h, 78o, 78q, 78bb, and 80a–2 of this title, and enacting provisions set out as notes under sections 77e and 77r of this title] may be cited as the 'Capital Markets Efficiency Act of 1996'."

Pub. L. 104–290, title IV, §401, Oct. 11, 1996, 110 Stat. 3441, provided that: "This title [amending sections 77f, 78d, 78ee, and 78kk of this title and enacting provisions set out as notes under this section and section 78ee of this title] may be cited as the 'Securities and Exchange Commission Authorization Act of 1996'."

#### **SHORT TITLE OF 1995 AMENDMENT**

Pub. L. 104–67, §1(a), Dec. 22, 1995, 109 Stat. 737, provided that: "This Act [enacting sections 77z–1, 77z–2, 78j–1, 78u–4, and 78u–5 of this title, amending sections 77k, 77l, 77t, 78o, 78t, 78u, and 78u–4 of this title and section 1964 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 77k, 77l, and 78j–1 of this title] may be cited as the 'Private Securities Litigation Reform Act of 1995'."

#### **SHORT TITLE OF 1994 AMENDMENTS**

Pub. L. 103–389, §1, Oct. 22, 1994, 108 Stat. 4081, provided that: "This Act [amending section 78l of this title] may be cited as the 'Unlisted Trading Privileges Act of 1994'."

Pub. L. 103–325, title II, §201, Sept. 23, 1994, 108 Stat. 2198, provided that: "This subtitle [subtitle A (§§201–210) of title II of Pub. L. 103–325 enacting section 1835 of Title 12, Banks and Banking, amending sections 77r–1, 78c, 78g, 78h, and 78k of this title and sections 24, 1464, and 1757 of Title 12, and enacting



provisions set out as notes under section 78b of this title and section 3305 of Title 12] may be cited as the 'Small Business Loan Securitization and Secondary Market Enhancement Act of 1994'."

#### **SHORT TITLE OF 1993 AMENDMENT**

Pub. L. 103-202, §1(a), Dec. 17, 1993, 107 Stat. 2344, provided that: "This Act [enacting section 3130 of Title 31, Money and Finance, amending sections 78c, 78f, 78n, 78o, 78o-3, 78o-5, 78s, and 78w of this title, and enacting provisions set out as notes under this section, sections 78f, 78n, and 78o-5 of this title, and section 3121 of Title 31] may be cited as the 'Government Securities Act Amendments of 1993'."

Pub. L. 103-202, title III, §301, Dec. 17, 1993, 107 Stat. 2359, provided that: "This title [amending sections 78f, 78n, and 78o-3 of this title and enacting provisions set out as notes under sections 78f and 78n of this title] may be cited as the 'Limited Partnership Rollup Reform Act of 1993'."

#### **SHORT TITLE OF 1990 AMENDMENTS**

Pub. L. 101-550, §1, Nov. 15, 1990, 104 Stat. 2713, provided that: "This Act [amending sections 77ccc to 77eee, 77iii to 77rrr, 77uuu, 77vvv, 78c, 78d, 78n, 78o, 78o-4, 78o-5, 78q-1, 78x, 78kk, 79z-5, 80a-2, 80a-9, 80a-44, 80a-45, 80b-2, 80b-3, 80b-10, and 80b-18 of this title and enacting provisions set out as notes under this section and sections 77aaa and 78n of this title] may be cited as the 'Securities Acts Amendments of 1990'."

Pub. L. 101-550, title I, §101, Nov. 15, 1990, 104 Stat. 2713, provided that: "This title [amending sections 77uuu, 78d, 78kk, 79z-5, 80a-45, and 80b-18 of this title] may be cited as the 'Securities and Exchange Commission Authorization Act of 1990'."

Pub. L. 101-550, title II, §201, Nov. 15, 1990, 104 Stat. 2714, provided that: "This title [amending sections 78c, 78d, 78o, 78o-4, 78o-5, 78q-1, 78x, 80a-2, 80a-9, 80a-44, 80b-2, 80b-3, and 80b-10 of this title] may be cited as the 'International Securities Enforcement Cooperation Act of 1990'."

Pub. L. 101-550, title III, §301, Nov. 15, 1990, 104 Stat. 2721, provided that: "This title [amending section 78n of this title and enacting provisions set out as a note under section 78n of this title] may be cited as the 'Shareholder Communications Improvement Act of 1990'."

Pub. L. 101-432, §1, Oct. 16, 1990, 104 Stat. 963, provided that: "This Act [enacting section 18311 of Title 12, Banks and Banking, amending sections 78i, 78l, 78m, 78o-5, 78q, 78q-1, and 78y of this title, and enacting provisions set out as notes under sections 78b and 78q-1 of this title] may be cited as the 'Market Reform Act of 1990'."

Pub. L. 101-429, §1(a), Oct. 15, 1990, 104 Stat. 931, provided that: "This Act [enacting sections 77h-1, 78q-2, 78u-2, and 78u-3 of this title, amending sections 77g, 77t, 78c, 78o, 78o-3, 78o-4, 78q-1, 78u, 78u-1, 78w, 78cc, 80a-9, 80a-41, 80b-3, 80b-9, and 80b-14 of this title, and enacting provisions set out as notes under this section and sections 77g, 78o, and 78s of this title] may be cited as the 'Securities Enforcement Remedies and Penny Stock Reform Act of 1990'."

Pub. L. 101-429, title V, §501, Oct. 15, 1990, 104 Stat. 951, provided that: "This title [enacting section 78q-2 of this title, amending sections 77g, 78c, 78o, 78o-3, and 78cc of this title, and enacting provisions set out as notes under sections 78o and 78s of this title] may be cited as the 'Penny Stock Reform Act of 1990'."

#### **SHORT TITLE OF 1988 AMENDMENTS**

Pub. L. 100-704, §1, Nov. 19, 1988, 102 Stat. 4677, provided that: "This Act [enacting sections 78t-1, 78u-1, and 80b-4a of this title, amending sections 78c, 78o, 78u, 78ff, and 78kk of this title, and enacting provisions set out as notes under sections 78b, 78o, and 78u-1 of this title] may be cited as the 'Insider Trading and Securities Fraud Enforcement Act of 1988'."

Pub. L. 100-418, title V, §5001, Aug. 23, 1988, 102 Stat. 1415, provided that: "This part [part I (§§5001-5003) of subtitle A of title I of Pub. L. 100-418, amending sections 78m, 78dd-1, 78dd-2, and 78ff of this title and enacting provisions set out as a note under section 78dd-1 of this title] may be cited as the 'Foreign Corrupt Practices Act Amendments of 1988'."

#### **SHORT TITLE OF 1987 AMENDMENT**

Pub. L. 100-181, §1, Dec. 4, 1987, 101 Stat. 1249, provided that: "This Act [enacting sections 78d-1, 78d-2, and 78ll of this title, amending sections 77b, 77c, 77f, 77i, 77s, 77t, 77v, 77ccc, 78c, 78d, 78f, 78k-1, 78l, 78m, 78o, 78o-4, 78o-5, 78q, 78q-1, 78u, 78w, 78aa, 78bb, 78kk, 78lll, 79h, 79r, 79x, 79y, 79z-4, 80a-2, 80a-3, 80a-5, 80a-6, 80a-9, 80a-12, 80a-15, 80a-17, 80a-18, 80a-20, 80a-21, 80a-22, 80a-24, 80a-26, 80a-28, 80a-35, 80a-41, 80a-52, 80a-53, 80a-54, 80a-56, 80b-2, 80b-3, 80b-5, 80b-9, 80b-11, 80b-13, and 80b-14 of this title, and repealing sections 78d-1, 78d-2, and 78jj of this title] may be cited as the 'Securities and Exchange Commission Authorization Act of 1987'."

#### **SHORT TITLE OF 1986 AMENDMENT**

Pub. L. 99-571, §1(a), Oct. 28, 1986, 100 Stat. 3208, provided that: "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 section 78o-5 of this title] may be cited as the 'Government Securities Act of 1986'."

#### **SHORT TITLE OF 1985 AMENDMENT**

Pub. L. 99-222, §1, Dec. 28, 1985, 99 Stat. 1737, provided that: "This Act [amending section 78n of this title and enacting a provision set out as a note under section 78n of this title] may be cited as the 'Shareholder Communications Act of 1985'."

#### **SHORT TITLE OF 1984 AMENDMENT**

Pub. L. 98-376, §1, Aug. 10, 1984, 98 Stat. 1264, provided that: "This Act [amending sections 78c, 78o, 78t, 78u, and 78ff of this title and enacting provisions set out as a note under section 78c of this title] may be cited as the 'Insider Trading Sanctions Act of 1984'."

#### **SHORT TITLE OF 1977 AMENDMENT**

Pub. L. 95-213, title I, §101, Dec. 19, 1977, 91 Stat. 1494, provided that: "This title [enacting sections 78dd-1 and 78dd-2 of this title and amending sections 78m and 78ff of this title] may be cited as the 'Foreign Corrupt Practices Act of 1977'."

Pub. L. 95-213, title II, §201, Dec. 19, 1977, 91 Stat. 1498, provided that: "This title [amending sections 78m and 78o of this title] may be cited as the 'Domestic and Foreign Investment Improved Disclosure Act of 1977'."

#### **SHORT TITLE OF 1975 AMENDMENT**

Pub. L. 94-29, §1, June 4, 1975, 89 Stat. 97, provided: "That this Act [enacting sections 78k-1, 78o-4, 78q-1, and 78kk of this title, amending sections 77d, 77x, 77yyy, 78b, 78c, 78d-1, 78f, 78h, 78k, 78l, 78m, 78o, 78o-3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z-3, 80a-9, 80a-10, 80a-13, 80a-15, 80a-16, 80a-18, 80a-31, 80a-35, 80a-48, 80b-3, 80b-4, and 80b-17 of this title, and enacting provisions set out as notes under sections 78b and 78f of this title] may be cited as the 'Securities Acts Amendments of 1975'."

#### **SHORT TITLE OF 1964 AMENDMENT**

Pub. L. 88-467, §1, Aug. 20, 1964, 78 Stat. 565, provided: "That this Act [amending sections 77d, 78c, 78l to 78o, 78o-3, 78p, 78t, 78w, and 78ff of this title and enacting provisions set out as a note under section 78c of this title] may be cited as the 'Securities Acts Amendments of 1964'."

#### **SHORT TITLE OF 1936 AMENDMENT**

Act May 27, 1936, ch. 462, 49 Stat. 1375, enacting sections 78l-1, 78o-1, 78o-2, and 78hh-1 of this title, and amending sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title, is popularly known as the Unlisted Securities Trading Act.

#### **SEVERABILITY**

Pub. L. 104-290, §3, Oct. 11, 1996, 110 Stat. 3417, provided: "If any provision of this Act [see Short Title of 1996 Amendment note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby."

#### **CONGRESSIONAL FINDINGS OF 1998 AMENDMENT**

Pub. L. 105-353, §2, Nov. 3, 1998, 112 Stat. 3227, provided that: "The Congress finds that—

"(1) the Private Securities Litigation Reform Act of 1995 [see Short Title of 1995 Amendment note above] sought to prevent abuses in private securities fraud lawsuits;

"(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

"(3) this shift has prevented that Act from fully achieving its objectives;

"(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

"(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being

used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits."

#### **PURPOSES OF 1996 AMENDMENT**

Pub. L. 104-290, title IV, §402, Oct. 11, 1996, 110 Stat. 3441, provided: "The purposes of this title [see Short Title of 1996 Amendment note above] are—

- "(1) to authorize appropriations for the Commission for fiscal year 1997; and
- "(2) to reduce over time the rates of fees charged under the Federal securities laws."

#### **DEFINITIONS**

Pub. L. 104-290, §2, Oct. 11, 1996, 110 Stat. 3417, provided: "For purposes of this Act [see Short Title of 1996 Amendment note above]—

- "(1) the term 'Commission' means the Securities and Exchange Commission; and
- "(2) the term 'State' has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c]."

### **§78b. Necessity for regulation**

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

(1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

(2) The prices established and offered in such transactions are generally disseminated and quoted throughout the United States and foreign countries and constitute a basis for determining and establishing the prices at which securities are bought and sold, the amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.

(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.

(4) National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and

unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.

(June 6, 1934, ch. 404, title I, §2, 48 Stat. 881; Pub. L. 94-29, §2, June 4, 1975, 89 Stat. 97; Pub. L. 111-203, title IX, §985(b)(1), July 21, 2010, 124 Stat. 1933.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Pub. L. 111-203 substituted "effected" for "affected" in introductory provisions.

**1975**—Pub. L. 94-29 inserted "to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto," after "require appropriate reports," in introductory provisions.

## **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**

Pub. L. 94-29, §31(a), June 4, 1975, 89 Stat. 170, provided that: "This Act [enacting sections 78k-1, 78o-4, 78q-1, and 78kk of this title, amending this section and sections 77d, 77x, 77yyy, 78c, 78d-1, 78f, 78h, 78k, 78l, 78m, 78o, 78o-3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z-3, 80a-9, 80a-10, 80a-13, 80a-15, 80a-16, 80a-18, 80a-31, 80a-35, 80a-48, 80b-3, 80b-4, and 80b-17 of this title, and enacting provisions set out as notes under sections 78a and 78f of this title] shall become effective on the date of its enactment [June 4, 1975] except as hereinafter provided. The amendments made by this Act to sections 3(a)(12), 6(a) through (d), 11A(b), 15(a), 15A, 15B(a), 17A(b), and (c), and 19(g) of the Securities Exchange Act of 1934 [sections 78c(a)(12), 78f(a) through (d), 78k-1(b), 78o(a), 78o-3, 78o-4(a), 78q-1(b) and (c), and 78s(g) of this title] shall become effective one hundred eighty days after the date of enactment of this Act [June 4, 1975], and the amendments made by this Act to section 31 of the Securities Exchange Act of 1934 [section 78ee of this title] shall become effective on January 1, 1976. Neither the provisions of section 3(a)(3), 6(b)(2), or 6(c)(1) of the Securities Exchange Act of 1934 (as amended by this Act) [section 78c(a)(3), 78f(b)(2), or 78f(c)(1) of this title] nor any rule or regulation thereunder shall apply so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on the date of enactment of this Act [June 4, 1975], a member or a member firm as defined in the constitution of such exchange or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm."

## **STUDY AND REPORT ON IMPACT OF TECHNOLOGICAL ADVANCES ON SECURITIES MARKETS**

Pub. L. 104-290, title V, §510(a), Oct. 11, 1996, 110 Stat. 3450, provided that:

"(1) STUDY.—

"(A) IN GENERAL.—The Commission shall conduct a study of—

"(i) the impact of technological advances and the use of on-line information systems on the securities markets, including steps that the Commission has taken to facilitate the electronic delivery of prospectuses to institutional and other investors;

"(ii) how such technologies have changed the way in which the securities markets operate; and

"(iii) any steps taken by the Commission to address such changes.

"(B) CONSIDERATIONS.—In conducting the study under subparagraph (A), the Commission shall consider how the Commission has adapted its enforcement policies and practices in response to technological developments with regard to—

"(i) disclosure, prospectus delivery, and other customer protection regulations;

"(ii) intermediaries and exchanges in the domestic and international financial services industry;

"(iii) reporting by issuers, including communications with holders of securities;

"(iv) the relationship of the Commission with other national regulatory authorities and organizations to improve coordination and cooperation; and

"(v) the relationship of the Commission with State regulatory authorities and organizations to improve coordination and cooperation.

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1)."

#### **JOINT STUDY ON IMPACT OF ADDITIONAL SECURITIES BASED ON POOLED OBLIGATIONS**

Pub. L. 103–325, title II, §209, Sept. 23, 1994, 108 Stat. 2202, provided that:

"(a) JOINT STUDY REQUIRED.—The Board and the Commission shall conduct a joint study of the impact of the provisions of this subtitle [subtitle A [§§201–210 of title II of Pub. L. 103–325], see Short Title of 1994 Amendment note set out under section 78a of this title] (including the amendments made by this subtitle) on the credit and securities markets. Such study shall evaluate—

"(1) the impact of the provisions of this subtitle on the availability of credit for business and commercial enterprises in general, and the availability of credit in particular for—

"(A) businesses in low- and moderate-income areas;

"(B) businesses owned by women and minorities;

"(C) community development efforts;

"(D) community development financial institutions;

"(E) businesses in different geographical regions; and

"(F) a diversity of types of businesses;

"(2) the structure and operation of the markets that develop for small business related securities and commercial mortgage related securities, including the types of entities (such as pension funds and insurance companies) that are significant purchasers of such securities, the extent to which such entities are sophisticated investors, the use of credit enhancements in obtaining investment-grade ratings, any conflicts of interest that arise in such markets, and any adverse effects of such markets on commercial real estate ventures, pension funds, or pension fund beneficiaries;

"(3) the extent to which the provisions of this subtitle with regard to margin requirements, the number of eligible investment rating categories, preemption of State law, and the treatment of such securities as government securities for the purpose of State investment limitations, affect the structure and operation of such markets; and

"(4) in view of the findings made pursuant to paragraphs (2) and (3), any additional suitability or disclosure requirements or other investor protections that should be required.

"(b) REPORTS.—

"(1) IN GENERAL.—The Board and the Commission shall submit to the Congress a report on the results of the study required by subsection (a) before the end of—

"(A) the 2-year period beginning on the date of enactment of this Act [Sept. 23, 1994];

"(B) the 4-year period beginning on such date of enactment; and

"(C) the 6-year period beginning on such date of enactment.

"(2) CONTENTS OF REPORT.—Each report required under paragraph (1) shall contain or be accompanied by such recommendations for administrative or legislative action as the Board and the Commission consider appropriate and may include recommendations regarding the need to develop a system for reporting additional information concerning investments by the entities described in subsection (a)(2).

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'Board' means the Board of Governors of the Federal Reserve System; and

"(2) the term 'Commission' means the Securities and Exchange Commission."

#### **INTERMARKET COORDINATION; REPORTS TO CONGRESS**

Pub. L. 101–432, §8(a), Oct. 16, 1990, 104 Stat. 976, provided that the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission should report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the efforts their respective agencies have made relating to the coordination of regulatory activities to ensure the integrity and competitiveness of United States financial markets and to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies, on the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants, and other issues relating to market soundness.

## SECURITIES LAWS STUDY

Pub. L. 100-704, §7, Nov. 19, 1988, 102 Stat. 4682, directed Securities and Exchange Commission to study and investigate adequacy of Federal securities laws and regulations for protection of the public interest and interests of investors, specified subjects for the study and investigation and authority of Commission in conducting the study and investigation, directed Commission to supply interim information to Congress on the progress of, and any impediments to completing, the study and investigation, directed Commission to report to Congress on results of the study and investigation within 18 months after the date funds are appropriated for the study and investigation, including in such report the Commission's recommendations.

## FOREIGN INVESTMENT STUDY

Pub. L. 93-479, Oct. 26, 1974, 88 Stat. 1450, directed Secretary of the Treasury and Secretary of Commerce to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States and submit to Congress an interim report twelve months after Oct. 26, 1974, and not later than one and one-half years after Oct. 26, 1974, a full and complete report of the findings made under the study authorized, together with such recommendations as they considered appropriate.

## EXECUTIVE DOCUMENTS

### EX. ORD. NO. 12631. WORKING GROUP ON FINANCIAL MARKETS

Ex. Ord. No. 12631, Mar. 18, 1988, 53 F.R. 9421, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Working Group on Financial Markets, it is hereby ordered as follows:

**SECTION 1. *Establishment.*** (a) There is hereby established a Working Group on Financial Markets (Working Group). The Working Group shall be composed of:

- (1) the Secretary of the Treasury, or his designee;
- (2) the Chairman of the Board of Governors of the Federal Reserve System, or his designee;
- (3) the Chairman of the Securities and Exchange Commission, or his designee; and
- (4) the Chairman of the Commodity Futures Trading Commission, or her designee.

(b) The Secretary of the Treasury, or his designee, shall be the Chairman of the Working Group.

**SEC. 2. *Purposes and Functions.*** (a) Recognizing the goals of enhancing the integrity, efficiency, orderliness, and competitiveness of our Nation's financial markets and maintaining investor confidence, the Working Group shall identify and consider:

(1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and

(2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

(b) The Working Group shall consult, as appropriate, with representatives of the various exchanges, clearinghouses, self-regulatory bodies, and with major market participants to determine private sector solutions wherever possible.

(c) The Working Group shall report to the President initially within 60 days (and periodically thereafter) on its progress and, if appropriate, its views on any recommended legislative changes.

**SEC. 3. *Administration.*** (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Working Group such information as it may require for the purpose of carrying out this Order.

(b) Members of the Working Group shall serve without additional compensation for their work on the Working Group.

(c) To the extent permitted by law and subject to the availability of funds therefor, the Department of the Treasury shall provide the Working Group with such administrative and support services as may be necessary for the performance of its functions.

RONALD REAGAN.

## §78c. Definitions and application

### (a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) The term "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.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules. For purposes of sections 78f(b)(1), 78f(b)(4), 78f(b)(6), 78f(b)(7), 78f(d), 78q(d), 78s(d), 78s(e), 78s(g), 78s(h), and 78u of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 78f(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules.

**(4) BROKER.—**

(A) **IN GENERAL.**—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) **EXCEPTION FOR CERTAIN BANK ACTIVITIES.**—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) **THIRD PARTY BROKERAGE ARRANGEMENTS.**—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this chapter under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling

appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) **TRUST ACTIVITIES.**—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) **PERMISSIBLE SECURITIES TRANSACTIONS.**—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of title 12, in conformity with section 78o–5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) **CERTAIN STOCK PURCHASE PLANS.**—

(I) **EMPLOYEE BENEFIT PLANS.**—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 1841 of title 12), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) **DIVIDEND REINVESTMENT PLANS.**—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to



the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of November 12, 1999; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 1841 of title 12) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 1843(k)(4)(H) of title 12.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2),<sup>1</sup> or 4(5) <sup>1</sup> of the Securities Act of 1933 [15 U.S.C. 77c(b), 77d(a)(2), 77d(a)(5)] or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after November 12, 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this chapter, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or

invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 78o(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term "fiduciary capacity" means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 78O(e).<sup>1</sup>—The term "broker" does not include a bank that—

(i) was, on the day before November 12, 1999, subject to section 78o(e) <sup>1</sup> of this title; and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term "dealer" does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of title 12, in conformity with section 78o–5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term "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) <sup>1</sup> of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 1462(4) <sup>1</sup> of title 12, 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 pursuant to section 92a of title 12, 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 chapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term "director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, 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, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has 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.

(11) The term "equity security" means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(3)];

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any 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 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)];

(vi) solely for purposes of sections 78l, 78m, 78n, and 78p of this title, 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)]; and

(vii) such other securities (which may include, among others, unregistered securities, the

market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this chapter which by their terms do not apply to an "exempted security" or to "exempted securities".

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 78q-1 of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections 78o and 78q-1 of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, (iii) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a 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)], other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of title 26, or (II) is a plan funded by an annuity contract described in section 403(b) of title 26.

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(14) The terms "sale" and "sell" each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(15) The term "Commission" means the Securities and Exchange Commission established by section 78d of this title.

(16) The term "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.

(17) 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. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 78o(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company", "affiliated person", "insurance company", "separate account", and "company" have the same meanings as in the Investment Company Act of 1940 [15

U.S.C. 80a-1 et seq.].

(20) The terms "investment adviser" and "underwriter" have the same meanings as in the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].

(21) The term "person associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organizations, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 153 of title 47, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 153 of title 47, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing



agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this chapter; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph (25)(E) of this subsection.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 78s(b), 78s(c), and 78w(b) <sup>1</sup> of this title) the Municipal Securities Rulemaking Board established by section 78o-4 of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) <sup>1</sup> of title 26) the interest on which is excludable from gross income under section 103(a)(1) <sup>1</sup> of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) <sup>1</sup> of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), <sup>1</sup> paragraph (1) of such section 103(c) <sup>1</sup> does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either

individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise: *Provided, however*, That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 78o-4(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph, a subsidiary or a department or division of such subsidiary, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by



the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) The Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation <sup>2</sup> when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and <sup>3</sup> when the appropriate regulatory agency for such clearing agency is not the Commission; <sup>4</sup>

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account; <sup>5</sup>

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811

et seq.] or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(2)]), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.];

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(3)]), the deposits of which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 1841(c)(2), or held under section 1843(f) of title 12—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 1841 of title 12. As used in this paragraph, the term "savings and loan holding company" has the same meaning as in section 1467a(a) of title 12.

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this chapter and the rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their

regulation under this chapter which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this chapter.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions 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 thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions 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 thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (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) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, 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, report, or proceeding any material fact which is required to be stated therein.

(40) The term "financial responsibility rules" means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term "mortgage related security" means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 1703 of title 12; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A)(i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence <sup>6</sup> by a retail

installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 78o-5 and 78q-1 of this title, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 78o, 78o-5, and 78q-1 of this title as applied to a bank, a qualified Canadian government obligation as defined in section 24 of title 12.

(43) The term "government securities broker" means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(44) The term "government securities dealer" means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing

similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means 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 Sarbanes-Oxley Act of 2002 [15 U.S.C. 7201 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 et seq.) [15 U.S.C. 80b–1 et seq.], and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 78o or 78o–4 of this title, except that in paragraph (3) of this subsection and sections 78f and 78o–3 of this title the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 78o–5(a)(1)(A) of this title.

(49) The term "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "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.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.];

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders,

the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "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 participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either—

- (i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or
- (ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

(B) For purposes of this paragraph—

- (i) an "interest in a promissory note or a lease of personal property" includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;
- (ii) the term "small business concern" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of this title;
- (iii) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]; and
- (iv) the term "insured credit union" has the same meaning as in section 1752 of title 12.

(54) QUALIFIED INVESTOR.—

(A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this chapter, the term "qualified investor" means—

- (i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8];
- (ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(7)];
- (iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933 [15 U.S.C. 77b(a)(13)]), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(48)]);
- (iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) [15 U.S.C. 681(c)] or (d) <sup>1</sup> of the Small Business Investment Act of 1958;
- (v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act [29 U.S.C. 1002(21)], which is either a bank, savings and loan association, insurance company, or registered investment adviser;
- (vi) any trust whose purchases of securities are directed by a person described in clauses (i)



through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(2)];

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. 3101(7)]);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than \$50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of subsection (a)(5)(C)(iii) of this section and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term "qualified investor" has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting "\$10,000,000" for "\$25,000,000".

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under paragraph (12) of this subsection as in effect on January 11, 1983 (other than any municipal security as defined in paragraph (29) of this subsection as in effect on January 11, 1983). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.] under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act [7 U.S.C. 2(c), (d), (f), (g)] (as in effect on December 21, 2000) or sections 27 to 27f of title 7.

(B) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

(i)(I) it has at least nine component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 78l of this title;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;



(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before December 21, 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

(v) no more than 18 months have passed since December 21, 2000, and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before December 21, 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after December 21, 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term "margin", when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms "margin level" and "level of margin", when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms "higher margin level" and "higher level of margin", when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 78f(g) of this title that is higher than the minimum amount established and in effect pursuant to section 78g(c)(2)(B) of this title.

(58) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the

issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7201].

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 78o–7(a)(1)(B)(ix) of this title, with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on September 29, 2006);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 78o–7 of this title.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with" a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

(64) QUALIFIED INSTITUTIONAL BUYER.—The term "qualified institutional buyer" has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.

(65) ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(66) MAJOR SWAP PARTICIPANT.—The term "major swap participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "major security-based swap participant" means any person—

(i) who is not a security-based swap dealer; and

(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions

maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(III) that is a financial entity that—

(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "security-based swap" means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act [7 U.S.C. 1a] (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term "security-based swap" shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term "security-based swap" does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on January 11, 1983 (other than any municipal security as defined in paragraph (29) as in effect on January 11,

1983), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term "index" means an index or group of securities, including any interest therein or based on the value thereof.

(69) SWAP.—The term "swap" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 78o–10(1)(2) of this title, the term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term "security-based swap dealer" means any person who—

(i) holds themselves out as a dealer in security-based swaps;

(ii) makes a market in security-based swaps;

(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term "security-based swap dealer" does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based

swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term "prudential regulator" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term "security-based swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term "swap dealer" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term "security-based swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

- (A) facilitates the execution of security-based swaps between persons; and
- (B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 78i, 78j, 78p, 78t, and 78u–1 of this title, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term "security-based swap agreement" means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term "security-based swap agreement" does not include any security-based swap.

(79) ASSET-BACKED SECURITY.—The term "asset-backed security"—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

- (i) a collateralized mortgage obligation;
- (ii) a collateralized debt obligation;
- (iii) a collateralized bond obligation;
- (iv) a collateralized debt obligation of asset-backed securities;
- (v) a collateralized debt obligation of collateralized debt obligations; and
- (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(80) <sup>2</sup> EMERGING GROWTH COMPANY.—The term "emerging growth company" means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed

for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b-2 of title 17, Code of Federal Regulations, or any successor thereto.

(80) <sup>7</sup> FUNDING PORTAL.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) <sup>1</sup> of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

**(b) Power to define technical, trade, accounting, and other terms**

The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter.

**(c) Application to governmental departments or agencies**

No provision of this chapter shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

**(d) Issuers of municipal securities**

No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

**(e) Charitable organizations**

**(1) Exemption**

Notwithstanding any other provision of this chapter, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(D)], or any 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, shall not be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", or "government securities

dealer" for purposes of this chapter solely 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—

- (A) such a charitable organization;
- (B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)]; or
- (C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)], or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

## **(2) Limitation on compensation**

The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after December 8, 1995, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)], is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

## **(f) Consideration of promotion of efficiency, competition, and capital formation**

Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, 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.

## **(g) Church plans**

No church plan described in section 414(e) of title 26, no person or entity eligible to establish and maintain such a plan under title 26, 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)], and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this chapter—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, 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)]; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.

## **(h) Limited exemption for funding portals**

### **(1) In general**

The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 78o(a)(1) of this title, provided that such funding portal—

- (A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;
- (B) is a member of a national securities association registered under section 78o-3 of this

title; and

(C) is subject to such other requirements under this chapter as the Commission determines appropriate under such rule.

## **(2) National securities association membership**

For purposes of sections 78o(b)(8) and 78o-3 of this title, the term "broker or dealer" includes a funding portal and the term "registered broker or dealer" includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.

(June 6, 1934, ch. 404, title I, §3, 48 Stat. 882; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86-70, §12(b), June 25, 1959, 73 Stat. 143; Pub. L. 86-624, §7(b), July 12, 1960, 74 Stat. 412; Pub. L. 88-467, §2, Aug. 20, 1964, 78 Stat. 565; Pub. L. 91-373, title IV, §401(b), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91-547, §28(a), (b), Dec. 14, 1970, 84 Stat. 1435; Pub. L. 91-567, §6(b), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 94-29, §3, June 4, 1975, 89 Stat. 97; Pub. L. 95-283, §16, May 21, 1978, 92 Stat. 274; Pub. L. 96-477, title VII, §702, Oct. 21, 1980, 94 Stat. 2295; Pub. L. 97-303, §2, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 98-376, §6(a), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 98-440, title I, §101, Oct. 3, 1984, 98 Stat. 1689; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-571, title I, §102(a)-(d), Oct. 28, 1986, 100 Stat. 3214-3216; Pub. L. 100-181, title III, §§301-306, Dec. 4, 1987, 101 Stat. 1253, 1254; Pub. L. 100-704, §6(a), Nov. 19, 1988, 102 Stat. 4681; Pub. L. 101-73, title VII, §744(u)(1), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101-429, title V, §503, Oct. 15, 1990, 104 Stat. 952; Pub. L. 101-550, title II, §§203(b), 204, Nov. 15, 1990, 104 Stat. 2717, 2718; Pub. L. 103-202, title I, §§106(b)(2)(A), 109(a), Dec. 17, 1993, 107 Stat. 2350, 2352; Pub. L. 103-325, title II, §202, title III, §347(a), Sept. 23, 1994, 108 Stat. 2198, 2241; Pub. L. 104-62, §4(a), (b), Dec. 8, 1995, 109 Stat. 684; Pub. L. 104-290, title I, §106(b), title V, §508(c), Oct. 11, 1996, 110 Stat. 3424, 3447; Pub. L. 105-353, title III, §301(b)(1)-(4), Nov. 3, 1998, 112 Stat. 3235, 3236; Pub. L. 106-102, title II, §§201, 202, 207, 208, 221(b), 231(b)(1), Nov. 12, 1999, 113 Stat. 1385, 1390, 1394, 1395, 1401, 1406; Pub. L. 106-554, §1(a)(5) [title II, §201], Dec. 21, 2000, 114 Stat. 2763, 2763A-413; Pub. L. 107-204, §2(b), title II, §205(a), title VI, §604(c)(1)(A), July 30, 2002, 116 Stat. 749, 773, 796; Pub. L. 108-359, §1(c)(1), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 108-386, §8(f)(1)-(3), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 108-447, div. H, title V, §520(1), Dec. 8, 2004, 118 Stat. 3267; Pub. L. 109-291, §3(a), Sept. 29, 2006, 120 Stat. 1328; Pub. L. 109-351, title I, §101(a)(1), title IV, §401(a)(1), (2), Oct. 13, 2006, 120 Stat. 1968, 1971, 1972; Pub. L. 111-203, title III, §376(1), title VII, §761(a), title IX, §§932(b), 939(e), 941(a), 944(b), 985(b)(2), 986(a)(1), July 21, 2010, 124 Stat. 1566, 1754, 1883, 1886, 1890, 1898, 1933, 1935; Pub. L. 112-106, title I, §101(b), title III, §304(a)(1), (b), Apr. 5, 2012, 126 Stat. 307, 321, 322.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a), (b), (c), (e)(1), (f), and (g), and (h)(1)(C), 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 subsec. (a)(4)(B)(v), (19), (47), (51)(A)(iii), is title I of act Aug. 20, 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.

Section 4(2), (5), and (6) of the Securities Act of 1933, referred to in subsec. (a)(4)(B)(vii)(I) and (80) defining "funding portal", was redesignated section 4(a)(2), (5), and (6), respectively, 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)(2), (5), and (6) of this title.

This chapter, referred to in subsec. (a)(4)(B)(vii)(II), was in the original "this Act". See References in Text note set out under section 78a of this title.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(4)(B)(ix), (5)(C)(iv), (54)(B), is



section 206 of Pub. L. 106–102, which is set out as a note below.

Subsec. (e) of section 78o of this title, referred to in subsec. (a)(4)(E), was redesignated (f) by Pub. L. 111–203, title IX, §929X(c)(1), July 21, 2010, 124 Stat. 1870.

Section 1462 of title 12, referred to in subsec. (a)(6)(A), (C), was amended by Pub. L. 111–203, title III, §369(2)(C), July 21, 2010, 124 Stat. 1557, by redesignating pars. (4) and (5) as (2) and (3), respectively.

The Investment Advisers Act of 1940, referred to in subsec. (a)(20), (47), is title II of act Aug. 20, 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.

Section 78w(b) of this title, referred to in subsec. (a)(26), was omitted from the Code.

Section 103 of title 26, referred to in subsec. (a)(29), which related to interest on certain governmental obligations, was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and, as so amended, relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Federal Deposit Insurance Act, referred to in subsec. (a)(34)(D), (F)(iii), (H)(iii), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 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 1811 of Title 12 and Tables.

The International Banking Act of 1978, referred to in subsec. (a)(34)(G)(i) to (iii), (46)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§3101 et seq.) and sections 347d and 611a of Title 12, Banks and Banking, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of Title 12, and enacted provisions set out as notes under sections 247, 611a, and 3101 of Title 12 and formerly set out as notes under sections 36, 247, and 601 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 12 and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(34)(G)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act, referred to in subsec. (a)(34)(G)(ii), (H)(ii), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Commodity Exchange Act, referred to in subsec. (a)(39)(B)(ii), (C), (55)(A), 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 subsec. (a)(47) and (80)(B) defining "emerging growth company", 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)(47), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to this chapter (§78a et seq.). For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Sarbanes-Oxley Act of 2002, referred to in subsec. (a)(47), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Section 2 of the Act enacted section 7201 of this title and amended this section. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(47), 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 Securities Investor Protection Act of 1970, referred to in subsec. (a)(47), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§78aaa et seq.) of this title. For complete classification of this Act to the Code, see section 78aaa of this title and Tables.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (a)(54)(A)(iv), was classified to section 681(d) of this title and was repealed by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(54)(A)(v), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, 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.

Section 206A of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(78)(A), is section 206A of Pub. L. 106–102, which is set out as a note below.

Words "Philippine Islands" deleted from definition of term "State" in subsec. (a)(16) 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

**2012**—Subsec. (a)(77), (79). Pub. L. 112–106, §101(b)(1), redesignated par. (77) defining "asset-backed security" as (79).

Subsec. (a)(80). Pub. L. 112–106, §304(b), added par. (80) defining "funding portal".

Pub. L. 112–106, §101(b)(2), added par. (80) defining "emerging growth company".

Subsec. (h). Pub. L. 112–106, §304(a)(1), added subsec. (h).

**2010**—Subsec. (a)(4)(B)(vii)(I). Pub. L. 111–203, §944(b), substituted "4(5)" for "4(6)".

Subsec. (a)(5)(A), (B). Pub. L. 111–203, §761(a)(1), inserted "(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)" after "securities".

Subsec. (a)(10). Pub. L. 111–203, §761(a)(2), inserted "security-based swap," after "security future,".

Subsec. (a)(13). Pub. L. 111–203, §761(a)(3), inserted at end "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require."

Subsec. (a)(14). Pub. L. 111–203, §761(a)(4), inserted at end "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require."

Subsec. (a)(34). Pub. L. 111–203, §376(1)(G), struck out ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Office of Thrift Supervision under section 1466a of title 12" after "section 1841 of title 12" in concluding provisions.

Subsec. (a)(34)(A)(i). Pub. L. 111–203, §376(1)(A)(i), substituted "a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association" for "or a subsidiary or a department or division of any such bank".

Subsec. (a)(34)(A)(ii). Pub. L. 111–203, §376(1)(A)(ii), substituted "a subsidiary or a department or division of such subsidiary, or a savings and loan holding company" for "or a subsidiary or a department or division of such subsidiary".

Subsec. (a)(34)(A)(iii). Pub. L. 111–203, §376(1)(A)(iii), substituted "a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and" for "or a subsidiary or department or division thereof;".

Subsec. (a)(34)(A)(iv), (v). Pub. L. 111–203, §376(1)(A)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and".

Subsec. (a)(34)(B)(i). Pub. L. 111–203, §376(1)(B)(i), substituted "a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association" for "or a subsidiary of any such bank".

Subsec. (a)(34)(B)(ii). Pub. L. 111–203, §376(1)(B)(ii), substituted "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company" for "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph".

Subsec. (a)(34)(B)(iii). Pub. L. 111–203, §376(1)(B)(iii), substituted "a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and" for "or a subsidiary thereof;".

Subsec. (a)(34)(B)(iv), (v). Pub. L. 111–203, §376(1)(B)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits

of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such savings association, or a savings and loan holding company; and".

Subsec. (a)(34)(C)(i). Pub. L. 111-203, §376(1)(C)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(C)(ii). Pub. L. 111-203, §376(1)(C)(ii), substituted "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company" for "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph".

Subsec. (a)(34)(C)(iii). Pub. L. 111-203, §376(1)(C)(iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and" after "System)".

Subsec. (a)(34)(C)(iv), (v). Pub. L. 111-203, §376(1)(C)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and".

Subsec. (a)(34)(D)(i). Pub. L. 111-203, §376(1)(D)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(D)(ii) to (iv). Pub. L. 111-203, §376(1)(D)(ii)-(v), in cl. (ii), inserted "and" at end, redesignated cl. (iv) as (iii), in cl. (iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank", and struck out former cl. (iii) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

Subsec. (a)(34)(F)(i). Pub. L. 111-203, §376(1)(E)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(F)(ii) to (v). Pub. L. 111-203, §376(1)(E)(ii)-(iv), redesignated cls. (iii) to (v) as (ii) to (iv), respectively, in cl. (iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation" before semicolon, and struck out former cl. (ii) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

Subsec. (a)(34)(G)(i). Pub. L. 111-203, §376(1)(F)(i), inserted ", a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation," after "national bank".

Subsec. (a)(34)(G)(iii). Pub. L. 111-203, §376(1)(F)(ii), inserted ", a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation," after "savings bank)" and inserted "and" at end.

Subsec. (a)(34)(G)(iv), (v). Pub. L. 111-203, §376(1)(F)(iii), (iv), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (a)(39)(B)(i)(I). Pub. L. 111-203, §761(a)(5)(A)(i), substituted "government securities dealer, security-based swap dealer, or major security-based swap participant" for "or government securities dealer".

Subsec. (a)(39)(B)(i)(II). Pub. L. 111-203, §761(a)(5)(A)(ii), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (a)(39)(C). Pub. L. 111-203, §761(a)(5)(B), substituted "government securities dealer, security-based swap dealer, or major security-based swap participant" for "or government securities dealer".

Subsec. (a)(39)(D). Pub. L. 111-203, §761(a)(5)(C), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (a)(41). Pub. L. 111-203, §939(e)(1), substituted "meets standards of credit-worthiness as established by the Commission" for "is rated in one of the two highest rating categories by at least one

nationally recognized statistical rating organization" in introductory provisions.

Subsec. (a)(47). Pub. L. 111-203, §986(a)(1), struck out "the Public Utility Holding Company Act of 1935," before "the Trust Indenture Act of 1939".

Subsec. (a)(53)(A). Pub. L. 111-203, §939(e)(2), substituted "meets standards of credit-worthiness as established by the Commission" for "is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization" in introductory provisions.

Subsec. (a)(55)(A). Pub. L. 111-203, §985(b)(2)(A), made technical amendment to reference in original act which appears in text as reference to paragraph (12) of this subsection.

Subsec. (a)(62). Pub. L. 111-203, §932(b), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 78o-7 of this title;".

Subsec. (a)(65) to (76). Pub. L. 111-203, §761(a)(6), added pars. (65) to (76).

Subsec. (a)(77). Pub. L. 111-203, §941(a), which directed amendment of subsec. (a) by adding par. (77) relating to asset-backed security "at the end", was executed by making the addition after par. (78) to reflect the probable intent of Congress. See Effective Date of 2010 Amendment note below.

Pub. L. 111-203, §761(a)(6), added par. (77) relating to security-based swap execution facility.

Subsec. (a)(78). Pub. L. 111-203, §761(a)(6), added par. (78).

Subsec. (g). Pub. L. 111-203, §985(b)(2)(B), substituted "account, person" for "account person" in introductory provisions.

**2006**—Subsec. (a)(4)(F). Pub. L. 109-351, §101(a)(1), added subpar. (F).

Subsec. (a)(6)(A). Pub. L. 109-351, §401(a)(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)(6)(C). Pub. L. 109-351, §401(a)(1)(B), inserted "or 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)(34). Pub. L. 109-351, §401(a)(2)(G), inserted at end of concluding provisions "As used in this paragraph, the term 'savings and loan holding company' has the same meaning as in section 1467a(a) of title 12."

Subsec. (a)(34)(A)(ii). Pub. L. 109-351, §401(a)(2)(A)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(A)(iv), (v). Pub. L. 109-351, §401(a)(2)(A)(ii)-(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(B)(ii). Pub. L. 109-351, §401(a)(2)(B)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(B)(iv), (v). Pub. L. 109-351, §401(a)(2)(B)(ii)-(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(C)(ii). Pub. L. 109-351, §401(a)(2)(C)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(C)(iv), (v). Pub. L. 109-351, §401(a)(2)(C)(ii)-(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(D)(iii), (iv). Pub. L. 109-351, §401(a)(2)(D), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(34)(F)(ii) to (v). Pub. L. 109-351, §401(a)(2)(E), added cl. (ii) and redesignated former cls. (ii) to (iv) as (iii) to (v), respectively.

Subsec. (a)(34)(H). Pub. L. 109-351, §401(a)(2)(F), moved subpar. (H) and inserted it immediately after subpar. (G).

Subsec. (a)(60) to (64). Pub. L. 109-291 added pars. (60) to (64).

**2004**—Subsec. (a)(12)(C)(iv). Pub. L. 108-359 added cl. (iv).

Subsec. (a)(34)(A)(i), (B)(i), (C)(i), (D)(i), (F)(i). Pub. L. 108-386, §8(f)(1), struck out "or a bank operating under the Code of Law for the District of Columbia" after "national bank".

Subsec. (a)(34)(G)(i). Pub. L. 108-386, §8(f)(2), struck out ", a bank in the District of Columbia examined by the Comptroller of the Currency," after "national bank".

Subsec. (a)(34)(H)(i). Pub. L. 108-386, §8(f)(3), struck out "or a bank in the District of Columbia examined by the Comptroller of the Currency" after "national bank".

Subsec. (a)(42)(B). Pub. L. 108-447 inserted "by the Tennessee Valley Authority or" after "issued or guaranteed".

**2002**—Subsec. (a)(39)(F). Pub. L. 107-204, §604(c)(1)(A), inserted ", or is subject to an order or finding,"

before "enumerated" and substituted "(H), or (G)" for "or (G)".

Subsec. (a)(47). Pub. L. 107-204, §2(b), inserted "the Sarbanes-Oxley Act of 2002," before "the Public Utility Holding Company Act of 1935".

Subsec. (a)(58), (59). Pub. L. 107-204, §205(a), added pars. (58) and (59).

**2000**—Subsec. (a)(10). Pub. L. 106-554, §1(a)(5) [title II, §201(1)], inserted "security future," after "treasury stock,".

Subsec. (a)(11). Pub. L. 106-554, §1(a)(5) [title II, §201(2)], added par. (11) and struck out former par. (11) which read as follows: "The term 'equity security' means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

Subsec. (a)(13), (14). Pub. L. 106-554, §1(a)(5) [title II, §201(3), (4)], inserted at end "For security futures products, such term includes any contract, agreement, or transaction for future delivery."

Subsec. (a)(55) to (57). Pub. L. 106-554, §1(a)(5) [title II, §201(5)], added pars. (55) to (57).

**1999**—Subsec. (a)(4). Pub. L. 106-102, §201, inserted heading and amended text of par. (4) generally. Prior to amendment, text read as follows: "The term '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)(5). Pub. L. 106-102, §202, inserted heading and amended text of par. (5) generally. Prior to amendment, text read as follows: "The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(12)(A)(iii). Pub. L. 106-102, §221(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;".

Subsec. (a)(34)(H). Pub. L. 106-102, §231(b)(1), added subpar. (H) at end of par. (34).

Subsec. (a)(42)(E). Pub. L. 106-102, §208, added subpar. (E).

Subsec. (a)(54). Pub. L. 106-102, §207, added par. (54).

**1998**—Subsec. (a)(10). Pub. L. 105-353, §301(b)(1), substituted "deposit for" for "deposit, for".

Subsec. (a)(12)(A)(vi). Pub. L. 105-353, §301(b)(2), realigned margins.

Subsec. (a)(22)(A). Pub. L. 105-353, §301(b)(3), substituted "section 153" for "section 153(h)" and for "section 153(t)".

Subsec. (a)(39)(B)(i). Pub. L. 105-353, §301(b)(4), substituted "of the Commission" for "to the Commission" in introductory provisions.

**1996**—Subsec. (a)(12)(A)(vi), (vii). Pub. L. 104-290, §508(c)(1), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsecs. (f), (g). Pub. L. 104-290, §§106(b), 508(c)(2), added subsecs. (f) and (g), respectively.

**1995**—Subsec. (a)(12)(A)(iv) to (vi). Pub. L. 104-62, §4(a), struck out "and" at end of cl. (iv), added cl. (v), and redesignated former cl. (v) as (vi).

Subsec. (e). Pub. L. 104-62, §4(b), added subsec. (e).

**1994**—Subsec. (a)(41)(A)(i). Pub. L. 103-325, §347(a), substituted "on a residential" for "or on a residential" and inserted before semicolon ", or on one or more parcels of real estate upon which is located one or more commercial structures".

Subsec. (a)(53). Pub. L. 103-325, §202, added par. (53).

**1993**—Subsec. (a)(12)(B)(ii). Pub. L. 103-202, §106(b)(2)(A), substituted "sections 78o and 78q-1" for "sections 78o, 78o-3 (other than subsection (g)(3)), and 78q-1".

Subsec. (a)(34)(G)(ii) to (iv). Pub. L. 103-202, §109(a)(1), amended cls. (ii) to (iv) generally. Prior to amendment, cls. (ii) to (iv) read as follows:

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

"(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank);

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (a)(46). Pub. L. 103-202, §109(a)(2), amended par. (46) generally. Prior to amendment, par. (46) read as follows: "The term 'financial institution' means (A) a bank (as such term is defined in paragraph (6) of this subsection), (B) a foreign bank, and (C) an insured institution (as such term is defined in section 1724 of title 12)."

Subsec. (a)(52). Pub. L. 103-202, §109(a)(3), redesignated par. (51) defining "foreign financial regulatory authority" as (52).

**1990**—Subsec. (a)(39)(A). Pub. L. 101-550, §203(b)(1), inserted "foreign equivalent of a self-regulatory organization, foreign or international securities exchange," after "self-regulatory organization," "or any substantially equivalent foreign statute or regulation," after "(7 U.S.C. 7)," and "(7 U.S.C. 21)," and "or foreign equivalent" after "contract market".

Subsec. (a)(39)(B). Pub. L. 101-550, §203(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "is subject to an order of the Commission or other appropriate regulatory agency denying, suspending for a period not exceeding twelve months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.);".

Subsec. (a)(39)(D). Pub. L. 101-550, §203(b)(4), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(39)(E). Pub. L. 101-550, §203(b)(3), (5), redesignated subpar. (D) as (E) and substituted "(A), (B), (C), or (D)" for "(A), (B), or (C)". Former subpar. (E) redesignated (F).

Subsec. (a)(39)(F). Pub. L. 101-550, §203(b)(3), (6), redesignated subpar. (E) as (F), substituted "(D), (E), or (G)" for "(D) or (E)", and inserted "or any other felony" before "within ten years".

Subsec. (a)(51). Pub. L. 101-550, §204, added par. (51) defining "foreign financial regulatory authority".

Pub. L. 101-429 added par. (51) defining "penny stock".

**1989**—Subsec. (a)(34). Pub. L. 101-73, §744(u)(1)(B), substituted "Office of Thrift Supervision" for "Federal Home Loan Bank Board" in concluding provisions.

Subsec. (a)(34)(G)(iv) to (vi). Pub. L. 101-73, §744(u)(1)(A), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

"(iv) the Federal Home Loan Bank Board, in the case of a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association;

"(v) the Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association);".

**1988**—Subsec. (a)(50). Pub. L. 100-704 added par. (50).

**1987**—Subsec. (a)(6)(C). Pub. L. 100-181, §301, substituted "under the authority of the Comptroller of the Currency pursuant to section 92a of title 12" for "under section 11(k) of the Federal Reserve Act, as amended".

Subsec. (a)(16). Pub. L. 100-181, §302, struck out reference to Canal Zone.

Subsec. (a)(22)(B). Pub. L. 100-181, §303, substituted "association, or any" and "own behalf, in" for "association or any" and "own behalf in", respectively.

Subsec. (a)(34)(C)(ii). Pub. L. 100-181, §304, substituted "State" for "state".

Subsec. (a)(39)(B). Pub. L. 100-181, §305, substituted "months, or revoking" for "months, revoking" and "barring or suspending for a period not exceeding 12 months his" for "barring his".

Subsec. (a)(47). Pub. L. 100-181, §306(1), added par. (47).

Subsec. (a)(49). Pub. L. 100-181, §306(2), added par. (49).

**1986**—Subsec. (a)(12). Pub. L. 99-571, §102(a), in amending par. (12) generally, expanded definition of "exempted security" or "exempted securities" to include government securities as defined in par. (42) of this subsection, provided that such securities not be deemed exempt for purposes of section 78q-1 of this title, substituted section 78o-3(g)(3) of this title for section 78o-3(b)(6), (11), and (g)(2) of this title in provision relating to municipal securities as not being "exempted securities" and defined "qualified plan" to mean qualified stock bonus, pension, or profit-sharing plan, qualified annuity plan, or governmental plan.

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.

Subsec. (a)(29). 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.

Subsec. (a)(34). Pub. L. 99-571, §102(b)(2), inserted ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Federal Home Loan Bank

Board under section 1466a of title 12" in concluding provisions.

Subsec. (a)(34)(G). Pub. L. 99-571, §102(b)(1), added subpar. (G).

Subsec. (a)(39)(B). Pub. L. 99-571, §102(c)(1)(A), which directed insertion of "or other appropriate regulatory agency" after "Commission" was executed by making the insertion after "Commission" the first place appearing as the probable intent of Congress.

Pub. L. 99-571, §102(c)(1)(B), substituted "municipal securities dealer, government securities broker, or government securities dealer" for "or municipal securities dealer" in two places.

Subsec. (a)(39)(C). Pub. L. 99-571, §102(c)(2), substituted "municipal securities dealer, government securities broker, or government securities dealer" for "or municipal securities dealer" and inserted ", an appropriate regulatory agency," after "the Commission".

Subsec. (a)(42) to (46), (48). Pub. L. 99-571, §102(d), added pars. (42) to (46) and (48).

**1984**—Subsec. (a)(39)(A). Pub. L. 98-376, §6(a)(1), inserted ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market".

Subsec. (a)(39)(B). Pub. L. 98-376, §6(a)(2), inserted ", or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.)".

Subsec. (a)(39)(C). Pub. L. 98-376, §6(a)(3), inserted "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

Subsec. (a)(41). Pub. L. 98-440 added par. (41).

**1982**—Subsec. (a)(10). Pub. L. 97-303 inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, 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 "for a security,".

**1980**—Subsec. (a)(12). Pub. L. 96-477 included within definition of "exempted security" interests or participation in single trust funds, provided that qualifying interests, participation, or securities could be issued in connection with certain governmental plans as defined in section 414(d) of title 26, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, and excluded from definition of "exempted security" any plans described in cls. (A), (B), or (C) of par. (12) which were funded by annuity contracts described in section 403(b) of title 26.

**1978**—Subsec. (a)(40). Pub. L. 95-283 added par. (40).

**1975**—Subsec. (a)(3). Pub. L. 94-29, §3(1), redefined term "member" to recognize the elimination of fixed commission rates in the case of exchanges, inserted definition of term when used in the case of registered securities associations, expanded definition of term when used with respect to an exchange to include any natural person permitted to effect transactions on the floor of an exchange without the services of another person acting as broker, any registered broker or dealer with which such natural person is associated, any registered broker or dealer permitted to designate a natural person as its representative on the floor of an exchange, and any other registered broker or dealer which agrees to be regulated by an exchange and with respect to whom the exchange has undertaken to enforce compliance with its rules, this chapter, and the rules and regulations thereunder, introduced the concept of including among members any person required to comply with the rules of an exchange to the extent specified by the Commission in accordance with section 78f(f) of this title, and expanded definition of term when used with respect to a registered securities association to include any broker or dealer who has agreed to be regulated and with respect to whom the association undertakes to enforce compliance with its own rules, this chapter, and the rules and regulations thereunder.

Subsec. (a)(9). Pub. L. 94-29, §3(2), substituted "a natural person, company, government, or political subdivision, agency, or instrumentality of a government" for "an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization".

Subsec. (a)(12). Pub. L. 94-29, §3(3), brought brokers and dealers engaged exclusively in municipal securities business within the registration provisions of this chapter by transferring the existing description of municipal securities to subsec. (a)(29) and by inserting in its place provisions revoking the exempt status of municipal securities for purposes of sections 78o, 78o-3 (except subsections (b)(6), (b)(11), and (g)(2) thereof) and 78q-1 of this title.

Subsec. (a)(17). Pub. L. 94-29, §3(4), expanded definition of "interstate commerce" to establish that the intrastate use of any facility of an exchange, any telephones or other interstate means of communication, or any other interstate instrumentality constitutes a use of the jurisdictional means for purposes of this chapter.

Subsec. (a)(18). Pub. L. 94-29, §3(4), expanded definition to include persons under common control with

the broker or dealer and struck out references to the classification of the persons, including employees, controlled by a broker or a dealer.

Subsec. (a)(19). Pub. L. 94-29, §3(4), substituted " 'separate account', and 'company' " for "and 'separate account'."

Subsec. (a)(21). Pub. L. 94-29, §3(5), broadened definition of term "person associated with a member" to encompass a person associated with a broker or dealer which is a member of an exchange by restating directly the definition of a "person associated with a broker or dealer" in subsec. (a)(18).

Subsec. (a)(22) to (39). Pub. L. 94-29, §3(6), added pars. (22) to (39).

Subsec. (b). Pub. L. 94-29, §3(7), substituted "accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter" for "and accounting terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter".

Subsec. (d). Pub. L. 94-29, §3(8), added subsec. (d).

**1970**—Subsec. (a)(12). Pub. L. 91-567 inserted provisions which brought within definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91-373.

Pub. L. 91-547, §28(a), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and included as exempted securities interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity; interests or participations in bank collective trust funds maintained for funding of employees' stock-bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and such other securities as the Commission by rules and regulations deems necessary in the public interest.

Pub. L. 91-373 inserted provisions which brought within definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91-567.

Subsec. (a)(19). Pub. L. 91-547, §28(b), provided for term "separate account" the same meaning as in the Investment Company Act of 1940.

**1964**—Subsec. (a)(18) to (21). Pub. L. 88-467 added pars. (18) to (21).

**1960**—Subsec. (a)(16). Pub. L. 86-624 struck out reference to Hawaii.

**1959**—Subsec. (a)(16). Pub. L. 86-70 struck out reference to Alaska.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

### EFFECTIVE DATE OF 2012 AMENDMENT

Notwithstanding subsec. (a)(80) of this section, issuer not to be an emerging growth company for purposes of 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.) if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before Dec. 8, 2011, see section 101(d) of Pub. L. 112-106, set out as a note under section 77b of this title.

### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 932(b), 941(a), 944(b), 985(b)(2), and 986(a)(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 Title 12, Banks and Banking.

Amendment by section 376(1) 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.

Amendment by section 761(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 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.

Amendment by section 939(e) of 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 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 1999 AMENDMENT**

Amendment by sections 201, 202, 207, and 208 of 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.

Amendment by section 221(b) of 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 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 1994 AMENDMENT**

Amendment by section 347(a) of Pub. L. 103–325 effective upon date of promulgation of final regulations under section 347(c) of Pub. L. 103–325, see section 347(d) of Pub. L. 103–325, set out as an Effective Date of 1994 Amendment note under section 24 of Title 12, Banks and Banking.

#### **EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101–429 effective 12 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)(A), (C) of Pub. L. 101–429, set out in a note under section 77g of this title.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–704, except for amendment by section 6, 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 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**

Pub. L. 98–376, §7, Aug. 10, 1984, 98 Stat. 1266, provided that: "The amendments made by this Act [amending this section and sections 78o, 78t, 78u, and 78ff of this title] shall become effective immediately upon enactment of this Act [Aug. 10, 1984]."

#### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsec. (a)(12) by Pub. L. 94–29 to be effective 180 days after June 4, 1975, with provisions of subsec. (a)(3), as amended by Pub. L. 94–29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

#### **EFFECTIVE DATE OF 1970 AMENDMENTS**

For effective date of amendment by Pub. L. 91–567, see section 6(d) of Pub. L. 91–567, set out as a note under section 77c of this title.

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.

For effective date of amendment by Pub. L. 91-373, see section 401(c) of Pub. L. 91-373, set out as a note under section 77c of this title.

### **EFFECTIVE DATE OF 1964 AMENDMENT**

Pub. L. 88-467, §13, Aug. 20, 1964, 78 Stat. 580, provided that: "The amendments made by this Act shall take effect as follows:

"(1) The effective date of section 12(g)(1) of the Securities Exchange Act of 1934, as added by section 3(c) of this Act [section 78l(g)(1) of this title], shall be July 1, 1964.

"(2) The effective date of the amendments to sections 12(b) and 15(a) of the Securities Exchange Act of 1934 [sections 78l(b) and 78o(a) of this title], contained in sections 3(a) and 6(a), respectively, of this Act shall be July 1, 1964.

"(3) All other amendments contained in this Act [amending this section and sections 77d, 78l, 78m, 78n, 78o, 78o-3, 78p, 78t, 78w, and 78ff of this title] shall take effect on the date of its enactment [Aug. 20, 1964]."

### **REGULATIONS**

Pub. L. 109-351, title I, §101(a)(2)-(c), Oct. 13, 2006, 120 Stat. 1968, provided that:

"(2) **TIMING.**—Not later than 180 days after the date of the enactment of this Act [Oct. 13, 2006], the Securities and Exchange Commission (in this section [enacting this note and amending 15 U.S.C. 78c] referred to as the 'Commission') and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') shall jointly issue a proposed single set of rules or regulations to define the term 'broker' in accordance with section 3(a)(4) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(4)], as amended by this subsection.

"(3) **RULEMAKING SUPERSEDES PREVIOUS RULEMAKING.**—A final single set of rules or regulations jointly adopted in accordance with this section shall supersede any other proposed or final rule issued by the Commission on or after the date of enactment of section 201 of the Gramm-Leach-Bliley Act [Nov. 12, 1999] with regard to the exceptions to the definition of a broker under section 3(a)(4)(B) of the Securities Exchange Act of 1934. No such other rule, whether or not issued in final form, shall have any force or effect on or after that date of enactment.

"(b) **CONSULTATION.**—Prior to jointly adopting the single set of final rules or regulations required by this section, the Commission and the Board shall consult with and seek the concurrence of the Federal banking agencies concerning the content of such rulemaking in implementing section 3(a)(4)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(4)(B)], as amended by this section and section 201 of the Gramm-Leach-Bliley Act [Pub. L. 106-102].

"(c) **DEFINITION.**—For purposes of this section, the term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation."

### **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.

### **RULEMAKING**

Pub. L. 112-106, title III, §304(a)(2), Apr. 5, 2012, 126 Stat. 322, provided that: "The [Securities and Exchange] Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c[(h)]), as added by this subsection, not later than 270 days after the date of enactment of this Act [Apr. 5, 2012]."

### **OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES**

Pub. L. 112-106, title I, §107, Apr. 5, 2012, 126 Stat. 312, provided that:

"(a) **IN GENERAL.**—With respect to an exemption provided to emerging growth companies under this title [amending this section and sections 77b, 77e to 77g, 78k-1, 78m, 78n, 78n-1, 78o-6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78o-6 of this title, and

amending provisions set out as a note under section 78l of this title], or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

"(b) SPECIAL RULE.—Notwithstanding subsection (a), with respect to the extension of time to comply with new or revised financial accounting standards provided under section 7(a)(2)(B) of the Securities Act of 1933 [15 U.S.C. 77g(a)(2)(B)] and section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)], as added by section 102(b), if an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

"(1) must make such choice at the time the company is first required to file a registration statement, periodic report, or other report with the [Securities and Exchange] Commission under section 13 of the Securities Exchange Act of 1934 [15 U.S.C. 78m] and notify the Securities and Exchange Commission of such choice;

"(2) may not select some standards to comply with in such manner and not others, but must comply with all such standards to the same extent that a non-emerging growth company is required to comply with such standards; and

"(3) must continue to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards for as long as the company remains an emerging growth company."

### STATE OPT OUT

Pub. L. 103–325, title III, §347(e), Sept. 23, 1994, 108 Stat. 2241, provided that: "Notwithstanding the amendments made by this section [amending this section and section 24 of Title 12, Banks and Banking], a note that is directly secured by a first lien on one or more parcels of real estate upon which is located one or more commercial structures shall not be considered to be a mortgage related security under section 3(a)(41) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(41)] in any State that, prior to the expiration of 7 years after the date of enactment of this Act [Sept. 23, 1994], enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided by the amendments made by this subsection. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto, and shall not require the sale or other disposition of any securities acquired prior thereto."

### DEFINITIONS

Pub. L. 112–106, title I, §101(c), Apr. 5, 2012, 126 Stat. 308, provided that: "As used in this title [amending this section and sections 77b, 77e to 77g, 78k–1, 78m, 78n, 78n–1, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title], the following definitions shall apply:

"(1) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(2) INITIAL PUBLIC OFFERING DATE.—The term 'initial public offering date' means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.]."

Pub. L. 106–554, §1(a)(5) [title III, §301(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–451, provided that: "As used in the amendment made by subsection (a) [enacting sections 206A to 206C of Pub. L. 106–102, set out below], the term 'security' has the same meaning as in section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)] or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]."

Pub. L. 106–102, title II, §206, Nov. 12, 1999, 113 Stat. 1393, as amended by Pub. L. 111–203, title VII, §742(b), July 21, 2010, 124 Stat. 1733, provided that:

"(a) DEFINITION OF IDENTIFIED BANKING PRODUCT.—Except as provided in subsection (e) [sic], for purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term 'identified banking product' means—

"(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

"(2) a banker's acceptance;

"(3) a letter of credit issued or loan made by a bank;

"(4) a debit account at a bank arising from a credit card or similar arrangement;

"(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

"(A) to qualified investors; or

"(B) to other persons that—

"(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

"(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

"(6) any swap agreement, including credit and equity swaps, except that an equity swap that is sold directly to any person other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934 [15 U.S.C. 78c(a)(54)]) shall not be treated as an identified banking product.

"(b) DEFINITION OF SWAP AGREEMENT.—For purposes of subsection (a)(6), the term 'swap agreement' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include any other identified banking product, as defined in paragraphs (1) through (5) of subsection (a).

"(c) CLASSIFICATION LIMITED.—Classification of a particular product as an identified banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

"(d) INCORPORATED DEFINITIONS.—For purposes of this section, the terms 'bank' and 'qualified investor' have the same meanings as given in section 3(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)], as amended by this Act."

Pub. L. 106–102, title II, §§206A–206C, as added by Pub. L. 106–554, §1(a)(5) [title III, §301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–449, and amended by Pub. L. 111–203, title VII, §762(a), (b), July 21, 2010, 124 Stat. 1759, provided that:

"SEC. 206A. SWAP AGREEMENT.

"(a) IN GENERAL.—Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—

"(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

"(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

"(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

"(b) EXCLUSIONS.—The term 'swap agreement' does not include—

"(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

"(2) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] relating to foreign currency;

"(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

"(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)] or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]; or

"(6) any agreement, contract, or transaction that is—

"(A) based on a security; and

"(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)]) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

"(c) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—As used in this section, the term 'swap agreement' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement, contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b)."

[SECS. 206B, 206C. REPEALED. PUB. L. 111–203, TITLE VII, §762(A), JULY 21, 2010, 124 STAT. 1759.]

*[Amendment by section 762(a), (b) of Pub. L. 111–203 to sections 206A–206C of Pub. L. 106–102, set out above, 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.]*

## 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.

<sup>1</sup> *See References in Text note below.*

<sup>2</sup> *So in original. Probably should be followed by a comma.*

<sup>3</sup> *So in original. The "; and" probably should be a comma.*

<sup>4</sup> *So in original. Probably should be followed by "and".*

<sup>5</sup> *So in original. The semicolon probably should be a colon.*

<sup>6</sup> *So in original. Probably should be "evidenced".*

<sup>7</sup> *So in original. Two pars. (80) have been enacted.*

## §78c–1. Swap agreements

### (a) [Reserved]

### (b) Security-based swap agreements

(1) The definition of "security" in section 78c(a)(10) of this title does not include any security-based swap agreement.

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this chapter of any security-based swap agreement. If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such a swap agreement shall be void and of no force or effect.

(3) Except as provided in section 78p(a) of this title with respect to reporting requirements, the Commission is prohibited from—

- (A) promulgating, interpreting, or enforcing rules; or
- (B) issuing orders of general applicability;

under this chapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement.

(4) References in this chapter to the "purchase" or "sale" of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.

(June 6, 1934, ch. 404, title I, §3A, as added Pub. L. 106–554, §1(a)(5) [title III, §303(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–452; amended Pub. L. 111–203, title VII, §762(d)(1), July 21, 2010, 124 Stat. 1760.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (b)(2) to (4), 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, §762(d)(1)(A), struck out subsec. (a) and reserved that subsec. Prior to amendment, text read as follows: "The definition of 'security' in section 78c(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act)."

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

## **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.

## **§78c–2. Securities-related derivatives**

(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 6(c)(1) of title 7 with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.

(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 6(c)(1) of title 7 with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the "purchase" or "sale" of a security shall be

deemed to include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under such agreement, contract, or transaction, as the context may require.

(June 6, 1934, ch. 404, title I, §3B, as added Pub. L. 111–203, title VII, §717(b), July 21, 2010, 124 Stat. 1651.)

## **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 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 an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

## **§78c–3. Clearing for security-based swaps**

### **(a) In general**

#### **(1) Standard for clearing**

It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this chapter or a clearing agency that is exempt from registration under this chapter if the security-based swap is required to be cleared.

#### **(2) Open access**

The rules of a clearing agency described in paragraph (1) shall—

(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

### **(b) Commission review**

#### **(1) Commission-initiated review**

(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.

(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

#### **(2) Swap submissions**

(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type, or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

(B) Any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of July 21, 2010, shall be considered submitted to the Commission.

(C) The Commission shall—

(i) make available to the public any submission received under subparagraphs (A) and (B);

(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

(iii) provide at least a 30-day public comment period regarding its determination whether the

clearing requirement under subsection (a)(1) shall apply to the submission.

**(3) Deadline**

The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

**(4) Determination**

(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 78q–1 of this title.

(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

(iv) The effect on competition, including appropriate fees and charges applied to clearing.

(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

(C) In making a determination under subsection (b)(1) or paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

**(5) Rules**

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type, or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in paragraph (2)(B).

**(c) Stay of clearing requirement**

**(1) In general**

After making a determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

**(2) Deadline**

The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

**(3) Determination**

Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or



(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps.

**(4) Rules**

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type, or class of security-based swaps, that it has accepted for clearing.

**(d) Prevention of evasion**

**(1) In general**

The Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this chapter.

**(2) Duty of Commission to investigate and take certain actions**

To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall—

(A) investigate the relevant facts and circumstances;

(B) within 30 days issue a public report containing the results of the investigation; and

(C) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.

**(3) Effect on authority**

Nothing in this subsection—

(A) authorizes the Commission to adopt rules requiring a clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would threaten the financial integrity of the clearing agency; and

(B) affects the authority of the Commission to enforce the open access provisions of subsection (a)(2) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.

**(e) Reporting transition rules**

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(1) Security-based swaps entered into before July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of this section.

(2) Security-based swaps entered into on or after July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission no later than the later of—

(A) 90 days after such effective date; or

(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

**(f) Clearing transition rules**

(1) Security-based swaps entered into before July 21, 2010, are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

**(g) Exceptions**

**(1) In general**

The requirements of subsection (a)(1) shall not apply to a security-based swap if 1 of the counterparties to the security-based swap—

- (A) is not a financial entity;
- (B) is using security-based swaps to hedge or mitigate commercial risk; and
- (C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

**(2) Option to clear**

The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

**(3) Financial entity definition**

**(A) In general**

For the purposes of this subsection, the term "financial entity" means—

- (i) a swap dealer;
- (ii) a security-based swap dealer;
- (iii) a major swap participant;
- (iv) a major security-based swap participant;
- (v) a commodity pool as defined in section 1a(10) of title 7;
- (vi) a private fund as defined in section 80b-2(a) of this title;
- (vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 1002 of title 29;
- (viii) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 1843(k) of title 12.

**(B) Exclusion**

The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

- (i) depository institutions with total assets of \$10,000,000,000 or less;
- (ii) farm credit system institutions with total assets of \$10,000,000,000 or less; or
- (iii) credit unions with total assets of \$10,000,000,000 or less.

**(4) Treatment of affiliates**

**(A) In general**

An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

- (i) enters into the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;
- (ii) is directly and wholly-owned by another affiliate qualified for the exception under this paragraph or an entity that is not a financial entity;
- (iii) is not indirectly majority-owned by a financial entity;
- (iv) is not ultimately owned by a parent company that is a financial entity; and
- (v) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12).

**(B) Limitation on qualifying affiliates**

The exception in subparagraph (A) shall not apply if the affiliate is—

- (i) a swap dealer;

- (ii) a security-based swap dealer;
- (iii) a major swap participant;
- (iv) a major security-based swap participant;
- (v) a commodity pool;
- (vi) a bank holding company;
- (vii) a private fund, as defined in section 80b-2(a) of this title;
- (viii) an employee benefit plan or government <sup>1</sup> plan, as defined in paragraphs (3) and (32) of section 1002 of title 29;
- (ix) an insured depository institution;
- (x) a farm credit system institution;
- (xi) a credit union;
- (xii) a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12); or
- (xiii) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

**(C) Limitation on affiliates' affiliates**

Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in subparagraph (A) shall not apply with respect to an affiliate if such affiliate is itself affiliated with—

- (i) a major security-based swap participant;
- (ii) a security-based swap dealer;
- (iii) a major swap participant; or
- (iv) a swap dealer.

**(D) Conditions on transactions**

With respect to an affiliate that qualifies for the exception in subparagraph (A)—

- (i) such affiliate may not enter into any security-based swap other than for the purpose of hedging or mitigating commercial risk; and
- (ii) neither such affiliate nor any person affiliated with such affiliate that is not a financial entity may enter into a security-based swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of security-based swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under subparagraph (A).

**(E) Transition rule for affiliates**

An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 78o-10(e) of this title and the clearing requirement described in subsection (a) with regard to security-based swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on July 21, 2010.

**(F) Risk management program**

Any security-based swap entered into by an affiliate that qualifies for the exception in subparagraph (A) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the security-based swap and to identify each of the affiliates on whose behalf a security-based swap was entered into.

**(5) Election of counterparty**

**(A) Security-based swaps required to be cleared**

With respect to any security-based swap that is subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

**(B) Security-based swaps not required to be cleared**

With respect to any security-based swap that is not subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

- (i) may elect to require clearing of the security-based swap; and
- (ii) shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

**(6) Abuse of exception**

The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

**(h) Trade execution**

**(1) In general**

With respect to transactions involving security-based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

- (A) execute the transaction on an exchange; or
- (B) execute the transaction on a security-based swap execution facility registered under section 78c-4 of this title or a security-based swap execution facility that is exempt from registration under section 78c-4(e) of this title.

**(2) Exception**

The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).

**(i) Board approval**

Exemptions from the requirements of this section to clear a security-based swap or execute a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title, only if an appropriate committee of the issuer's board or governing body has reviewed and approved the issuer's decision to enter into security-based swaps that are subject to such exemptions.

**(j) Designation of chief compliance officer**

**(1) In general**

Each registered clearing agency 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 clearing agency;
- (B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(D) ensure compliance with this chapter (including regulations issued under this chapter) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(E) establish procedures for the remediation of noncompliance issues identified by the 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

(F) 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 registered clearing agency or security-based swap execution facility of the compliance officer with respect to this chapter (including regulations under this chapter); and
- (ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).

#### **(B) Requirements**

A compliance report under subparagraph (A) shall—

- (i) accompany each appropriate financial report of the registered clearing agency 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.

(June 6, 1934, ch. 404, title I, §3C, as added Pub. L. 111–203, title VII, §763(a), July 21, 2010, 124 Stat. 1762; amended Pub. L. 114–113, div. O, title VII, §705(b), Dec. 18, 2015, 129 Stat. 3027.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

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

For the effective date of this section, referred to in subsec. (e), see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

Subsection (c) of that section, referred to in subsec. (g)(4)(B)(v), was in the original "subsection (c) of that Act", and was translated as meaning subsec. (c) of section 3 of act Aug. 22, 1940, ch. 686, to reflect the probable intent of Congress.

### **AMENDMENTS**

**2015**—Subsec. (g)(4). Pub. L. 114–113 added subpars. (A) to (D) and (F), redesignated former subpar. (C) as (E), and struck out former subpars. (A) and (B) which related to application of exception to affiliates and prohibition relating to certain affiliates, respectively.

### **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.

<sup>1</sup> So in original. Probably should be "governmental".

## §78c–4. Security-based swap execution facilities

### (a) Registration

#### (1) In general

No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.

#### (2) Dual registration

Any person that is registered as a security-based swap execution facility 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 execution facility.

### (b) Trading and trade processing

A security-based swap execution facility that is registered under subsection (a) may—

- (1) make available for trading any security-based swap; and
- (2) facilitate trade processing of any security-based swap.

### (c) Identification of facility used to trade security-based swaps by national securities exchanges

A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

### (d) Core principles for security-based swap execution facilities

#### (1) Compliance with core principles

##### (A) In general

To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with—

- (i) the core principles described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation.

##### (B) Reasonable discretion of security-based swap execution facility

Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which it complies with the core principles described in this subsection.

#### (2) Compliance with rules

A security-based swap execution facility shall—

(A) establish and enforce compliance with any rule established by such security-based swap execution facility, including—

- (i) the terms and conditions of the security-based swaps traded or processed on or through the facility; and

(ii) any limitation on access to the facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

(i) to provide market participants with impartial access to the market; and

(ii) to capture information that may be used in establishing whether rule violations have occurred; and

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

**(3) Security-based swaps not readily susceptible to manipulation**

The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

**(4) Monitoring of trading and trade processing**

The security-based swap execution facility shall—

(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

(ii) procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

**(5) Ability to obtain information**

The security-based swap execution facility shall—

(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

(B) provide the information to the Commission on request; and

(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

**(6) Financial integrity of transactions**

The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 78c-3(a)(1) of this title.

**(7) Emergency authority**

The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

**(8) Timely publication of trading information**

**(A) In general**

The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

**(B) Capacity of security-based swap execution facility**

The security-based swap execution facility shall be required to have the capacity to electronically capture and transmit and disseminate trade information with respect to transactions executed on or through the facility.

## **(9) Recordkeeping and reporting**

### **(A) In general**

A security-based swap execution facility shall—

- (i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and
- (ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this chapter.

### **(B) Requirements**

The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

## **(10) Antitrust considerations**

Unless necessary or appropriate to achieve the purposes of this chapter, the security-based swap execution facility shall not—

- (A) adopt any rules or taking <sup>1</sup> any actions that result in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading or clearing.

## **(11) Conflicts of interest**

The security-based swap execution facility shall—

- (A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and
- (B) establish a process for resolving the conflicts of interest.

## **(12) Financial resources**

### **(A) In general**

The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

### **(B) Determination of resource adequacy**

The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources—

- (i) enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and
- (ii) exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

## **(13) System safeguards**

The security-based swap execution facility shall—

- (A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—
  - (i) are reliable and secure; and
  - (ii) have adequate scalable capacity;



(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

- (i) the timely recovery and resumption of operations; and
- (ii) the fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued—

- (i) order processing and trade matching;
- (ii) price reporting;
- (iii) market surveillance; and
- (iv) maintenance of a comprehensive and accurate audit trail.

#### **(14) Designation of chief compliance officer**

##### **(A) In general**

Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

##### **(B) Duties**

The chief compliance officer shall—

- (i) report directly to the board or to the senior officer of the facility;
- (ii) review compliance with the core principles in this subsection;
- (iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;
- (iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;
- (v) ensure compliance with this chapter and the rules and regulations issued under this chapter, including rules prescribed by the Commission pursuant to this section;
- (vi) establish procedures for the remediation of noncompliance issues found during—
  - (I) compliance office reviews;
  - (II) look backs;
  - (III) internal or external audit findings;
  - (IV) self-reported errors; or
  - (V) through validated complaints; and
- (vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

##### **(C) Annual reports**

###### **(i) 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 execution facility with this chapter; and
- (II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based <sup>2</sup> swap execution facility.

###### **(ii) Requirements**

The chief compliance officer shall—

- (I) submit each report described in clause (i) with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and
- (II) include in the report a certification that, under penalty of law, the report is accurate

and complete.

**(e) Exemptions**

The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

**(f) Rules**

The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.

(June 6, 1934, ch. 404, title I, §3D, as added Pub. L. 111–203, title VII, §763(c), July 21, 2010, 124 Stat. 1769.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (d)(9)(A)(ii), (10), (14)(B)(v), (C)(i)(I), 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 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.

<sup>1</sup> *So in original. Probably should be "take".*

<sup>2</sup> *So in original.*

**§78c–5. Segregation of assets held as collateral in security-based swap transactions**

**(a) Registration requirement**

It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this chapter with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

**(b) Cleared security-based swaps**

**(1) Segregation required**

A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or through <sup>1</sup> a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

**(2) Commingling prohibited**

Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or be used to margin, secure, or guarantee any trades or contracts of any security-based swaps customer or person other than the person for whom the same are held.

**(c) Exceptions**

**(1) Use of funds**

**(A) In general**

Notwithstanding subsection (b), money, securities, and property of a security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

**(B) Withdrawal**

Notwithstanding subsection (b), such share of the money, securities, and property described in subparagraph (A) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared security-based swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.

**(2) Commission action**

Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

**(d) Permitted investments**

Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

**(e) Prohibition**

It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.

**(f) Segregation requirements for uncleared security-based swaps**

**(1) Segregation of assets held as collateral in uncleared security-based swap transactions**

**(A) Notification**

A security-based swap dealer or major security-based swap participant shall be required to notify the counterparty of the security-based swap dealer or major security-based swap participant at the beginning of a security-based swap transaction that the counterparty has the right to require segregation of the funds of other property supplied to margin, guarantee, or secure the obligations of the counterparty.

**(B) Segregation and maintenance of funds**

At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall—

- (i) segregate the funds or other property for the benefit of the counterparty; and
- (ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the security-based swap dealer or major security-based swap participant.

## **(2) Applicability**

The requirements described in paragraph (1) shall—

(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency; and

(B)(i) not apply to variation margin payments; or

(ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

## **(3) Use of independent third-party custodians**

The segregated account described in paragraph (1) shall be—

(A) carried by an independent third-party custodian; and

(B) designated as a segregated account for and on behalf of the counterparty.

## **(4) Reporting requirement**

If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

## **(g) Bankruptcy**

A security-based swap, as defined in section 78c(a)(68) of this title shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11.<sup>2</sup> An account that holds a security-based swap, other than a portfolio margining account referred to in section 78o(c)(3)(C) of this title shall be considered to be a securities account, as that term is defined in section 741 of title 11. The definitions of the terms "purchase" and "sale" in section 78c(a)(13) and (14) of this title shall be applied to the terms "purchase" and "sale", as used in section 741 of title 11. The term "customer", as defined in section 741 of title 11, excludes any person, to the extent that such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to which there is a customer protection requirement under section 78o(c)(3) of this title or a segregation requirement. (June 6, 1934, ch. 404, title I, §3E, as added Pub. L. 111–203, title VII, §763(d), July 21, 2010, 124 Stat. 1774.)

## **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.

## 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.

<sup>1</sup> *So in original. Probably should be "through".*

<sup>2</sup> *So in original.*

## §78d. Securities and Exchange Commission

### (a) Establishment; composition; limitations on commissioners; terms of office

There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934.

### (b) Appointment and compensation of staff and leasing authority

#### (1) Appointment and compensation

The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5.

#### (2) Reporting of information

In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1833b of title 12 and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

#### (3) Leasing authority

Notwithstanding <sup>1</sup> any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

### (c) Acceptance of travel support for Commission activities from non-Federal sources;

## **regulations**

Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

### **(d) Acceptance of relocation expenses from former employers by professional fellows program participants**

Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

### **(e) Fee payments**

Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

### **(f) Reimbursement of expenses for assisting foreign securities authorities**

Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 78u(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

### **(g) Office of the Investor Advocate**

#### **(1) Office established**

There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

#### **(2) Investor Advocate**

##### **(A) In general**

The head of the Office shall be the Investor Advocate, who shall—

- (i) report directly to the Chairman; and
- (ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

##### **(B) Compensation**

The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

##### **(C) Limitation on service**

An individual who serves as the Investor Advocate may not be employed by the Commission—

- (i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

### **(3) Staff of Office**

The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

### **(4) Functions of the Investor Advocate**

The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this chapter; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

### **(5) Access to documents**

The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

### **(6) Annual reports**

#### **(A) Report on objectives**

##### **(i) In general**

Not later than June 30 of each year after 2010, the Investor Advocate 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 objectives of the Investor Advocate for the following fiscal year.

##### **(ii) Contents**

Each report required under clause (i) shall contain full and substantive analysis and explanation.

#### **(B) Report on activities**

##### **(i) In general**

Not later than December 31 of each year after 2010, the Investor Advocate 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 activities of the Investor Advocate during the immediately preceding fiscal year.

##### **(ii) Contents**

Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

### **(iii) Independence**

Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

### **(iv) Confidentiality**

No report required under clause (i) may contain confidential information.

## **(7) Regulations**

The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

## **(8) Ombudsman**

### **(A) Appointment**

Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i),<sup>2</sup> the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

### **(B) Duties**

The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

### **(C) Limitation**

In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

### **(D) Report**

The Ombudsman shall submit a semiannual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

## **(h) Examiners**



**(1) Division of Trading and Markets**

The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

- (A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and
- (B) report to the Director of that Division.

**(2) Division of Investment Management**

The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

- (A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and
- (B) report to the Director of that Division.

**(i) Securities and Exchange Commission Reserve Fund**

**(1) Reserve Fund established**

There is established in the Treasury of the United States a separate fund, to be known as the "Securities and Exchange Commission Reserve Fund" (referred to in this subsection as the "Reserve Fund").

**(2) Reserve Fund amounts**

**(A) In general**

Except as provided in subparagraph (B), any registration fees collected by the Commission under section 77f(b) of this title or section 80a-24(f) of this title shall be deposited into the Reserve Fund.

**(B) Limitations**

For any 1 fiscal year—

- (i) the amount deposited in the Fund may not exceed \$50,000,000; and
- (ii) the balance in the Fund may not exceed \$100,000,000.

**(C) Excess fees**

Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 77f(b) of this title or section 80a-24(f) of this title shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

**(3) Use of amounts in Reserve Fund**

The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

**(4) Rule of construction**

Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

**(j) Office of the Advocate for Small Business Capital Formation**

**(1) Office established**

There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the "Office").

**(2) Advocate for Small Business Capital Formation**

**(A) In general**

The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

- (i) report directly to the Commission; and
- (ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

**(B) Compensation**

The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

**(C) No current employee of the Commission**

An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

**(3) Staff of Office**

The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

**(4) Functions of the Advocate for Small Business Capital Formation**

The Advocate for Small Business Capital Formation shall—

- (A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;
- (B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;
- (C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;
- (D) analyze the potential impact on small businesses and small business investors of—
  - (i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and
  - (ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this chapter;
- (E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;
- (F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;
- (G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and
- (H) advise the Investor Advocate on issues related to small businesses and small business investors.

**(5) Access to documents**

The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

## **(6) Annual report on activities**

### **(A) In general**

Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation 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 activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

### **(B) Contents**

Each report required under subparagraph (A) shall include—

- (i) appropriate statistical information and full and substantive analysis;
- (ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;
- (iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;
- (iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—
  - (I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;
  - (II) the length of time that each item has remained on such inventory; and
  - (III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;
- (v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and
- (vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

### **(C) Confidentiality**

No report required by subparagraph (A) may contain confidential information.

### **(D) Independence**

Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

## **(7) Regulations**

The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

## **(8) Government-Business Forum on Small Business Capital Formation**

The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 80c–1 of this title.

## **(9) Rule of construction**

Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

## **(k) Open data publication**

All public data assets published by the Commission under the securities laws and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376) shall be—

- (1) made available as an open Government data asset (as defined in section 3502 of title 44);
- (2) freely available for download;
- (3) rendered in a human-readable format; and
- (4) accessible via application programming interface where appropriate.

(June 6, 1934, ch. 404, title I, §4, 48 Stat. 885; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 86–619, §3, July 12, 1960, 74 Stat. 408; Pub. L. 86–771, Sept. 13, 1960, 74 Stat. 913; Pub. L. 88–426, title III, §305(20), Aug. 14, 1964, 78 Stat. 425; Pub. L. 98–38, §1, June 6, 1983, 97 Stat. 205; Pub. L. 100–181, title III, §307, Dec. 4, 1987, 101 Stat. 1254; Pub. L. 101–550, title I, §103, title II, §207, Nov. 15, 1990, 104 Stat. 2713, 2721; Pub. L. 104–290, title IV, §406, Oct. 11, 1996, 110 Stat. 3444; Pub. L. 105–353, title II, §203, Nov. 3, 1998, 112 Stat. 3234; Pub. L. 107–123, §8(d)(2), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 111–203, title IX, §§915, 919D, 965, 991(e)(1), July 21, 2010, 124 Stat. 1830, 1840, 1911, 1954; Pub. L. 114–284, §2(a), Dec. 16, 2016, 130 Stat. 1447; Pub. L. 115–141, div. S, title IX, §902, Mar. 23, 2018, 132 Stat. 1143; Pub. L. 117–263, div. E, title LVIII, §5822, Dec. 23, 2022, 136 Stat. 3427.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a), (g)(4)(D)(ii), and (j)(4)(D)(ii), was in the original "this title". See References in Text note set out under section 78a of this title.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (k), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, which enacted chapter 53 (§5301 et seq.) of Title 12, Banks and Banking, and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of this title, and enacted, amended, and repealed 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 5301 of Title 12 and Tables.

### **AMENDMENTS**

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

**2018**—Subsec. (j)(4)(C), (6)(B)(iii). Pub. L. 115–141 substituted "minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters" for "minority-owned and women-owned small businesses".

**2016**—Subsec. (j). Pub. L. 114–284 added subsec. (j).

**2010**—Subsec. (g). Pub. L. 111–203, §915, added subsec. (g).

Subsec. (g)(8). Pub. L. 111–203, §919D, added par. (8).

Subsec. (h). Pub. L. 111–203, §965, added subsec. (h).

Subsec. (i). Pub. L. 111–203, §991(e)(1), added subsec. (i).

**2002**—Subsec. (b)(1), (2). Pub. L. 107–123 added pars. (1) and (2) and struck out former pars. (1) and (2), which authorized the Commission to appoint and compensate officers, attorneys, examiners, and other experts as needed, and to select, appoint, and compensate professional economists.

**1998**—Subsec. (b)(2), (3). Pub. L. 105–353 added par. (2) and redesignated former par. (2) as (3).

**1996**—Subsec. (e). Pub. L. 104–290 inserted before period at end "and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission".

**1990**—Subsec. (b). Pub. L. 101–550, §103, inserted heading, designated existing provision as par. (1) and inserted heading, and added par. (2).

Subsec. (f). Pub. L. 101–550, §207, added subsec. (f).

**1987**—Subsec. (e). Pub. L. 100–181 added subsec. (e).

**1983**—Subsecs. (c), (d). Pub. L. 98–38 added subsecs. (c) and (d).

**1964**—Subsec. (a). Pub. L. 88–426 repealed provisions which prescribed the compensation of the Chairman and the Commissioners.

**1960**—Subsec. (a). Pub. L. 86–771 authorized the chairman to receive an additional \$500 a year.

Pub. L. 86–619 increased the salary of each commissioner from \$15,000 to \$20,000 a year, and provided for continuation in office of a commissioner upon termination of his term until a successor is appointed and has qualified, not beyond expiration of next session of Congress subsequent to the expiration of said fixed term of office.

**1949**—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by sections 915, 919D, and 965 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(e)(2), July 21, 2010, 124 Stat. 1955, provided that: "The amendment made by this subsection [amending this section] shall take effect on October 1, 2011."

### **EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

### **EFFECTIVE DATE OF 1964 AMENDMENT**

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

### **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.

### **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.

### **OUTREACH BY THE COMMISSION**

Pub. L. 112–106, title VII, §701, Apr. 5, 2012, 126 Stat. 327, provided that: "The Securities and Exchange Commission shall provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act [see Short Title of 2012 Amendment note set out under section 78a of this title]."

### **PAY AUTHORITY FOR EMPLOYMENT OF EXPERTS AND CONSULTANTS**

Pub. L. 111–203, title IX, §929G(c), July 21, 2010, 124 Stat. 1856, provided that: "The [Securities and Exchange] Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission."

## **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 below.

## **1950 REORGANIZATION PLAN NO. 10**

15 F.R. 3175, 64 STAT. 1265

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June

20, 1949 [see 5 U.S.C. 901 et seq.].

## SECURITIES AND EXCHANGE COMMISSION

### SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

(a) Subject to the provisions of subsection (b) of this section there are hereby transferred from the Securities and Exchange Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

### SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of section 1 of this reorganization plan.

### SEC. 3. DESIGNATION OF CHAIRMAN

The functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President.

### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 10 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Securities and Exchange Commission. My reasons for transmitting this plan are stated in an accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 10 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

HARRY S. TRUMAN.

<sup>1</sup> *So in original. Probably should be "Notwithstanding".*

<sup>2</sup> *So in original. Probably should be "(2)(A)(ii)."*

## §78d-1. Delegation of functions by Commission

### (a) Authorization; functions delegable; eligible persons; application of other laws

In addition to its existing authority, the Securities and Exchange Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or

otherwise acting as to any work, business, or matter. Nothing in this section shall be deemed to supersede the provisions of section 556(b) of title 5, or to authorize the delegation of the function of rulemaking as defined in subchapter II of chapter 5 of title 5, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule pursuant to section 78s(c) of this title.

**(b) Right of review; procedure**

With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe. The vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review. A person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 77h(a) or section 77h(c) of this title or the first sentence of section 78l(d) of this title; (2) suspends trading in a security pursuant to section 78l(k) of this title; or (3) is pursuant to any provision of this chapter in a case of adjudication, as defined in section 551 of title 5, not required by this chapter to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of such title 5).

**(c) Finality of delegated action**

If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

(June 6, 1934, ch. 404, title I, §4A, as added Pub. L. 100-181, title III, §308(a), Dec. 4, 1987, 101 Stat. 1254.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

A prior section 78d-1, Pub. L. 87-592, §1, Aug. 20, 1962, 76 Stat. 394; Pub. L. 94-29, §25, June 4, 1975, 89 Stat. 163; Pub. L. 95-251, §2(a)(4), Mar. 27, 1978, 92 Stat. 183, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100-181.

**§78d-2. Transfer of functions with respect to assignment of personnel to chairman**

In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to the Commission personnel, including Commissioners, pursuant to section 78d-1 of this title.

(June 6, 1934, ch. 404, title I, §4B, as added Pub. L. 100-181, title III, §308(a), Dec. 4, 1987, 101 Stat. 1255.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), referred to in text, is set out as a note under section 78d of this title.

### **PRIOR PROVISIONS**

A prior section 78d-2, Pub. L. 87-592, §2, Aug. 20, 1962, 76 Stat. 395, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100-181.

### **§78d-3. Appearance and practice before the Commission**

#### **(a) Authority to censure**

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

- (1) not to possess the requisite qualifications to represent others;
- (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or
- (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

#### **(b) Definition**

With respect to any registered public accounting firm or associated person, for purposes of this section, the term "improper professional conduct" means—

- (1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and
- (2) negligent conduct in the form of—
  - (A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or
  - (B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

(June 6, 1934, ch. 404, title I, §4C, as added Pub. L. 107-204, title VI, §602, July 30, 2002, 116 Stat. 794.)

### **§78d-4. Additional duties of Inspector General**

#### **(a) Suggestion submissions by Commission employees**

##### **(1) Hotline established**

The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

- (A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and
- (B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.

##### **(2) Confidentiality**

The Inspector General shall maintain as confidential—

- (A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and
- (B) at the request of any such individual, any specific information provided by the individual.

#### **(b) Consideration of reports**

The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.



**(c) Recognition**

The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

- (1) increase the work efficiency, effectiveness, or productivity of the Commission; or
- (2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

**(d) Report**

The Inspector General of the Commission shall submit to Congress an annual report containing a description of—

- (1) the nature, number, and potential benefits of any suggestions received under subsection (a);
- (2) the nature, number, and seriousness of any allegations received under subsection (a);
- (3) any recommendations made or actions taken by the Inspector General in response to substantiated allegations received under subsection (a); and
- (4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

**(e) Funding**

The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 78u–6 of this title.

(June 6, 1934, ch. 404, title I, §4D, as added Pub. L. 111–203, title IX, §966, July 21, 2010, 124 Stat. 1912.)

**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.

**§78d–5. Deadline for completing enforcement investigations and compliance examinations and inspections**

**(a) Enforcement investigations**

**(1) In general**

Not later than 180 days after the date on which Commission staff provide <sup>1</sup> a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

**(2) Exceptions for certain complex actions**

Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

**(b) Compliance examinations and inspections**

**(1) In general**

Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded, has concluded without findings, or that the staff requests the entity undertake corrective action.

**(2) Exception for certain complex actions**

Notwithstanding paragraph (1), if the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection, or regarding the staff requests the entity undertake corrective action, cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.

(June 6, 1934, ch. 404, title I, §4E, as added Pub. L. 111–203, title IX, §929U, July 21, 2010, 124 Stat. 1867.)

**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.

*<sup>1</sup> So in original. Probably should be "provides".*

**§78d–6. Report and certification of internal supervisory controls**

**(a) Annual reports and certification**

Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

**(b) Contents of reports**

Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).<sup>1</sup>

**(c) Certification**

**(1) Signature**

The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

**(2) Content of certification**

Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

**(d) New Director or Acting Director**

Notwithstanding subsection (a), if the Director of the Division of Enforcement, the Director of the Division of Corporate Finance, or the Director of the Office of Compliance Inspections and Examinations has served as Director of the Division or Office for less than 90 days on the date on which a report is required to be submitted under subsection (a), the Commission may submit the report on the date on which the Director has served as Director for 90 days. If there is no Director of the Division of Enforcement, the Division of Corporate Finance, or the Office of Compliance Inspections and Examinations, on the date on which a report is required to be submitted under subsection (a), the Acting Director of the Division or Office may make the certification required under subsection (c).

**(e) Review by the Comptroller General**

**(1) Report**

The Comptroller General of the United States 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 a review of the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1), not less frequently than once every 3 years, at a time to coincide with the publication of the reports of the Commission under this section.

**(2) Authority to hire experts**

The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

(Pub. L. 111–203, title IX, §961, July 21, 2010, 124 Stat. 1907.)

**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.

<sup>1</sup> So in original. Probably should be "(e)."

## §78d–7. Triennial report on personnel management

### (a) Triennial report required

Once every 3 years, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

### (b) Contents of report

Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the application of the promotion criteria to the decisions of the Commission;

(D) the competence of the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the consideration of supervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low-level, mid-level, or senior-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties and circumstances under which the Commission has issued to employees a notice of termination; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate;

(2) an evaluation of any improvements made with respect to the areas described in paragraph

(1) since the date of submission of the previous report; and

(3) recommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.

### (c) Consultation

In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, the Inspector General of the Commission, persons that have business before the Commission, any union representing the employees of the Commission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

### (d) Report by Commission

Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), 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 describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

**(e) Reimbursements for cost of reports**

**(1) Reimbursements required**

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under this section, as billed therefor by the Comptroller General.

**(2) Crediting and use of reimbursements**

Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

**(f) Authority to hire experts**

The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

(Pub. L. 111–203, title IX, §962, July 21, 2010, 124 Stat. 1908.)

**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.

**DEFINITION**

For definition of "Commission" as used in this section, see section 5301 of Title 12, Banks and Banking.

**§78d–8. Annual financial controls audit**

**(a) Reports of Commission**

**(1) Annual reports required**

Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

**(2) Attestation**

The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

**(b) Report by Comptroller General**

**(1) Report required**

Not later than 6 months after the end of the first fiscal year after July 21, 2010, the Comptroller General of the United States shall submit a report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

**(2) Attestation**

The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

**(c) Reimbursements for cost of reports**

**(1) Reimbursements required**

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (b), as billed therefor by the Comptroller General.

**(2) Crediting and use of reimbursements**

Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

(Pub. L. 111–203, title IX, §963, July 21, 2010, 124 Stat. 1910.)

**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.

**DEFINITION**

For definition of "Commission" as used in this section, see section 5301 of Title 12, Banks and Banking.

**§78d–9. Report on oversight of national securities associations**

**(a) Report required**

Not later than 2 years after July 21, 2010, and every 3 years thereafter, the Comptroller General of the United States 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 includes an evaluation of the oversight by the Commission of national securities associations registered under section 78o–3 of this title with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the regulatory enforcement or rulemaking by such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

- (4) the arbitration services provided by the national securities associations;
- (5) the review performed by national securities associations of advertising by the members of the national securities associations;
- (6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;
- (7) how the funding of national securities associations is used to support the mission of the national securities associations, including—
  - (A) the methods of funding;
  - (B) the sufficiency of funds;
  - (C) how funds are invested by the national securities association pending use; and
  - (D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;
- (8) the policies regarding the employment of former employees of national securities associations by regulated entities;
- (9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;
- (10) the transparency of governance and activities of the national securities associations; and
- (11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members; <sup>1</sup>

**(b) Reimbursements for cost of reports**

**(1) Reimbursements required**

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

**(2) Crediting and use of reimbursements**

Such reimbursements shall—

- (A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and
- (B) remain available until expended.

(Pub. L. 111–203, title IX, §964, July 21, 2010, 124 Stat. 1910.)

**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.

<sup>1</sup> *So in original. The semicolon probably should be a period.*

## **§78e. Transactions on unregistered exchanges**

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as national securities exchange under section 78f of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

(June 6, 1934, ch. 404, title I, §5, 48 Stat. 885.)

### **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.

## **§78f. National securities exchanges**

### **(a) Registration; application**

An exchange may be registered as a national securities exchange 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 exchange 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) Determination by Commission requisite to registration of applicant as a national securities exchange**

An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange 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, and the rules of the exchange.

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

(3) The rules of the exchange 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 exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange 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, 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 exchange.

(6) The rules of the exchange 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 the provisions of this chapter, the rules or regulations thereunder, or the rules of the exchange, 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.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) 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 exchange of any person with respect to access to services offered by the exchange or a member thereof.

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

(9)(A) The rules of the exchange prohibit the listing of any security issued in 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—

(i) 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 of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited 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 exchange and that are designed to protect dissenting limited partners;

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

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

(iv) 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.

(B) 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 exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 78l of this title from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of

the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 78l of this title from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

**(c) Denial of membership in national exchanges; denial of association with member; conditions; limitation of membership**

(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange 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 or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange 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.

(3)(A) A national securities exchange 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 exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange 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 exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or 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 exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange 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 exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

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

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions

on the floor of the exchange without the services of another person acting as broker: *Provided, however,* That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further,* That the Commission, in accordance with the provisions of section 78s(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

**(d) Discipline of national securities exchange members and persons associated with members; summary proceedings**

(1) In any proceeding by a national securities exchange 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 exchange 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 exchange 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, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange 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 exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange 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 exchange 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 exchange 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 national securities exchange 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 exchange 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 exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange 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 exchange 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 exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange 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.

**(e) Commissions, allowances, discounts, and other fees**

(1) On and after June 4, 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided, however,* That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further,* That the Commission, in accordance with the provisions of section 78s(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this chapter.

(2) Notwithstanding the provisions of section 78s(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this chapter.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination

as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in section 78y(a) of this title, a reviewing Court may set aside an order of the Commission under section 78s(b) of this title approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

**(f) Compliance of non-members with exchange rules**

The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

**(g) Notice registration of security futures product exchanges**

**(1) Registration required**

An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)) [7 U.S.C. 1 et seq.], that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(C)].

**(2) Registration by notice filing**

**(A) Form and content**

An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under subsection (a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

**(B) 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 such registration would be subject to suspension or revocation.

**(C) Termination**

Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

**(3) Public availability**

The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

**(4) Exemption of exchanges from specified provisions**

**(A) Transaction exemptions**

An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this chapter and the rules thereunder:

- (i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.
- (ii) Section 78h of this title.
- (iii) Section 78k of this title.
- (iv) Subsections (d), (f), and (k) <sup>1</sup> of section 78q of this title.
- (v) Subsections (a), (f), and (h) of section 78s of this title.

**(B) Rule change exemptions**

An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

- (i) such exchange 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 security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;
- (ii) such exchange 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
- (iii) such exchange 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.

**(5) Trading in security futures products**

**(A) In general**

Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

- (i) 1 year after December 21, 2000; or
- (ii) such date that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] has met the requirements set forth in section 78o-3(k)(2) of this title.

**(B) Principal-to-principal transactions**

Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

- (i) the transaction is entered into—

(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(18)(B)(ii) of the Commodity Exchange Act [7 U.S.C.

1a(18)(B)(ii)]; and

(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(18) [7 U.S.C. 1a(18)(A), (B)(ii), (C)]) at the time at which the persons enter into the agreement, contract, or transaction; and

(ii) the transaction is entered into on or after the later of—

(I) 8 months after December 21, 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] has met the requirements set forth in section 78o-3(k)(2) of this title.

## **(h) Trading in security futures products**

### **(1) Trading on exchange or association required**

It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title.

### **(2) Listing standards required**

Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 78s(b) of this title and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(D)(i)].

### **(3) Requirements for listing standards and conditions for trading**

Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 78l of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 78o-3(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 78o-3(a) of this title effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 78k(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this chapter and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to

manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 78g(c)(2)(B) of this title, except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

#### **(4) Authority to modify certain listing standard requirements**

##### **(A) Authority to modify**

The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

##### **(B) Authority to grant exemptions**

The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

#### **(5) Requirements for other persons trading security future products**

It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 78o-3(a) of this title or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

#### **(6) Deferral of options on security futures trading**

No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after December 21, 2000, the



Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this chapter and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

**(7) Deferral of linked and coordinated clearing**

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 78o-3(a) of this title may trade a security futures product that does not—

- (i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or
- (ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(D)(i)(IV)].

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term "compliance date" means the later of—

- (i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 78o-3(a) of this title, and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 78o-3(a) of this title; or
- (ii) 2 years after the date on which trading in any security futures product commences under this chapter.

**(i) Rules to avoid duplicative regulation of dual registrants**

Consistent with this chapter, each national securities exchange 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 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except paragraph (2) thereof), with respect to the application of—

- (1) rules of such national securities exchange of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and
- (2) similar rules of national securities exchanges registered pursuant to subsection (g) and national securities associations registered pursuant to section 78o-3(k) of this title involving security futures products.

**(j) Procedures and rules for security future products**

A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in subsection (h)(5)(A) and adopt the rules specified in subparagraphs (B) and (C) of subsection (h)(5) not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.

**(k) Rules relating to security futures products traded on foreign boards of trade**

(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

- (2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as

appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

### **(I) Security-based swaps**

It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

(June 6, 1934, ch. 404, title I, §6, 48 Stat. 885; Pub. L. 94–29, §4, June 4, 1975, 89 Stat. 104; Pub. L. 100–181, title III, §§309–312, Dec. 4, 1987, 101 Stat. 1255; Pub. L. 103–202, title III, §303(b), Dec. 17, 1993, 107 Stat. 2365; Pub. L. 106–554, §1(a)(5) [title II, §§202(a), 206(a), (i), (k)(2), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A–416, 2763A–426, 2763A–433, 2763A–434; Pub. L. 111–203, title VII, §§721(e)(8), 734(b)(2), 763(e), title IX, §957, July 21, 2010, 124 Stat. 1671, 1718, 1777, 1906.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (b) to (e), (g)(4)(A), (h)(3)(G), (7)(C)(ii), and (i), was in the original "this title". This chapter, referred to in subsec. (h)(6), was in the original "this Act". See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (b)(10)(B), 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 Commodity Exchange Act, referred to in subsecs. (g)(1)(A) and (h)(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. Section 1a(2) of Title 7 was redesignated section 1a(6) by Pub. L. 111–203, title VII, §721(a)(1), July 21, 2010, 124 Stat. 1658. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

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

### **AMENDMENTS**

**2010**—Subsec. (b)(9). Pub. L. 111–203, §957(1), designated introductory provisions and subpars. (A) to (D) as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and realigned margins, redesignated former cls. (i) to (v) of subpar. (A) as subcls. (I) to (V), respectively, of cl. (i) and realigned margins, and designated concluding provisions as subpar. (B).

Subsec. (b)(10). Pub. L. 111–203, §957(2), added par. (10).

Subsec. (g)(1)(A). Pub. L. 111–203, §734(b)(2), substituted "that has been designated" for "that—(i) has been designated" and "and" for "or" at end and struck out cl. (ii) which read as follows: "is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act and such registration is not suspended by the Commodity Futures Trading Commission; and".

Subsec. (g)(5)(B)(i)(I). Pub. L. 111–203, §721(e)(8)(A), substituted "section 1a(18)(B)(ii)" for "section 1a(12)(B)(ii)".

Subsec. (g)(5)(B)(i)(II). Pub. L. 111–203, §721(e)(8)(B), substituted "section 1a(18)" for "section 1a(12)".

Subsec. (l). Pub. L. 111–203, §763(e), added subsec. (l).

**2000**—Subsec. (g). Pub. L. 106–554, §1(a)(5) [title II, §202(a)], added subsec. (g).

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

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

Subsec. (j). Pub. L. 106–554, §1(a)(5) [title II, §206(k)(2)], added subsec. (j).

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

**1993**—Subsec. (b)(9). Pub. L. 103–202 added par. (9).

**1987**—Subsec. (c)(2). Pub. L. 100–181, §309, substituted "protection of investors shall" for "protection shall".

Subsec. (c)(3)(A). Pub. L. 100–181, §310, substituted "associated" for "association".

Subsec. (c)(4). Pub. L. 100–181, §311, substituted "may limit (A)" for "may (A) limit".

Subsec. (e)(1). Pub. L. 100–181, §312(1), substituted "paragraph (3) of this subsection" for "paragraph (4) of this section".

Subsec. (e)(3), (4). Pub. L. 100–181, §312(2), (3), redesignated par. (4) as (3) and, in subpar. (E), substituted "fixing" for "fixes" in introductory provisions, "subparagraph (A) of this paragraph" for "paragraph

(4)(A) of this subsection" in cl. (1), and "subparagraph (B) of this paragraph" for "paragraph (4)(B) of this subsection" in cl. (2), and struck out former par. (3) which read as follows: "Until December 31, 1976, the Commission, on a regular basis, shall file with the Speaker of the House and the President of the Senate information concerning the effect on the public interest, protection of investors, and maintenance of fair and orderly markets of the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members of any national securities exchange for effecting transactions on such exchange."

**1975**—Pub. L. 94–29 restructured the entire section and, in addition, authorized the Commission to require an exchange to file such documents and information as it deems necessary or appropriate in the public interest or for the protection of investors and to prescribe the form and substance of an exchange's application for registration, expanded to eight the number of explicit statutory requirements that must be satisfied before an exchange may be registered as a national securities exchange, set forth the authority of a national securities exchange to admit or deny persons membership or association with members, prescribed exchange procedures for instituting disciplinary actions, denying membership, and summarily suspending members or persons associated with members, specified the authority of national securities exchanges to impose schedules or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for transacting business on the exchange, and empowered the Commission to regulate any broker or dealer who effects transactions on an exchange on a regular basis but who is not a member of that exchange and any person who effects transactions on an exchange without the services of another person acting as broker.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 957 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 721(e)(8) and 734(b)(2) 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 section 763(e) 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 1993 AMENDMENT**

Pub. L. 103–202, title III, §304, Dec. 17, 1993, 107 Stat. 2367, provided that:

"(a) **EFFECTIVE DATE.**—

"(1) **IN GENERAL.**—The amendments made by section 303 [amending this section and section 78o–3 of this title] shall become effective 12 months after the date of enactment of this Act [Dec. 17, 1993].

"(2) **RULEMAKING AUTHORITY.**—Notwithstanding paragraph (1), the authority of the Securities and Exchange Commission, a registered securities association, and a national securities exchange to commence rulemaking proceedings for the purpose of issuing rules pursuant to the amendments made by section 303 is effective on the date of enactment of this Act.

"(3) **REVIEW OF FILINGS PRIOR TO EFFECTIVE DATE.**—Prior to the effective date of regulations promulgated pursuant to this title [amending this section and sections 78n and 78o–3 of this title and enacting provisions set out as notes under sections 78a and 78n of this title], the Securities and Exchange Commission shall continue to review and declare effective registration statements and amendments thereto relating to limited partnership rollup transactions in accordance with applicable regulations then in effect.

"(b) **EFFECT ON EXISTING AUTHORITY.**—The amendments made by this title [amending this section and sections 78n and 78o–3 of this title] shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments."

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsecs. (a) through (d) by Pub. L. 94-29 to be effective 180 days after June 4, 1975, with provisions of subsecs. (b)(2) and (c)(6), as amended by Pub. L. 94-29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to a natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

## **CHANGES IN ORGANIZATION AND RULES OF NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS**

Pub. L. 94-29, §31(b), June 4, 1975, 89 Stat. 170, provided that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act [see Short Title of 1975 Amendment note under section 78a of this title] to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act [June 4, 1975] do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934 [section 78s(h) of this title], as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements."

## **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.

<sup>1</sup> See References in Text note below.

## **§78g. Margin requirements**

### **(a) Rules and regulations for extension of credit; standard for initial extension; undermargined accounts**

For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to October 1, 1934, and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security or a security futures product). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

- (1) 55 per centum of the current market price of the security, or
- (2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales,

arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1, 1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

**(b) Lower and higher margin requirements**

Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

**(c) Unlawful credit extension to customers**

**(1) Prohibition**

It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall prescribe under subsections (a) and (b); or

(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe—

(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and

(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).

**(2) Margin regulations**

**(A) Compliance with margin rules required**

It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations—

(i) which the Board shall prescribe pursuant to subparagraph (B); or

(ii) if the Board determines to delegate the authority to prescribe such regulations, which the Commission and the Commodity Futures Trading Commission shall jointly prescribe pursuant to subparagraph (B).

If the Board delegates the authority to prescribe such regulations under clause (ii) and the Commission and the Commodity Futures Trading Commission have not jointly prescribed such regulations within a reasonable period of time after the date of such delegation, the Board shall prescribe such regulations pursuant to subparagraph (B).

**(B) Criteria for issuance of rules**

The Board shall prescribe, or, if the authority is delegated pursuant to subparagraph (A)(ii), the Commission and the Commodity Futures Trading Commission shall jointly prescribe, such regulations to establish margin requirements, including the establishment of levels of margin

(initial and maintenance) for security futures products under such terms, and at such levels, as the Board deems appropriate, or as the Commission and the Commodity Futures Trading Commission jointly deem appropriate—

- (i) to preserve the financial integrity of markets trading security futures products;
- (ii) to prevent systemic risk;
- (iii) to require that—

(I) the margin requirements for a security future product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 78f(a) of this title; and

(II) initial and maintenance margin levels for a security future product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 78f(a) of this title, other than an option on a security future;

except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate; and

- (iv) to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures products, are and remain consistent with the requirements established by the Board, pursuant to subparagraphs (A) and (B) of paragraph (1).

### **(3) Exception**

This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—

- (A) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or
- (B) to finance its activities as a market maker or an underwriter;

except that the Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by this paragraph if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

## **(d) Unlawful credit extension in violation of rules and regulations; exceptions to application of rules, etc.**

### **(1) Prohibition**

It shall be unlawful for any person not subject to subsection (c) to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) and the rules and regulations thereunder.

### **(2) Exceptions**

This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged—

- (A) by a person not in the ordinary course of business;
- (B) on an exempted security;
- (C) to or for a member of a national securities exchange or a registered broker or dealer—
  - (i) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or
  - (ii) to finance its activities as a market maker or an underwriter;

(D) by a bank on a security other than an equity security; or

(E) as the Board shall, by such rules, regulations, or orders as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

**(3) Board authority**

The Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by subparagraph (C) if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.

**(e) Effective date of this section and rules and regulations**

The provisions of this section or the rules and regulations thereunder shall not apply on or before July 1, 1937, to any loan or extension of credit made prior to June 6, 1934, or to the maintenance, renewal, or extension of any such loan or credit, except to the extent that the Board of Governors of the Federal Reserve System may by rules and regulations prescribe as necessary to prevent the circumvention of the provisions of this section or the rules and regulations thereunder by means of withdrawals of funds or securities, substitutions of securities, or additional purchases or by any other device.

**(f) Unlawful receipt of credit; exemptions**

(1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

(2) For the purposes of this subsection—

(A) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(B) The term "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(C) The term "foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

(3) The Board of Governors of the Federal Reserve System may, in its discretion and with due regard for the purposes of this section, by rule or regulation exempt any class of United States persons or foreign persons controlled by a United States person from the application of this subsection.

**(g) Effect of bona fide agreement for delayed delivery of mortgage related security**

Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or

arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation. (June 6, 1934, ch. 404, title I, §7, 48 Stat. 886; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 90-437, July 29, 1968, 82 Stat. 452; Pub. L. 91-508, title III, §301(a), Oct. 26, 1970, 84 Stat. 1124; Pub. L. 98-440, title I, §102, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, §203, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-290, title I, §104(a), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105-353, title III, §301(b)(5), (6), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, §1(a)(5) [title II, §206(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-429; Pub. L. 111-203, title IX, §929, July 21, 2010, 124 Stat. 1852.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (c)(1)(A). Pub. L. 111-203 substituted "; or" for "; and" at end.

**2000**—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title II, §206(b)(1)], inserted "or a security futures product" after "exempted security" in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 106-554, §1(a)(5) [title II, §206(b)(2)], inserted "except as provided in paragraph (2)," after "security".

Subsec. (c)(2), (3). Pub. L. 106-554, §1(a)(5) [title II, §206(b)(3), (4)], added par. (2) and redesignated former par. (2) as (3).

**1998**—Subsecs. (a), (b). Pub. L. 105-353, §301(b)(5), substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

Subsec. (d). Pub. L. 105-353, §301(b)(6), substituted "exceptions" for "exception" in heading.

**1996**—Subsec. (c). Pub. L. 104-290, §104(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

"(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section;

"(2) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection."

Subsec. (d). Pub. L. 104-290, §104(a)(2), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder."



**1994**—Subsec. (g). Pub. L. 103–325 inserted "or a small business related security" after "mortgage related security".

**1984**—Subsec. (g). Pub. L. 98–440 added subsec. (g).

**1970**—Subsec. (f). Pub. L. 91–508 added subsec. (f).

**1968**—Subsec. (a). Pub. L. 90–437, §1(1), struck out "registered on a national securities exchange" after "(other than an exempted security)".

Subsec. (c). Pub. L. 90–437, §1(2), struck out "who transacts a business in securities through the medium of any such member" after "any broker or dealer", in par. (1) struck out "registered on a national securities exchange" after "(other than an exempted security)", and in par. (2) substituted "other than securities" for "other than exempted securities and/or securities registered upon a national securities exchange".

Subsec. (d). Pub. L. 90–437, §1(3), struck out "registered on a national securities exchange" after "the purpose of purchasing or carrying any security", and "registered on national securities exchanges" after "the purpose of purchasing or carrying securities".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Act Aug. 23, 1935, in subsec. (e), 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 1970 AMENDMENT**

Amendment by Pub. L. 91–508 effective on first day of seventh calendar month which begins after Oct. 26, 1970, except as otherwise provided in section 401(c) of Pub. L. 91–508, see section 401(a) of Pub. L. 91–508, set out as a note under section 1951 of Title 12, Banks and Banking.

Pub. L. 91–508, title IV, §401(c), Oct. 26, 1970, 84 Stat. 1125, provided that: "The Board of Governors of the Federal Reserve System may by regulation provide that the amendment made by title III [amending this section] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

### **VALIDITY OF RULES AND REGULATIONS**

Pub. L. 91–508, title III, §301(b), Oct. 26, 1970, 84 Stat. 1125, provided that: "The amendment made by subsection (a) of this section [amending this section] does not affect the continuing validity of any rule or regulation under section 7 of the Securities Exchange Act of 1934 [this section] in effect prior to the effective date of the amendment."

## **§78h. Restrictions on borrowing and lending by members, brokers, and dealers**

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

(b) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the

Commission shall prescribe for the protection of investors.

(June 6, 1934, ch. 404, title I, §8, 48 Stat. 888; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 94-29, §5, June 4, 1975, 89 Stat. 109; Pub. L. 98-440, title I, §103, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, §204, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-290, title I, §104(b), Oct. 11, 1996, 110 Stat. 3423.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1996**—Pub. L. 104-290 redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to borrowing in ordinary course of business as broker or dealer on any security, except exempted security, registered on national securities exchange.

**1994**—Subsec. (a). Pub. L. 103-325 inserted "or a small business related security" after "mortgage related security" in last sentence.

**1984**—Subsec. (a). Pub. L. 98-440 inserted provision that no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security under certain conditions.

**1975**—Pub. L. 94-29, §5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who transacts a business in securities through the medium of any such member" in provisions preceding subsec. (a).

Subsecs. (b) to (d). Pub. L. 94-29, §5(2), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and in subsec. (c) as so redesignated inserted "or in contravention of such rules and regulations as the Commissioner shall prescribe for the protection of investors" after "written consent of such customer". Former subsec. (b), which covered the maximum allowable aggregate indebtedness of brokers, was struck out.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

### **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.

## **§78i. Manipulation of security prices**

### **(a) Transactions relating to purchase or sale of security**

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such

security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement 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, and which that person knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

(6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security other than a government security for the purpose of pegging, fixing, or stabilizing the price of such security 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) Transactions relating to puts, calls, straddles, options, futures, or security-based swaps**

It shall be unlawful for any person to effect, 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—

(1) any transaction in connection with any security whereby any party to such transaction acquires—

(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

(B) any security futures product on the security; or

(C) any security-based swap involving the security or the issuer of the security;

(2) any transaction in connection with any security with relation to which such person has, directly or indirectly, any interest in any—

- (A) such put, call, straddle, option, or privilege;
- (B) such security futures product; or
- (C) such security-based swap; or

(3) any transaction in any security for the account of any person who such person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

- (A) such put, call, straddle, option, or privilege;
- (B) such security futures product with relation to such security; or
- (C) any security-based swap involving such security or the issuer of such security.

**(c) Endorsement or guarantee of puts, calls, straddles, or options**

It shall be unlawful for any broker, dealer, or member of a national securities exchange directly or indirectly to endorse or guarantee the performance of any put, call, straddle, option, or privilege in relation to any security other than a government security, 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.

**(d) Transactions relating to short sales of securities**

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.

**(e) Registered warrant, right, or convertible security not included in "put", "call", "straddle", or "option"**

The terms "put", "call", "straddle", "option", or "privilege" as used in this section shall not include any registered warrant, right, or convertible security.

**(f) Persons liable; suits at law or in equity**

Any person who willfully participates in any act or transaction in violation of subsections (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. 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. Every person who becomes liable to make any payment under this subsection 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. 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 violation and within three years after such violation.

**(g) Subsection (a) not applicable to exempted securities**

The provisions of subsection (a) shall not apply to an exempted security.

**(h) Foreign currencies and security futures products**

(1) Notwithstanding any other provision of law, the Commission shall have the authority to regulate the trading of any put, call, straddle, option, or privilege on any security, certificate of deposit, 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 (but not, with respect to any of the foregoing, an option on a contract for future delivery other than a security futures product).

(2) Notwithstanding the Commodity Exchange Act [7 U.S.C. 1 et seq.], the Commission shall have the authority to regulate the trading of any security futures product to the extent provided in the securities laws.

**(i) Limitations on practices that affect market volatility**

It shall be unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce or of any facility of any national securities exchange, to use or employ any act or practice in connection with the purchase or sale of any equity security in contravention of such rules or regulations as the Commission may adopt, consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets—

(1) to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof; and

(2) to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines (A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and (B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

In adopting rules under paragraph (2), the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security.

**(j) <sup>1</sup> 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.

**(j) <sup>1</sup> Regulations relating to security-based swaps**

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.

(June 6, 1934, ch. 404, title I, §9, 48 Stat. 889; Pub. L. 97–303, §3, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 101–432, §6(a), Oct. 16, 1990, 104 Stat. 975; Pub. L. 106–554, §1(a)(5) [title II, §205(a)(1), (2), title III, §303(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–425, 2763A–426, 2763A–453, 2763A–454; Pub. L. 111–203, title VII, §§762(d)(2), 763(f), (g), title IX, §§929L(1), 929X(b), July 21, 2010, 124 Stat. 1760, 1777, 1861, 1870.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Commodity Exchange Act, referred to in subsec. (h)(2), 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**

**2010**—Subsec. (a). Pub. L. 111–203, §929L(1)(A), substituted "other than a government security" for "registered on a national securities exchange" wherever appearing.

Subsec. (a)(2) to (5). Pub. L. 111–203, §762(d)(2)(A), added pars. (2) to (5) and struck out former pars. (2) to (5) which prohibited certain actions in the purchase or sale of a security or a security-based swap agreement, such as making false or misleading statements or creating conditions to raise or depress the price

of such security.

Subsec. (b). Pub. L. 111-203, §929L(1)(B), struck out "by use of any facility of a national securities exchange," after "effect," in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 111-203, §763(f), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

"(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; or (B) any security futures product on the security; or

"(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; or (B) such security futures product; or

"(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; or (B) such security futures product with relation to such security."

Subsec. (c). Pub. L. 111-203, §929L(1)(C), inserted "broker, dealer, or" after "unlawful for any".

Pub. L. 111-203, §929L(1)(A), substituted "other than a government security" for "registered on a national securities exchange".

Subsecs. (d) to (i). Pub. L. 111-203, §929X(b), added subsec. (d) and redesignated former subsecs. (d) to (h) as (e) to (i), respectively. Former subsec. (i), relating to limitation on Commission authority, redesignated (j).

Subsec. (j). Pub. L. 111-203, §929X(b)(1), redesignated subsec. (i), relating to limitation on Commission authority, as (j).

Pub. L. 111-203, §763(g), added subsec. (j) relating to regulations relating to security-based swaps.

Pub. L. 111-203, §762(d)(2)(B), which directed amendment of subsec. (i) 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. (j) relating to limitation on Commission authority, to reflect the probable intent of Congress and the redesignation of subsec. (i) as (j) by Pub. L. 111-203, §929X(b)(1). See above and Effective Date of 2010 Amendment notes below.

**2000**—Subsec. (a)(2) to (5). Pub. L. 106-554, §1(a)(5) [title III, §303(b)], amended pars. (2) to (5) generally. Prior to amendment, pars. (2) to (5) read as follows:

"(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

"(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the prices of such security.

"(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, 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, and which he knew or had reasonable ground to believe was so false or misleading.

"(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security."

Subsec. (b)(1). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(1)(A)], inserted "(A)" after "acquires" and substituted "; or (B) any security futures product on the security; or" for "; or".

Subsec. (b)(2). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(1)(B)], inserted "(A)" after "interest in any" and substituted "; or (B) such security futures product; or" for "; or".

Subsec. (b)(3). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(1)(C)], inserted "(A)" after "interest in any" and "; or (B) such security futures product" after "privilege".

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(2)], designated existing provisions as par. (1), inserted "other than a security futures product" after "future delivery", and added par. (2).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title III, §303(c)], added subsec. (i).

**1990**—Subsec. (h). Pub. L. 101-432 added subsec. (h).

**1982**—Subsec. (f). Pub. L. 97–303, §3(1), substituted "The provisions of subsection (a) shall not apply" for "The provisions of this section shall not apply".

Subsec. (g). Pub. L. 97–303, §3(2), added subsec. (g).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929L(1) and 929X(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 Title 12, Banks and Banking.

Amendment by sections 762(d)(2) and 763(f), (g) 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.

### 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.

<sup>1</sup> So in original. Two subsecs. (j) have been enacted.

## §78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, 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.

(2) Paragraph (1) of this subsection shall not apply to security futures products.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement <sup>1</sup> any manipulative or deceptive device or contrivance 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)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities 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.

(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 1813(q) of title 12), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or

insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 77q(a) of this title and sections 78i, 78o, 78p, 78t, and 78u–1 of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

(June 6, 1934, ch. 404, title I, §10, 48 Stat. 891; Pub. L. 106–554, §1(a)(5) [title II, §206(g), title III, §303(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–432, 2763A–454; Pub. L. 111–203, title VII, §762(d)(3), title IX, §§929L(2), 984(a), July 21, 2010, 124 Stat. 1761, 1861, 1932.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Pub. L. 111–203, §762(d)(3)(B), which directed amendment of the matter following subsection (b) "by striking '(as defined in section 206B of the Gramm-Leach-Bliley Act), in each place that such terms appear' ", was executed by striking out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreements" in two places in concluding provisions following subsec. (c) to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 111–203, §929L(2), substituted "other than a government security" for "registered on a national securities exchange".

Subsec. (b). Pub. L. 111–203, §762(d)(3)(A), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)," after "securities-based swap agreement".

Subsec. (c). Pub. L. 111–203, §984(a), which directed amendment of this section by adding subsec. (c) at the end, was executed by adding subsec. (c) after subsec. (b) to reflect the probable intent of Congress.

**2000**—Pub. L. 106–554, §1(a)(5) [title III, §303(d)(2)], inserted concluding provisions at end.

Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §206(g)], designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title III, §303(d)(1)], inserted "or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)," before "any manipulative or deceptive device".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by sections 929L(2) and 984(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 Title 12, Banks and Banking.

Amendment by section 762(d)(3) 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.

### **REGULATIONS**

Pub. L. 111–203, title IX, §984(b), July 21, 2010, 124 Stat. 1933, provided that: "Not later than 2 years after the date of enactment of this Act [July 21, 2010], the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities."

[For definitions of terms used in section 984(b) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

### **PROHIBITION OF INSIDER TRADING**

Pub. L. 112–105, §4(a), Apr. 4, 2012, 126 Stat. 292, provided that: "Members of Congress and employees of Congress are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder."

[For definitions of "Member of Congress" and "employee of Congress", see section 2 of Pub. L. 112–105, set out as a Definitions note under section 13101 of Title 5, Government Organization and Employees.]

## **APPLICATION OF INSIDER TRADING LAWS**



Pub. L. 112–105, §9(b)(1), Apr. 4, 2012, 126 Stat. 297, provided that: "Executive branch employees, judicial officers, and judicial employees are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder."

[For definitions of "executive branch employees", "judicial officers", and "judicial employees", see section 2 of Pub. L. 112–105, set out as a Definitions note under section 13101 of Title 5, Government Organization and Employees.]

## 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.

*<sup>1</sup> So in original. Probably should be followed by a comma.*

## §78j–1. Audit requirements

### (a) In general

Each audit required pursuant to this chapter of the financial statements of an issuer by a registered public accounting firm shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

- (1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;
- (2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and
- (3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

### (b) Required response to audit discoveries

#### (1) Investigation and report to management

If, in the course of conducting an audit pursuant to this chapter to which subsection (a) applies, the registered public accounting firm detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the firm shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

- (A)(i) determine whether it is likely that an illegal act has occurred; and
- (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and
- (B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such firm in the course of the audit, unless the illegal act is clearly inconsequential.

#### (2) Response to failure to take remedial action

If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the firm in the course of the audit of such firm, the registered public accounting firm concludes that—

- (A) the illegal act has a material effect on the financial statements of the issuer;
- (B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and
- (C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement;

the registered public accounting firm shall, as soon as practicable, directly report its conclusions to the board of directors.

**(3) Notice to Commission; response to failure to notify**

An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the registered public accounting firm making such report with a copy of the notice furnished to the Commission. If the registered public accounting firm fails to receive a copy of the notice before the expiration of the required 1-business-day period, the registered public accounting firm shall—

- (A) resign from the engagement; or
- (B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

**(4) Report after resignation**

If a registered public accounting firm resigns from an engagement under paragraph (3)(A), the firm shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the report of the firm (or the documentation of any oral report given).

**(c) Auditor liability limitation**

No registered public accounting firm shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto.

**(d) Civil penalties in cease-and-desist proceedings**

If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 78u-3 of this title, that a registered public accounting firm has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 78u-3 of this title, impose a civil penalty against the registered public accounting firm and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 78u-2 of this title.

**(e) Preservation of existing authority**

Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this chapter.

**(f) Definitions**

As used in this section, the term "illegal act" means an act or omission that violates any law, or any rule or regulation having the force of law. As used in this section, the term "issuer" means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

**(g) Prohibited activities**

Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this chapter or the rules of the Commission under

this chapter or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 7211 of this title (in this section referred to as the "Board"), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

- (1) bookkeeping or other services related to the accounting records or financial statements of the audit client;
- (2) financial information systems design and implementation;
- (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (4) actuarial services;
- (5) internal audit outsourcing services;
- (6) management functions or human resources;
- (7) broker or dealer, investment adviser, or investment banking services;
- (8) legal services and expert services unrelated to the audit; and
- (9) any other service that the Board determines, by regulation, is impermissible.

**(h) Preapproval required for non-audit services**

A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).

**(i) Preapproval requirements**

**(1) In general**

**(A) Audit committee action**

All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

**(B) De minimis exception**

The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

- (i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the non-audit services are provided;
- (ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and
- (iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

**(2) Disclosure to investors**

Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 78m(a) of this title.

**(3) Delegation authority**

The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

**(4) Approval of audit services for other purposes**

In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.

**(j) Audit partner rotation**

It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.

**(k) Reports to audit committees**

Each registered public accounting firm that performs for any issuer any audit required by this chapter shall timely report to the audit committee of the issuer—

- (1) all critical accounting policies and practices to be used;
- (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and
- (3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.

**(l) Conflicts of interest**

It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this chapter, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.

**(m) Standards relating to audit committees**

**(1) Commission rules**

**(A) In general**

Effective not later than 270 days after July 30, 2002, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

**(B) Opportunity to cure defects**

The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

**(2) Responsibilities relating to registered public accounting firms**

The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

**(3) Independence**

**(A) In general**

Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

## **(B) Criteria**

In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

- (i) accept any consulting, advisory, or other compensatory fee from the issuer; or
- (ii) be an affiliated person of the issuer or any subsidiary thereof.

## **(C) Exemption authority**

The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

## **(4) Complaints**

Each audit committee shall establish procedures for—

- (A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and
- (B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

## **(5) Authority to engage advisers**

Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

## **(6) Funding**

Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

- (A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and
- (B) to any advisers employed by the audit committee under paragraph (5).

(June 6, 1934, ch. 404, title I, §10A, as added Pub. L. 104–67, title III, §301(a), Dec. 22, 1995, 109 Stat. 762; amended Pub. L. 107–204, title II, §§201(a), 202–204, 205(b), (d), 206, title III, §301, July 30, 2002, 116 Stat. 771–775; Pub. L. 111–203, title IX, §985(b)(3), July 21, 2010, 124 Stat. 1933.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a), (b)(1), (e), (g), (k), and (l), 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), 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**

**2010**—Subsec. (i)(1)(B). Pub. L. 111–203 substituted "minimis" for "minus" in heading and "the non-audit" for "the nonaudit" in cl. (i).

**2002**—Subsec. (a). Pub. L. 107–204, §205(b)(1), substituted "a registered public accounting firm" for "an independent public accountant" in introductory provisions.

Subsec. (b)(1). Pub. L. 107–204, §205(b)(2), (4)(A), in introductory provisions, substituted "the registered public accounting firm" for "the independent public accountant" and "the firm" for "the accountant".

Subsec. (b)(1)(B). Pub. L. 107–204, §205(b)(4)(B), substituted "such firm" for "such accountant".

Subsec. (b)(2). Pub. L. 107–204, §205(b)(2), (4)(A), (B), in introductory provisions, substituted "the firm" for "the accountant", "such firm" for "such accountant", and "the registered public accounting firm" for "the independent public accountant" and, in concluding provisions, substituted "the registered public accounting firm" for "the independent public accountant".

Subsec. (b)(3). Pub. L. 107–204, §205(b)(2), substituted "the registered public accounting firm" for "the independent public accountant" wherever appearing in introductory provisions.

Subsec. (b)(4). Pub. L. 107–204, §205(b)(1), (4)(A), (C), substituted "a registered public accounting firm" for "an independent public accountant", "the firm" for "the accountant", and "the report of the firm" for "the accountant's report".

Subsec. (c). Pub. L. 107–204, §205(b)(3), substituted "No registered public accounting firm" for "No independent public accountant".

Subsec. (d). Pub. L. 107–204, §205(b)(1), (2), substituted "a registered public accounting firm" for "an independent public accountant" and "the registered public accounting firm" for "the independent public accountant".

Subsec. (f). Pub. L. 107–204, §205(d), substituted "Definitions" for "Definition" in heading and inserted at end "As used in this section, the term 'issuer' means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn."

Subsecs. (g), (h). Pub. L. 107–204, §201(a), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 107–204, §202, added subsec. (i).

Subsec. (j). Pub. L. 107–204, §203, added subsec. (j).

Subsec. (k). Pub. L. 107–204, §204, added subsec. (k).

Subsec. (l). Pub. L. 107–204, §206, added subsec. (l).

Subsec. (m). Pub. L. 107–204, §301, added subsec. (m).

## **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**

Pub. L. 104–67, title III, §301(b), Dec. 22, 1995, 109 Stat. 764, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to each annual report—

"(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required to file selected quarterly financial data pursuant to the rules or regulations of the Securities and Exchange Commission; and

"(2) for any period beginning on or after January 1, 1997, with respect to any other registrant."

### **CONSTRUCTION**

Pub. L. 104–67, title II, §203, Dec. 22, 1995, 109 Stat. 762, provided that: "Nothing in this Act [see Short Title of 1995 Amendment note set out under section 78a of this title] or the amendments made by this Act shall be deemed to create or ratify any implied private right of action, or to prevent the Commission, by rule or regulation, from restricting or otherwise regulating private actions under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]."

## **§78j–2. Position limits and position accountability for security-based swaps and large trader reporting**

### **(a) Position limits**

As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 78c(a) of this title, and any other instrument relating to such security or loan or group or index of securities or loans; or

(2) any security-based swap and—

(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 78c(a) of this title; and

(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).

**(b) Exemptions**

The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.

**(c) SRO rules**

**(1) In general**

As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, may direct a self-regulatory organization—

(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

(i) any member of such self-regulatory organization; or

(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under this subsection.

**(2) Requirement to aggregate positions**

In establishing the limits under paragraph (1), the self-regulatory organization may require such member or person to aggregate positions in—

(A) any security-based swap and any security or loan or group or narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 78c(a)(68) of this title, and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans; or

(B)(i) any security-based swap; and

(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

**(d) Large trader reporting**

The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.

(June 6, 1934, ch. 404, title I, §10B, as added Pub. L. 111–203, title VII, §763(h), July 21, 2010, 124 Stat. 1778.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), 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 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.

## §78j–3. Compensation committees

### (a) Independence of compensation committees

#### (1) Listing standards

The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

#### (2) Independence of compensation committees

The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

- (A) a member of the board of directors of the issuer; and
- (B) independent.

#### (3) Independence

The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term "independence" for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

- (A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and
- (B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

#### (4) Exemption authority

The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

### (b) Independence of compensation consultants and other compensation committee advisers

#### (1) In general

The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

#### (2) Rules



The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—

(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

**(c) Compensation committee authority relating to compensation consultants**

**(1) Authority to retain compensation consultant**

**(A) In general**

The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

**(B) Direct responsibility of compensation committee**

The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

**(C) Rule of construction**

This paragraph may not be construed—

(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

**(2) Disclosure**

In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after July 21, 2010, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

**(d) Authority to engage independent legal counsel and other advisers**

**(1) In general**

The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

**(2) Direct responsibility of compensation committee**

The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

**(3) Rule of construction**

This subsection may not be construed—

(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

**(e) Compensation of compensation consultants, independent legal counsel, and other advisers**

Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

(1) to a compensation consultant; and

(2) to independent legal counsel or any other adviser to the compensation committee.

**(f) Commission rules**

**(1) In general**

Not later than 360 days after July 21, 2010, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

**(2) Opportunity to cure defects**

The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

**(3) Exemption authority**

**(A) In general**

The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

**(B) Considerations**

In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

**(g) Controlled company exemption**

**(1) In general**

This section shall not apply to any controlled company.

**(2) Definition**

For purposes of this section, the term "controlled company" means an issuer—

(A) that is listed on a national securities exchange or by a national securities association; and

(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.

(June 6, 1934, ch. 404, title I, §10C, as added Pub. L. 111–203, title IX, §952(a), July 21, 2010, 124 Stat. 1900.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Investment Company Act of 1940, referred to in subsec. (a)(1), 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.

## 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.

## §78j–4. Recovery of erroneously awarded compensation policy

### (a) Listing standards

The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

### (b) Recovery of funds

The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

(1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

(2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in <sup>1</sup> excess of what would have been paid to the executive officer under the accounting restatement.

(June 6, 1934, ch. 404, title I, §10D, as added Pub. L. 111–203, title IX, §954, July 21, 2010, 124 Stat. 1904.)

## 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.

<sup>1</sup> *So in original. Probably should be "compensation in".*

## §78k. Trading by members of exchanges, brokers, and dealers

### (a) Trading for own account or account of associated person; exceptions

(1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however,* That this paragraph shall not make unlawful—

(A) any transaction by a dealer acting in the capacity of market maker;

(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(C) any stabilizing transaction effected in compliance with rules under section 78j(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to

acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

(E) any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person;

(F) any transaction to offset a transaction made in error;

(G) any other transaction for a member's own account provided that (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange;

(H) any transaction for an account with respect to which such member or an associated person thereof exercises investment discretion if such member—

(i) has obtained, from the person or persons authorized to transact business for the account, express authorization for such member or associated person to effect such transactions prior to engaging in the practice of effecting such transactions;

(ii) furnishes the person or persons authorized to transact business for the account with a statement at least annually disclosing the aggregate compensation received by the exchange member in effecting such transactions; and

(iii) complies with any rules the Commission has prescribed with respect to the requirements of clauses (i) and (ii); and

(I) any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of this paragraph, the protection of investors, and the maintenance of fair and orderly markets.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation of exchange markets and markets occurring otherwise than on an exchange, may regulate or prohibit:

(A) transactions on a national securities exchange not unlawful under paragraph (1) of this subsection effected by any member thereof for its own account (unless such member is acting in the capacity of market maker or odd-lot dealer), the account of an associated person, or an account with respect to which such member or an associated person thereof exercises investment discretion;

(B) transactions otherwise than on a national securities exchange effected by use of the mails or any means or instrumentality of interstate commerce by any member of a national securities exchange, broker, or dealer for the account of such member, broker, or dealer (unless such member, broker, or dealer is acting in the capacity of a market maker) <sup>1</sup> the account of an associated person, or an account with respect to which such member, broker, or dealer or associated person thereof exercises investment discretion; and

(C) transactions on a national securities exchange effected by any broker or dealer not a member thereof for the account of such broker or dealer (unless such broker or dealer is acting in the capacity of market maker), the account of an associated person, or an account with respect to which such broker or dealer or associated person thereof exercises investment discretion.

(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on February 1, 1978 shall not become effective until February 1, 1979. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to February 1, 1979, pursuant to paragraph (2) of this subsection.

**(b) Registration of members as odd-lot dealers and specialists**

When not in contravention of such rules and regulations as the Commission may 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, the rules of a national securities exchange may permit (1) a member to be registered as an odd-lot dealer and as such to buy and sell for his own account so far as may be reasonably necessary to carry on such odd-lot transactions, and (2) a member to be registered as a specialist. Under the rules and regulations of the Commission a specialist may be permitted to act as a broker and dealer or limited to acting as a broker or dealer. It shall be unlawful for a specialist or an official of the exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: *Provided, however,* That the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. It shall also be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order.

**(c) Exemptions from provisions of section and rules and regulations**

If because of the limited volume of transactions effected on an exchange, it is in the opinion of the Commission impracticable and not necessary or appropriate in the public interest or for the protection of investors to apply any of the foregoing provisions of this section or the rules and regulations thereunder, the Commission shall have power, upon application of the exchange and on a showing that the rules of such exchange are otherwise adequate for the protection of investors, to exempt such exchange and its members from any such provision or rules and regulations.

**(d) Prohibition on extension of credit by broker-dealer**

It shall be unlawful for a member of a national securities exchange who is both a dealer and a broker, or for any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise, to effect through the use of any facility of a national securities exchange or of the mails or of any means or instrumentality of interstate commerce, or otherwise in the case of a member, (1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction: *Provided,* That credit shall not be deemed extended by reason of a bona fide delayed delivery of (i) any such security against full payment of the entire purchase price thereof upon such delivery within thirty-five days after such purchase or (ii) any mortgage related security or any small business related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such purchase, or within such shorter period as the Commission may prescribe by rule or regulation, or (2) any transaction with respect to any security (other than an exempted security) unless, if the transaction is with a customer, he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.

(June 6, 1934, ch. 404, title I, §11, 48 Stat. 891; Aug. 10, 1954, ch. 667, title II, §201, 68 Stat. 686; Pub. L. 94-29, §6, June 4, 1975, 89 Stat. 110; Pub. L. 95-283, §18(a), May 21, 1978, 92 Stat. 275; Pub. L. 98-440, title I, §104, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-68, §1, Aug. 11, 1993, 107 Stat. 691; Pub. L. 103-325, title II, §205, Sept. 23, 1994, 108 Stat. 2199.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1994**—Subsec. (d)(1)(ii). Pub. L. 103-325 inserted "or any small business related security" after "mortgage related security".

**1993**—Subsec. (a)(1)(E). Pub. L. 103-68, §1(1), struck out "(other than an investment company)" after

"trust".

Subsec. (a)(1)(H), (I). Pub. L. 103-68, §1(2)-(4), added subpar. (H) and redesignated former subpar. (H) as (I).

**1984**—Subsec. (d)(1). Pub. L. 98-440 designated existing provisions of par. (1) as cl. (i) and added cl. (ii).

**1978**—Subsec. (a)(3). Pub. L. 95-283 substituted "February 1, 1978" for "May 1, 1975", and "February 1, 1979" for "May 1, 1978" in two places.

**1975**—Subsec. (a). Pub. L. 94-29, §6(2), prohibited stock exchange members from effecting any transaction on the exchange for its own account, the account of an associated person, or an account with respect to which the member or an associated person exercises investment discretion, exempted from that prohibition 8 types of transactions, and authorized the Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, to regulate or prohibit the specifically exempted transactions, certain transactions otherwise that on a national securities exchange, and transactions on a national securities exchange effected by a broker or dealer not a member thereof for the account of such broker or dealer, the account of an associated person, or an account with respect to which such broker, dealer, or associated person exercises investment discretion.

Subsec. (b). Pub. L. 94-29, §6(2), struck out requirement that specialist's dealings be limited to those transactions reasonably necessary to permit him to maintain a fair and orderly market, expanded the Commission's rulemaking authority in the area of specialist's dealings so that the Commission may define responsibilities and restrict activities of specialists in response to changing conditions in the market, expanded the standards to be followed by the Commission in exercising its rulemaking power to include the maintenance of fair and orderly markets and the removal of impediments to and the perfection of the mechanism of a national market system, and inserted specific reference to the Commission's power to limit the activity of a specialist to that of a broker or dealer.

Subsec. (e). Pub. L. 94-29, §6(3), struck out subsec. (e) which directed the Commission to make a study, to be submitted on or before Jan. 3, 1936, of the feasibility of segregating the functions of dealer and broker.

**1954**—Subsec. (d). Act Aug. 10, 1954, reduced from 6 months to 30 days the prohibition period against extending credit to purchasers of a new issue by dealers.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-283, §18(b), May 21, 1978, 92 Stat. 275, provided that: "The amendment made by subsection (a) of this section [amending this section] shall be effective as of May 1, 1978."

### 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 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 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.

*<sup>1</sup> So in original. Probably should be followed by a comma.*

## §78k-1. National market system for securities; securities information processors

(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities

(1) The Congress finds that—

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) economically efficient execution of securities transactions;

(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) the practicability of brokers executing investors' orders in the best market; and

(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated hereinafter <sup>1</sup> in this section referred to as "qualified securities".)

(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection—

(A) to create one or more advisory committees pursuant to chapter 10 of title 5 (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section),<sup>2</sup> and to employ one or more outside experts;

(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system.

**(b) Securities information processors; registration; withdrawal of registration; access to services; censure; suspension or revocation of registration**

(1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor 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 securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities 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, including the maintenance of fair and orderly markets in securities and the removal of impediments



to and perfection of the mechanism of a national market system: *Provided, however,* That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

(2) A securities information processor may be registered by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this chapter and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the 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 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 the conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer periods as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this chapter and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

(4) A registered securities information processor 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 securities information processor 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 the registration.

(5)(A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission. 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. Any prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved



person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission 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). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this chapter and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this chapter or the rules or regulations thereunder.

**(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges**

(1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to—

(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;

(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

(D) assure that all exchange members, brokers, dealers, securities information processors, and, subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation

of a national market system; and

(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

(3)(A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 78l(b) of this title otherwise than on a national securities exchange, if the Commission finds, on the record after notice and opportunity for hearing, that—

(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such securities and such dealers who are not specialists in such securities, and

(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this chapter.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this chapter.

(4) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges.

(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

(6) TICK SIZE.—

(A) STUDY AND REPORT.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading operations in these securities in penny increments. Not later than 90 days after April 5, 2012, the Commission shall submit to Congress a report on the findings of the study.

(B) DESIGNATION.—If the Commission determines that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than \$0.01, the Commission may, by rule not later than 180 days after April 5, 2012, designate a minimum increment for the securities of emerging growth companies that is greater than \$0.01 but less than \$0.10 for use in all quoting and trading of securities in any exchange or other execution venue.

**(d) National Market Advisory Board**

(1) Not later than one hundred eighty days after June 4, 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the "Advisory Board") to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

(3)(A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a "National Market Regulatory Board" or "Regulatory Board") to administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

- (i) the point in time at which a Regulatory Board should be established;
- (ii) the composition of a Regulatory Board;
- (iii) the scope of the authority of a Regulatory Board;
- (iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and
- (v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study and its recommendations, including such recommendations for legislation as it deems appropriate.

(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

**(e) National markets system for security futures products**

**(1) Consultation and cooperation required**

With respect to security futures products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

**(2) Application of rules by order of CFTC**

No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security futures products on an exchange that is registered under section 78f(g) of this

title unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.

(June 6, 1934, ch. 404, title I, §11A, as added Pub. L. 94–29, §7, June 4, 1975, 89 Stat. 111; amended Pub. L. 98–620, title IV, §402(14), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 100–181, title III, §§313, 314, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 106–554, §1(a)(5) [title II, §206(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–430; Pub. L. 112–106, title I, §106(b), Apr. 5, 2012, 126 Stat. 312; Pub. L. 117–286, §4(a)(62), Dec. 27, 2022, 136 Stat. 4312.)

## 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

**2022**—Subsec. (a)(3)(A). Pub. L. 117–286 substituted "chapter 10 of title 5 (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section)," for "the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section)".

**2012**—Subsec. (c)(6). Pub. L. 112–106 added par. (6).

**2000**—Subsec. (e). Pub. L. 106–554 added subsec. (e).

**1987**—Subsec. (b)(2). Pub. L. 100–181, §313(1), substituted "transactions" for "transaction".

Subsec. (c)(4). Pub. L. 100–181, §313(2), struck out "On or before the ninetieth day following June 4, 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 78s(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement."

Subsec. (e). Pub. L. 100–181, §314, struck out subsec. (e) which read as follows: "The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of 'broker' and 'dealer' maintain accounts on behalf of public customers for buying and selling securities registered under section 78l of this title and whether such exclusions are consistent with the protection of investors and the other purposes of this chapter. The Commission shall report to the Congress, on or before December 31, 1976, the results of its study together with such recommendations for legislation as it deems advisable."

**1984**—Subsec. (c)(4). Pub. L. 98–620 struck out designation "(A)" after "(4)", and struck out subpar. (B) which provided that review pursuant to section 78y(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to this paragraph would, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and had to be assigned for consideration at the earliest practicable date and expedited in every way.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

### EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (b) 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.

### TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the

President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

<sup>1</sup> So in original. Probably should be "are hereinafter".

<sup>2</sup> So in original. The comma probably should not appear.

## **§78l. Registration requirements for securities**

### **(a) General requirement of registration**

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

### **(b) Procedure for registration; information**

A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

- (A) the organization, financial structure, and nature of the business;
- (B) the terms, position, rights, and privileges of the different classes of securities outstanding;
- (C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;
- (D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;
- (E) remuneration to others than directors and officers exceeding \$20,000 per annum;
- (F) bonus and profit-sharing arrangements;
- (G) management and service contracts;
- (H) options existing or to be created in respect of their securities;
- (I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;
- (J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;
- (K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and
- (L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of,

and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

**(c) Additional or alternative information**

If in the judgment of the Commission any information required under subsection (b) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

**(d) Effective date of registration; withdrawal of registration**

If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 78m of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only 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.

**(e) Exemption from provisions of section for period ending not later than July 1, 1935**

Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

**(f) Unlisted trading privileges for security originally listed on another national exchange**

(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2), subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after October 22, 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter. Until the earlier of the effective date of such rule or regulation or 240 days after October 22,

1994, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this chapter;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph—

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.]; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 78m or 78o(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 78y of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5. Upon such suspension—

(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter; and

(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this chapter.

(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).

(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this chapter. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—

(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this chapter.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this chapter. The powers and duties of the Commission under this chapter shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 78m, 78n, or 78p of this title.



**(g) Registration of securities by issuer; exemptions**

(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either—

- (i) 2,000 persons, or
- (ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

(B) in the case of an issuer that is 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, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 78r of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 80a-8 of this title.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by 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.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended [12 U.S.C. 1141 et seq.], or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

- (i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its

domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 78p of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 80a-3(c)(14) of this title.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to 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.<sup>1</sup> The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall 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 terms "total assets" and "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. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of "held of record" shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933 [15 U.S.C. 77e].

(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6)<sup>2</sup> of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)] from the provisions of this subsection.

#### **(h) Exemption by rules and regulations from certain provisions of section**

The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 78m, 78n, or 78o(d) of this title or may exempt from section 78p of this title any officer, director, or beneficial owner of

securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this chapter, classify issuers and prescribe requirements appropriate for each such class.

**(i) Securities issued by banks**

In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], the powers, functions, and duties vested in the Commission to administer and enforce this section and sections 78j-1(m), 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation <sup>3</sup> are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under this section and sections 78j-1(m), 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of October 28, 1974, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

**(j) Denial, suspension, or revocation of registration; notice and hearing**

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer, of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, 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 the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

**(k) Trading suspensions; emergency authority**

**(1) Trading suspensions**

If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the

President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

## **(2) Emergency orders**

### **(A) In general**

The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

- (i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);
- (ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or
- (iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—
  - (I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or
  - (II) the transmission or processing of securities transactions (other than transactions in exempted securities).

### **(B) Effective period**

An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

### **(C) Extension**

An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

### **(D) Security futures**

If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

### **(E) Exemption**

In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

- (i) section 78s(c) of this title; or
- (ii) section 553 of title 5.

## **(3) Termination of emergency actions by President**

The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

## **(4) Compliance with orders**

No member of a national securities exchange, 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 the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5)

of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

**(5) Limitations on review of orders**

An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 78y(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

**(6) Consultation**

Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

**(7) Definition**

For purposes of this subsection, the term "emergency" means—

(A) a major market disturbance characterized by or constituting—

- (i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or
- (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

- (i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or
- (ii) the transmission or processing of securities transactions.

**(l) Issuance of any security in contravention of rules and regulations; application to annuity contracts and variable life policies**

It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

(June 6, 1934, ch. 404, title I, §12, 48 Stat. 892; May 27, 1936, ch. 462, §1, 49 Stat. 1375; Aug. 10, 1954, ch. 667, title II, §202, 68 Stat. 686; Pub. L. 88–467, §3, Aug. 20, 1964, 78 Stat. 565; Pub. L. 90–439, §1, July 29, 1968, 82 Stat. 454; Pub. L. 91–547, §28(c), Dec. 14, 1970, 84 Stat. 1435; Pub. L. 93–495, title I, §105(b), Oct. 28, 1974, 88 Stat. 1503; Pub. L. 94–29, §§8, 9, June 4, 1975, 89 Stat. 117, 118; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–181, title III, §314, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 101–73, title VII, §744(u)(2), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101–432, §2, Oct. 16, 1990, 104 Stat. 963; Pub. L. 103–389, §2, Oct. 22, 1994, 108 Stat. 4081; Pub. L. 104–62, §4(d), Dec. 8, 1995, 109 Stat. 685; Pub. L. 106–554, §1(a)(5) [title II, §§206(e), 208(b)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–431, 2763A–435; Pub. L. 107–204, §3(b)(4), title II, §205(c)(1), July 30, 2002, 116 Stat. 749, 774; Pub. L. 108–359, §1(c)(2), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 108–386, §8(f)(4), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 108–458, title VII, §7803(b), (c), Dec. 17, 2004, 118 Stat. 3861, 3862; Pub. L. 111–203, title III, §376(2), title IX, §986(a)(2), July 21, 2010, 124 Stat. 1569, 1935; Pub. L. 112–106, title III, §303(a), title V, §§501, 502, title VI, §601(a), Apr. 5, 2012, 126 Stat. 321, 325, 326; Pub. L. 114–94, div. G, title LXXXV, §85001(1), Dec. 4, 2015, 129 Stat. 1797.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (f), and (j), 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)(1)(G)(i)(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 effective date of this subsection, referred to in subsec. (g)(1)(B), probably means the date of enactment of Pub. L. 112–106, which amended subsec. (g) of this section and was approved Apr. 5, 2012.

The Agricultural Marketing Act, approved June 15, 1929, as amended, referred to in subsec. (g)(2)(E), is act June 15, 1929, ch. 24, 46 Stat. 11, which is classified generally to chapter 7A (§1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(e) of Title 12 and Tables.

Section 4(6) of the Securities Act of 1933, referred to in subsec. (g)(6), was redesignated section 4(a)(6) 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)(6) of this title.

The Federal Deposit Insurance Act, referred to in subsec. (i), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 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 1811 of Title 12 and Tables.

### AMENDMENTS

**2015**—Subsec. (g)(1)(B). Pub. L. 114–94, §85001(1)(A), inserted ", a savings and loan holding company (as defined in section 1467a of title 12)," after "is a bank".

Subsec. (g)(4). Pub. L. 114–94, §85001(1)(B), inserted ", a savings and loan holding company (as defined in section 1467a of title 12)," after "case of a bank".

**2012**—Subsec. (g)(1)(A). Pub. L. 112–106, §501, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "within one hundred and twenty days after the last day of its first fiscal year ended after July 1, 1964, on which the issuer has total assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons; and".

Subsec. (g)(1)(B). Pub. L. 112–106, §601(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "within one hundred and twenty days after the last day of its first fiscal year ended after two years from July 1, 1964, on which the issuer has total assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons,".

Subsec. (g)(4). Pub. L. 112–106, §601(a)(2), substituted "300 persons, or, in the case of a bank or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons" for "three hundred".

Subsec. (g)(5). Pub. L. 112–106, §502, which directed that subsec. (g)(5) "as amended by section 302" of Pub. L. 112–106 be amended "in subparagraph (A)" by inserting at end "For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of 'held of record' shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.", was executed by making the insertion at end of par. (5) to reflect the probable intent of Congress. Section 302 of Pub. L. 112–106 did not amend this section, and subsec. (g)(5) does not contain subpars.

Subsec. (g)(6). Pub. L. 112–106, §303(a), added par. (6).

**2010**—Subsec. (i). Pub. L. 111–203, §376(2)(C), substituted "and the Federal Deposit Insurance Corporation" for "the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision" in second sentence.

Subsec. (i)(1). Pub. L. 111–203, §376(2)(A), inserted "and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation" after "national banks".

Subsec. (i)(3), (4). Pub. L. 111–203, §376(2)(B), substituted "and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation" for "(3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation, and (4) with respect to savings associations the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Office of Thrift Supervision".

Subsec. (k)(7). Pub. L. 111–203, §986(a)(2), amended par. (7) generally. Prior to amendment, par. (7) contained similar provisions defining the term "emergency" and provided that, notwithstanding section 78c(a)(47) of this title, the term "securities laws" did not include the Public Utility Holding Company Act of 1935.

**2004**—Subsec. (g)(2)(H)(iii). Pub. L. 108–359 added cl. (iii).

Subsec. (i)(1). Pub. L. 108–386 struck out "and banks operating under the Code of Law for the District of Columbia" after "national banks".

Subsec. (k)(2). Pub. L. 108–458, §7803(b)(1), amended par. (2) generally. Prior to amendment, par. (2) provided Commission authority to make emergency orders.

Subsec. (k)(6), (7). Pub. L. 108–458, §7803(c), added pars. (6) and (7) and struck out heading and text of former par. (6). Text read as follows: "For purposes of this subsection, the term 'emergency' means a major market disturbance characterized by or constituting—

"(A) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets, or

"(B) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities, or a substantial threat thereof."

**2002**—Subsec. (b)(1)(J), (K). Pub. L. 107–204, §205(c)(1), substituted "a registered public accounting firm" for "independent public accountants".

Subsec. (i). Pub. L. 107–204, §3(b)(4)(B), substituted "and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title," for "and 78p of this title," in two places.

Pub. L. 107–204, §3(b)(4)(A), substituted "this section and sections 78j–1(m), 78m" for "this section and sections 78m" in two places.

**2000**—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §208(b)(1)], inserted at end "The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange."

Subsec. (g)(5). Pub. L. 106–554, §1(a)(5) [title II, §208(b)(2)], inserted at end "For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product."

Subsec. (k)(1). Pub. L. 106–554, §1(a)(5) [title II, §206(e)(1)], inserted at end "If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission."

Subsec. (k)(2)(B). Pub. L. 106–554, §1(a)(5) [title II, §206(e)(2)], inserted after first sentence "If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission."

**1995**—Subsec. (g)(2)(D). Pub. L. 104–62 inserted before period at end "; or any security of a fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title".

**1994**—Subsec. (f)(1), (2). Pub. L. 103–389, §2(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to extension of unlisted trading privileges for securities originally listed on another national exchange and approval process for application for extension of such privileges, respectively.

Subsec. (f)(3). Pub. L. 103–389, §2(b), substituted "Notwithstanding paragraph (2), the Commission" for "The Commission".

**1990**—Subsec. (k). Pub. L. 101–432 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, 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 the purchase or sale of, any security in which trading is so suspended."

**1989**—Subsec. (i). Pub. L. 101–73, in first sentence, inserted "and savings associations" after "securities issued by banks", struck out "or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" before ", the powers, functions, and duties", inserted new cl. (4) and struck out former cl. (4) which read "with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation are vested in the Federal Home Loan Bank Board", and, in second sentence, substituted "Office of Thrift Supervision" for "Federal Home Loan Bank Board".

**1987**—Subsec. (m). Pub. L. 100–181 struck out subsec. (m) which read as follows: "The Commission is authorized and directed to make a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities to determine (1) whether such practice is consistent with the purposes of this chapter, with particular reference to

subsection (g) of this section and sections 78m, 78n, 78o(d), 78p, and 78q-1 of this title, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. The Commission shall report to the Congress its preliminary findings within six months after June 4, 1975, and its final conclusions and recommendations within one year of such date."

**1986**—Subsec. (g)(2)(H). 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.

**1975**—Subsec. (f)(1). Pub. L. 94-29, §8(1), added subpar. (C) and in provisions following subpar. (C), substituted "is based" for "was originally based" and "remains listed and registered on a national securities exchange" for "shall remain listed and registered on any other national securities exchange".

Subsec. (f)(2). Pub. L. 94-29, §8(1), substituted "after notice and opportunity for hearing" for "after appropriate notice and opportunity for hearing" and "consistent with the maintenance of fair and orderly markets and the protection of investors" for "necessary or appropriate in the public interest or for the protection of investors" in existing provisions and added the enumeration of matters to be taken into account by the Commission in considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange.

Subsec. (f)(6). Pub. L. 94-29, §8(2), substituted "this chapter" for "section 78s(b) of this title".

Subsecs. (j) to (m). Pub. L. 94-29, §9, added subsecs. (j) to (m).

**1974**—Subsec. (i). Pub. L. 93-495 added coverage of institutions insured by the Federal Savings and Loan Insurance Corporation, cl. (4), and provisions authorizing the Federal Home Loan Bank Board to promulgate necessary rules and regulations, and substituted provisions relating to issuance of regulations in order to implement agency responsibility under this subsec. for provisions relating to the binding effect of rules, regulations, forms or orders issued or adopted by the Commission pursuant to this chapter.

**1970**—Subsec. (g)(2)(H). Pub. L. 91-547 added subpar. (H).

**1968**—Subsec. (i). Pub. L. 90-439 inserted "78n(d), 78n(f)," after "78n(c)".

**1964**—Subsec. (b)(1)(I) to (L). Pub. L. 88-467, §3(a)(1), (2), added subpar. (I) and redesignated former subpars. (I) to (K) as (J) to (L), respectively.

Subsec. (b)(3). Pub. L. 88-467, §3(a)(3), added par. (3).

Subsec. (f)(1). Pub. L. 88-467, §3(b), designated first par. as (1), redesignated cl. (1) as cl. (A) and substituted therein "July 1, 1964" for "March 1, 1934", redesignated cl. (2) as cl. (B) and struck out the provision for continuation of unlisted trading privileges, which is now incorporated in concluding sentence, and struck out cl. (3) which permitted a national security exchange to extend unlisted trading privileges to any security in respect to which there was available information substantially equivalent to that available in respect to a security duly listed and registered on a national securities exchange, so long as the registration statement was effective and the reports and data continued to be filed.

Subsec. (f)(2). Pub. L. 88-467, §3(b), designated first sentence of second par. as (2) and substituted therein "finds, after appropriate notice and opportunity for hearing, that the extension" for "finds that the continuation or extension", and struck out second through sixth sentences of such second par. which related as follows: the second sentence, to notice and opportunity for hearing, now incorporated in par. (2); the third sentence, to conditions (respecting sufficiently widespread public distribution and sufficient public trading activity) for approval of application to extend unlisted trading privileges to any security pursuant to former clauses (2) and (3) of subsec. (f); the fourth sentence, to terms and conditions (subjecting issuer, officers, and directors of issuer, and beneficial owners of more than 10 per centum of the securities to duties equivalent to duties if the securities were registered on a national security exchange) for approval of application to extend unlisted trading privileges to any security pursuant to former clause (3) of subsec. (f); the fifth sentence, to requirement for differentiation by national security exchanges between quotations or transactions in listed securities and in securities with unlisted trading privileges, now covered by section 78s(b) of this title; the sixth sentence, to grouping under separate headings of quotations or transactions in listed securities and in securities with unlisted trading privileges, in the publication of quotations or transactions.

Subsec. (f)(3). Pub. L. 88-467, §3(b), designated third par. as (3).

Subsec. (f)(4). Pub. L. 88-467, §3(b), designated second sentence of fourth par. as (4), struck out "by reason of inadequate public distribution of such security in the vicinity of said exchange, or by reason of inadequate public trading activity or of the character of trading therein on said exchange," before "such termination or suspension is necessary", and struck out first sentence of fourth par. which provided for the termination under certain conditions of unlisted trading privileges continued for any security pursuant to former cl. (1) of subsec. (f), now incorporated in par. (1)(A) of subsec. (f).

Subsec. (f)(5), (6). Pub. L. 88-467, §3(b), designated fifth and sixth pars. as (5) and (6).



Subsecs. (g) to (i). Pub. L. 88–467, §3(c)–(e), added subsecs. (g) to (i).

**1954**—Subsec. (d). Act Aug. 10, 1954, repealed last sentence requiring that rules and regulations limit the registration of unissued security to specified cases.

**1936**—Subsec. (f). Act May 27, 1936, amended first par. and added subsequent pars.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 986(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 376(2) 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 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 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 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.

### **EFFECTIVE DATE OF 1964 AMENDMENT**

Amendment by section 3(a), (c) of Pub. L. 88–467 effective July 1, 1964, and amendment by section 3(b), (d), (e) of 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.

### **EFFECTIVE DATE OF 1954 AMENDMENT**

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

## **RULEMAKING**

Pub. L. 112–106, title III, §303(b), Apr. 5, 2012, 126 Stat. 321, provided that: "The [Securities and Exchange] Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c) [probably should be 15 U.S.C. 78l(g)(6)], as added by this section, not later than 270 days after the date of enactment of this Act [Apr. 5, 2012]."

Pub. L. 112–106, title V, §503, Apr. 5, 2012, 126 Stat. 326, provided that: "The Securities and Exchange Commission shall revise the definition of 'held of record' pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to implement the amendment made by section 502 [amending this section]. The Commission shall also adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of section 5 of the Securities Act of 1933 [15 U.S.C. 77e]."

Pub. L. 112–106, title VI, §602, Apr. 5, 2012, 126 Stat. 327, provided that: "Not later than 1 year after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall issue final regulations to implement this title [amending this section and section 78o of this title] and the amendments

made by this title."

### ADDITIONAL DISCLOSURE REQUIREMENTS

Pub. L. 111–203, title IX, §953(b), July 21, 2010, 124 Stat. 1904, as amended by Pub. L. 112–106, title I, §102(a)(3), Apr. 5, 2012, 126 Stat. 309, provided that:

"(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer, other than an emerging growth company, as that term is defined in section 3(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)], to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

"(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

"(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

"(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

"(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act [July 21, 2010]."

[For definitions of "Commission" and "issuer" as used in section 953(b) 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.

<sup>1</sup> *So in original.*

<sup>2</sup> *See References in Text note below.*

<sup>3</sup> *So in original. Probably should be followed by a comma.*

### **§78l–1. Applications for unlisted trading privileges deemed filed under section 78l of this title**

Any application to continue unlisted trading privileges for any security heretofore filed by any exchange and approved by the Commission pursuant to clause (1) of subsection (f) of section 78l of this title and rules and regulations thereunder shall be deemed to have been filed and approved pursuant to clause (1) of said subsection (f).

(May 27, 1936, ch. 462, §2, 49 Stat. 1377.)

### EDITORIAL NOTES

#### CODIFICATION

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

### **§78m. Periodical and other reports**

#### **(a) Reports by issuer of security; contents**

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as

necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 [15 U.S.C. 77a et seq.] and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

**(b) Form of report; books, records, and internal accounting; directives**

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 7219 of this title.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 781 of this title or an issuer which is required to file reports pursuant to section 780(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

### **(c) Alternative reports**

If in the judgment of the Commission any report required under subsection (a) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

### **(d) Reports by persons acquiring more than five per centum of certain classes of securities**

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 781 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 781(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of title 43, or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the

Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed 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.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

**(e) Purchase of securities by issuer**

(1) It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 78l of this title, or which is a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

(2) For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to \$92 <sup>1</sup> per \$1,000,000 of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)] for such fiscal year.

(5) FEE COLLECTIONS.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) EFFECTIVE DATE; PUBLICATION.—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 (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

**(f) Reports by institutional investment managers**

(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the

Commission may define by rule, having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in subsection (d)(1) held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

(E) with respect to any transaction or series of transactions having a market value of at least \$500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in subsection (d)(1)—

(i) the name of the issuer and the title, class, and CUSIP number of the security;

(ii) the number of shares or principal amount of the security involved in the transaction;

(iii) whether the transaction was a purchase or sale;

(iv) the per share price or prices at which the transaction was effected;

(v) the date or dates of the transaction;

(vi) the date or dates of the settlement of the transaction;

(vii) the broker or dealer through whom the transaction was effected;

(viii) the market or markets in which the transaction was effected; and

(ix) such other related information as the Commission, by rule, may prescribe.

(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.

(3) The Commission, by rule, or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.

(4) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in subsection (d)(1), updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such



form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

(5) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

(6)(A) For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount.<sup>2</sup>

**(g) Statement of equity security ownership**

(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) such person's identity, residence, and citizenship; and

(B) the number and description of the shares in which such person has an interest and the nature of such interest.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed 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.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive



of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.

(6) The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.

## **(h) Large trader reporting**

### **(1) Identification requirements for large traders**

For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this chapter, each large trader shall—

(A) provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

(B) identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

### **(2) Recordkeeping and reporting requirements for brokers and dealers**

Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

### **(3) Aggregation rules**

The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control.

### **(4) Examination of broker and dealer records**

All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders 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, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

### **(5) Factors to be considered in Commission actions**

In exercising its authority under this subsection, the Commission shall take into account—

- (A) existing reporting systems;
- (B) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and
- (C) the relationship between the United States and international securities markets.

#### **(6) Exemptions**

The Commission, by rule, regulation, or order, consistent with the purposes of this chapter, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

#### **(7) Authority of Commission to limit disclosure of information**

Notwithstanding any other provision of law, 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 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 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.

#### **(8) Definitions**

For purposes of this subsection—

(A) the term "large trader" means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

(B) the term "publicly traded security" means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

(C) the term "identifying activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated;

(D) the term "reporting activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

(E) the term "person" has the meaning given in section 78c(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank.

#### **(i) Accuracy of financial reports**

Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this chapter and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

#### **(j) Off-balance sheet transactions**

Not later than 180 days after July 30, 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

**(k) Prohibition on personal loans to executives**

**(1) In general**

It shall be unlawful for any issuer (as defined in section 7201 of this title), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on July 30, 2002, shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after July 30, 2002.

**(2) Limitation**

Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 1464 of title 12), consumer credit (as defined in section 1602 of this title), or any extension of credit under an open end credit plan (as defined in section 1602 of this title), or a charge card (as defined in section 1637(c)(4)(e) of this title), or any extension of credit by a broker or dealer registered under section 78o of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 78g of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

- (A) made or provided in the ordinary course of the consumer credit business of such issuer;
- (B) of a type that is generally made available by such issuer to the public; and
- (C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

**(3) Rule of construction for certain loans**

Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 375b of title 12.

**(l) Real time issuer disclosures**

Each issuer reporting under subsec. (a) or section 78o(d) of this title shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

**(m) Public availability of security-based swap transaction data**

**(1) In general**

**(A) Definition of real-time public reporting**

In this paragraph, the term "real-time public reporting" means to report data relating to a security-based swap transaction, including price and volume, as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

**(B) Purpose**

The purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the

Commission determines appropriate to enhance price discovery.

**(C) General rule**

The Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 78c-3(a)(1) of this title (including those security-based swaps that are excepted from the requirement pursuant to section 78c-3(g) of this title), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in section 78c-3(a)(1) of this title, but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 78c-3(a)(6) of this title,<sup>3</sup> the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to security-based swaps that are determined to be required to be cleared under section 78c-3(b) of this title but are not cleared, the Commission shall require real-time public reporting for such transactions.

**(D) Registered entities and public reporting**

The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

**(E) Rulemaking required**

With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

**(F) Timeliness of reporting**

Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

**(G) Reporting of swaps to registered security-based swap data repositories**

Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.

**(H) Registration of clearing agencies**

A clearing agency may register as a security-based swap data repository.

**(2) Semiannual and annual public reporting of aggregate security-based swap data**

**(A) In general**

In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

(i) the trading and clearing in the major security-based swap categories; and

(ii) the market participants and developments in new products.

**(B) Use; consultation**

In preparing a report under subparagraph (A), the Commission shall—

- (i) use information from security-based swap data repositories and clearing agencies; and
- (ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

**(C) Authority of Commission**

The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

**(n) Security-based swap data repositories**

**(1) Registration requirement**

It shall be unlawful for any person, 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 security-based swap data repository.

**(2) Inspection and examination**

Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

**(3) Compliance with core principles**

**(A) In general**

To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

- (i) the requirements and core principles described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation.

**(B) Reasonable discretion of security-based swap data repository**

Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

**(4) Standard setting**

**(A) Data identification**

**(i) In general**

In accordance with clause (ii), the Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

**(ii) Requirement**

In carrying out clause (i), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

**(B) Data collection and maintenance**

The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

**(C) Comparability**

The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.

## **(5) Duties**

A security-based swap data repository shall—

(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

(G) on a confidential basis pursuant to section 78x of this title, upon request, and after notifying the Commission of the request, make available security-based swap data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

(i) each appropriate prudential regulator;

(ii) the Financial Stability Oversight Council;

(iii) the Commodity Futures Trading Commission;

(iv) the Department of Justice; and

(v) any other person that the Commission determines to be appropriate, including—

(I) foreign financial supervisors (including foreign futures authorities);

(II) foreign central banks;

(III) foreign ministries; and

(IV) other foreign authorities.

(H) **CONFIDENTIALITY AGREEMENT.**—Before the security-based swap data repository may share information with any entity described in subparagraph (G), the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 78x of this title relating to the information on security-based swap transactions that is provided.

## **(6) Designation of chief compliance officer**

### **(A) In general**

Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

### **(B) Duties**

The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the security-based swap data repository;

(ii) review the compliance of the security-based swap data repository with respect to the requirements and core principles described in this subsection;

(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;

(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(v) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(vi) 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

(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

### **(C) Annual reports**

#### **(i) 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 data repository of the chief compliance officer with respect to this chapter (including regulations); and

(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

#### **(ii) Requirements**

A compliance report under clause (i) shall—

(I) accompany each appropriate financial report of the security-based swap data repository 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.

### **(7) Core principles applicable to security-based swap data repositories**

#### **(A) Antitrust considerations**

Unless necessary or appropriate to achieve the purposes of this chapter, the swap data repository shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

#### **(B) Governance arrangements**

Each security-based swap data repository shall establish governance arrangements that are transparent—

(i) to fulfill public interest requirements; and

(ii) to support the objectives of the Federal Government, owners, and participants.

#### **(C) Conflicts of interest**

Each security-based swap data repository shall—

(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

(ii) establish a process for resolving any conflicts of interest described in clause (i).

#### **(D) Additional duties developed by Commission**

##### **(i) In general**

The Commission may develop 1 or more additional duties applicable to security-based swap data repositories.

**(ii) Consideration of evolving standards**

In developing additional duties under subparagraph (A),<sup>4</sup> the Commission may take into consideration any evolving standard of the United States or the international community.

**(iii) Additional duties for Commission designees**

The Commission shall establish additional duties for any registrant described in subsection (m)(2)(C) in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the security-based swap data repository.

**(8) Required registration for security-based swap data repositories**

Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act [7 U.S.C. 1 et seq.] as a swap data repository.

**(9) Rules**

The Commission shall adopt rules governing persons that are registered under this subsection.

**(o) Beneficial ownership**

For purposes of this section and section 78p of this title, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.

**(p) Disclosures relating to conflict minerals originating in the Democratic Republic of the Congo**

**(1) Regulations**

**(A) In general**

Not later than 270 days after July 21, 2010, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person's first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ("DRC conflict free" is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.



**(B) Certification**

The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

**(C) Unreliable determination**

If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

**(D) DRC conflict free**

For purposes of this paragraph, a product may be labeled as "DRC conflict free" if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

**(E) Information available to the public**

Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

**(2) Person described**

A person is described in this paragraph if—

(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

**(3) Revisions and waivers**

The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

**(4) Termination of disclosure requirements**

The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than the date that is one day after the end of the 5-year period beginning on July 21, 2010, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

**(5) Definitions**

For purposes of this subsection, the terms "adjoining country", "appropriate congressional committees", "armed group", and "conflict mineral" have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**(q) Disclosure of payments by resource extraction issuers**

**(1) Definitions**

In this subsection—

(A) the term "commercial development of oil, natural gas, or minerals" includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

(B) the term "foreign government" means a foreign government, a department, agency, or

instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

(C) the term "payment"—

(i) means a payment that is—

- (I) made to further the commercial development of oil, natural gas, or minerals; and
- (II) not de minimis; and

(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

(D) the term "resource extraction issuer" means an issuer that—

- (i) is required to file an annual report with the Commission; and
- (ii) engages in the commercial development of oil, natural gas, or minerals;

(E) the term "interactive data format" means an electronic data format in which pieces of information are identified using an interactive data standard; and

(F) the term "interactive data standard" means [5](#) standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

## **(2) Disclosure**

### **(A) Information required**

Not later than 270 days after July 21, 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

- (i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and
- (ii) the type and total amount of such payments made to each government.

### **(B) Consultation in rulemaking**

In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

### **(C) Interactive data format**

The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

### **(D) Interactive data standard**

#### **(i) In general**

The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

#### **(ii) Electronic tags**

The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

- (I) the total amounts of the payments, by category;
- (II) the currency used to make the payments;
- (III) the financial period in which the payments were made;
- (IV) the business segment of the resource extraction issuer that made the payments;

- (V) the government that received the payments, and the country in which the government is located;
- (VI) the project of the resource extraction issuer to which the payments relate; and
- (VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

**(E) International transparency efforts**

To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

**(F) Effective date**

With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

**(3) Public availability of information**

**(A) In general**

To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

**(B) Other information**

Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

**(4) Authorization of appropriations**

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.

**(r) Disclosure of certain activities relating to Iran**

**(1) In general**

Each issuer required to file an annual or quarterly report under subsection (a) shall disclose in that report the information required by paragraph (2) if, during the period covered by the report, the issuer or any affiliate of the issuer—

(A) knowingly engaged in an activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(B) knowingly engaged in an activity described in subsection (c)(2) of section 8513 of title 22 or a transaction described in subsection (d)(1) of that section;

(C) knowingly engaged in an activity described in section 8514a(b)(2) of title 22; or

(D) knowingly conducted any transaction or dealing with—

(i) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13224 (66 Fed. Reg. 49079; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism);

(ii) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13382 (70 Fed. Reg. 38567; relating to blocking of property of weapons of mass destruction proliferators and their supporters); or

(iii) any person or entity identified under section 560.304 of title 31, Code of Federal Regulations (relating to the definition of the Government of Iran) without the specific authorization of a Federal department or agency.

**(2) Information required**

If an issuer or an affiliate of the issuer has engaged in any activity described in paragraph (1),

the issuer shall disclose a detailed description of each such activity, including—

- (A) the nature and extent of the activity;
- (B) the gross revenues and net profits, if any, attributable to the activity; and
- (C) whether the issuer or the affiliate of the issuer (as the case may be) intends to continue the activity.

### **(3) Notice of disclosures**

If an issuer reports under paragraph (1) that the issuer or an affiliate of the issuer has knowingly engaged in any activity described in that paragraph, the issuer shall separately file with the Commission, concurrently with the annual or quarterly report under subsection (a), a notice that the disclosure of that activity has been included in that annual or quarterly report that identifies the issuer and contains the information required by paragraph (2).

### **(4) Public disclosure of information**

Upon receiving a notice under paragraph (3) that an annual or quarterly report includes a disclosure of an activity described in paragraph (1), the Commission shall promptly—

- (A) transmit the report to—
  - (i) the President;
  - (ii) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and
  - (iii) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) make the information provided in the disclosure and the notice available to the public by posting the information on the Internet website of the Commission.

### **(5) Investigations**

Upon receiving a report under paragraph (4) that includes a disclosure of an activity described in paragraph (1) (other than an activity described in subparagraph (D)(iii) of that paragraph), the President shall—

- (A) initiate an investigation into the possible imposition of sanctions under the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note), section 8513 or 8514a of title 22, an Executive order specified in clause (i) or (ii) of paragraph (1)(D), or any other provision of law relating to the imposition of sanctions with respect to Iran, as applicable; and
- (B) not later than 180 days after initiating such an investigation, make a determination with respect to whether sanctions should be imposed with respect to the issuer or the affiliate of the issuer (as the case may be).

### **(6) Sunset**

The provisions of this subsection shall terminate on the date that is 30 days after the date on which the President makes the certification described in section 8551(a) of title 22.

## **(s) Data standards**

### **(1) Requirement**

The Commission shall, by rule, adopt data standards for all collections of information with respect to periodic and current reports required to be filed or furnished under this section or under section 780(d) of this title, 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, §13, 48 Stat. 894; Pub. L. 88–467, §4, Aug. 20, 1964, 78 Stat. 569;

Pub. L. 90–439, §2, July 29, 1968, 82 Stat. 454; Pub. L. 91–567, §§1, 2, Dec. 22, 1970, 84 Stat. 1497; Pub. L. 94–29, §10, June 4, 1975, 89 Stat. 119; Pub. L. 94–210, title III, §308(b), Feb. 5, 1976, 90 Stat. 57; Pub. L. 95–213, title I, §102, title II, §§202, 203, Dec. 19, 1977, 91 Stat. 1494, 1498, 1499; Pub. L. 98–38, §2(a), June 6, 1983, 97 Stat. 205; Pub. L. 100–181, title III, §§315, 316, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 100–241, §12(d), Feb. 3, 1988, 101 Stat. 1810; Pub. L. 100–418, title V, §5002, Aug. 23, 1988, 102 Stat. 1415; Pub. L. 101–432, §3, Oct. 16, 1990, 104 Stat. 964; Pub. L. 107–123, §5, Jan. 16, 2002, 115 Stat. 2395; Pub. L. 107–204, title I, §109(i), formerly §109(h), title IV, §§401(a), 402(a), 409, July 30, 2002, 116 Stat. 771, 785, 787, 791, renumbered §109(i), Pub. L. 111–203, title IX, §982(h)(3), July 21, 2010, 124 Stat. 1930; Pub. L. 111–203, title VII, §§763(i), 766(b), (c), (e), title IX, §§929R(a), 929X(a), 985(b)(4), 991(b)(2), title XV, §§1502(b), 1504, July 21, 2010, 124 Stat. 1779, 1799, 1866, 1870, 1933, 1952, 2213, 2220; Pub. L. 112–106, title I, §102(b)(2), Apr. 5, 2012, 126 Stat. 309; Pub. L. 112–158, title II, §219(a), Aug. 10, 2012, 126 Stat. 1235; Pub. L. 114–94, div. G, title LXXXVI, §86001(c), Dec. 4, 2015, 129 Stat. 1798; Pub. L. 117–263, div. E, title LVIII, §5821(f), Dec. 23, 2022, 136 Stat. 3426.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", and this chapter, referred to in subsecs. (b)(1), (h)(1), (2), (4), (6), (i), and (n)(6)(B)(v), (C)(i)(I), (7)(A), 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 subsecs. (a) and (d)(6)(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 subsecs. (d)(1) and (e)(1), 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 Federal Deposit Insurance Act, referred to in subsec. (f)(5), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 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 1811 of Title 12 and Tables.

Section 7201 of this title, referred to in subsec. (k)(1), 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.

The Commodity Exchange Act, referred to in subsec. (n)(8), 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.

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (p)(5), is section 1502 of Pub. L. 111–203, which amended this section and enacted provisions set out as a note below.

Executive Order No. 13224, referred to in subsec. (r)(1)(D)(i), is Ex. Ord. No. 13224, Sept. 23, 2001, 66 F.R. 49079, which is listed in a table under section 1701 of Title 50, War and National Defense.

Executive Order No. 13382, referred to in subsec. (r)(1)(D)(ii), is Ex. Ord. No. 13382, June 28, 2005, 70 F.R. 38567, which is listed in a table under section 1701 of Title 50, War and National Defense.

### AMENDMENTS

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

**2015**—Subsec. (n)(5)(G). Pub. L. 114–94, §86001(c)(1)(A), substituted "make available security-based swap" for "make available all" in introductory provisions.

Subsec. (n)(5)(G)(v)(IV). Pub. L. 114–94, §86001(c)(1)(B), added subcl. (IV)

Subsec. (n)(5)(H). Pub. L. 114–94, §86001(c)(2), added subpar. (H) and struck out former subpar. (H) which related to confidentiality and indemnification agreement.

**2012**—Subsec. (a). Pub. L. 112–106 inserted at end of concluding provisions "In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial

accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers."

Subsec. (r). Pub. L. 112-158 added subsec. (r).

**2010**—Subsec. (b)(1). Pub. L. 111-203, §985(b)(4), substituted "earnings statement" for "earning statement".

Subsec. (b)(2)(C). Pub. L. 111-203, §982(h)(3), amended Pub. L. 107-204, §109. See 2002 Amendment note below.

Subsec. (d)(1). Pub. L. 111-203, §929R(a)(1), in introductory provisions, inserted "or within such shorter time as the Commission may establish by rule" after "within ten days after such acquisition" and struck out "send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and" before "file with the Commission".

Pub. L. 111-203, §766(b)(1), in introductory provisions, inserted "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and" after "section 1629c(d)(6) of title 43,".

Subsec. (d)(2). Pub. L. 111-203, §929R(a)(2), struck out "in the statements to the issuer and the exchange, and" after "facts set forth" and "shall be transmitted to the issuer and the exchange and" after "an amendment".

Subsec. (e)(3). Pub. L. 111-203, §991(b)(2)(A), substituted "paragraph (4)" for "paragraphs (5) and (6)".

Subsec. (e)(4) to (6). Pub. L. 111-203, §991(b)(2)(B), (C), added pars. (4) to (6) and struck out former pars. (4) to (6) which related to offsetting collections, annual adjustment of rate, and final rate adjustment, respectively.

Subsec. (e)(8) to (10). Pub. L. 111-203, §991(b)(2)(D), struck out 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. (f)(1). Pub. L. 111-203, §766(c), which directed insertion of "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule," after "subsection (d)(1) of this section", was executed by making the insertion after "section 13(d)(1) of this title", which was translated to "subsection (d)(1) of this section", to reflect the probable intent of Congress.

Subsec. (f)(2) to (6). Pub. L. 111-203, §929X(a), added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (g)(1). Pub. L. 111-203, §929R(a)(3), struck out "shall send to the issuer of the security and" before "shall file" in introductory provisions.

Pub. L. 111-203, §766(b)(2), in introductory provisions, inserted "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule" after "subsection (d)(1) of this section".

Subsec. (g)(2). Pub. L. 111-203, §929R(a)(4), struck out "sent to the issuer and" after "the statement" and "shall be transmitted to the issuer and" after "an amendment".

Subsecs. (m), (n). Pub. L. 111-203, §763(i), added subsecs. (m) and (n).

Subsec. (o). Pub. L. 111-203, §766(e), added subsec. (o).

Subsec. (p). Pub. L. 111-203, §1502(b), added subsec. (p).

Subsec. (q). Pub. L. 111-203, §1504, added subsec. (q).

**2002**—Subsec. (b)(2)(C). Pub. L. 107-204, §109(i), formerly §109(h), renumbered §109(i) by Pub. L. 111-203, §982(h)(3), added subpar. (C).

Subsec. (e)(3). Pub. L. 107-123, §5(1), substituted "a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$92 per \$1,000,000 of the value of securities proposed to be purchased" for "a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased".

Subsec. (e)(4) to (10). Pub. L. 107-123, §5(2), added pars. (4) to (10).

Subsecs. (i), (j). Pub. L. 107-204, §401(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 107-204, §402(a), added subsec. (k).

Subsec. (l). Pub. L. 107-204, §409, added subsec. (l).

**1990**—Subsec. (h). Pub. L. 101-432 added subsec. (h).

**1988**—Subsec. (b)(4) to (7). Pub. L. 100-418 added pars. (4) to (7).

Subsec. (d)(1). Pub. L. 100-241 inserted "or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of title 43".

**1987**—Subsec. (c). Pub. L. 100-181, §315, struck out "of" after "thereof".

Subsec. (h). Pub. L. 100-181, §316, struck out subsec. (h) which required Commission to report to Congress within thirty months of Dec. 19, 1977, with respect to effectiveness of ownership reporting

requirements contained in this chapter and desirability and feasibility of reducing or otherwise modifying the 5 per centum threshold used in subsecs. (d)(1) and (g)(1) of this section.

**1983**—Subsec. (e)(3). Pub. L. 98–38 added par. (3).

**1977**—Subsec. (b). Pub. L. 95–213, §102, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 95–213, §202, inserted references to residence and citizenship of persons and to nature of beneficial ownership of persons in subpar. (A), and inserted references to background, identity, residence, and citizenship of associates of persons in subpar. (D).

Subsecs. (g), (h). Pub. L. 95–213, §203, added subsecs. (g) and (h).

**1976**—Subsec. (b). Pub. L. 94–210 substituted provisions relating to exceptions for inconsistent rules and regulations, for provisions relating to reporting requirements for carriers subject to the provisions of section 20 of title 49, or other carriers required to make reports of the same general character as those required under section 20 of title 49.

**1975**—Subsec. (f). Pub. L. 94–29 added subsec. (f).

**1970**—Subsec. (d)(1). Pub. L. 91–567, §1(a), included equity securities of insurance companies 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)(5), (6). Pub. L. 91–567, §1(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (e)(2). Pub. L. 91–567, §2, inserted provisions empowering the Commission to make rules and regulations implementing the paragraph in the public interest and for the protection of investors.

**1968**—Subsecs. (d), (e). Pub. L. 90–439 added subsecs. (d) and (e).

**1964**—Subsec. (a). Pub. L. 88–467 substituted provisions which require the issuer of a security registered pursuant to section 78l of this title to file reports with the Commission rather than with the exchange and to furnish the exchange with duplicate originals and prohibit the Commission from requiring the filing of any material contract wholly executed before July 1, 1962 for former provisions which required the issuer of a security registered on a national securities exchange to file certain reports with the exchange and to file duplicates with the Commission.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2015 AMENDMENT**

Amendment by Pub. L. 114–94 effective as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, see section 86001(d) of Pub. L. 114–94, set out as a note under section 7a–1 of Title 7, Agriculture.

### **EFFECTIVE DATE OF 2012 AMENDMENT**

Pub. L. 112–158, title II, §219(b), Aug. 10, 2012, 126 Stat. 1236, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to reports required to be filed with the Securities and Exchange Commission after the date that is 180 days after the date of the enactment of this Act [Aug. 10, 2012]."

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by sections 929R(a), 929X(a), 982(h)(3), 985(b)(4), 1502(b), and 1504 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 763(i) and 766(b), (c), (e) 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.

Amendment by section 991(b)(2) 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. (e)(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 1976 AMENDMENT**

Amendment by Pub. L. 94–210 not applicable to any report by any person with respect to a fiscal year of such person which began before Feb. 5, 1976, see section 308(d)(2) of Pub. L. 94–210, set out as a note under section 80a–3 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.

#### **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.

#### **IMPROVING ACCESS TO CAPITAL**

Pub. L. 115–174, title V, §508, May 24, 2018, 132 Stat. 1364, provided that: "The Securities and Exchange Commission shall amend—

"(1) section 230.251 of title 17, Code of Federal Regulations, to remove the requirement that the issuer not be subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) [15 U.S.C. 78m, 78o(d)] immediately before the offering; and

"(2) section 230.257 of title 17, Code of Federal Regulations, with respect to an offering described in section 230.251(a)(2) of title 17, Code of Federal Regulations, to deem any issuer that is subject to section 13 or 15(d) of the Securities Exchange Act of 1934 as having met the periodic and current reporting requirements of section 230.257 of title 17, Code of Federal Regulations, if such issuer meets the reporting requirements of section 13 of the Securities Exchange Act of 1934."

#### **SUMMARY PAGE FOR FORM 10–K**

Pub. L. 114–94, div. G, title LXXII, §72001, Dec. 4, 2015, 129 Stat. 1784, provided that: "Not later than the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 4, 2015], the Securities and Exchange Commission shall issue regulations to permit issuers to submit a summary page on form 10–K (17 CFR 249.310), but only if each item on such summary page includes a cross-reference (by electronic link or otherwise) to the material contained in form 10–K to which such item relates."

#### **ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE**

Pub. L. 111–203, title IX, §939B, July 21, 2010, 124 Stat. 1887, provided that: "Not later than 90 days after the date of enactment of this subtitle [July 21, 2010], the Securities [and] Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii))."

#### **CONFLICT MINERALS**

Pub. L. 111–203, title XV, §1502, July 21, 2010, 124 Stat. 2213, as amended by Pub. L. 114–301, §3(b), Dec. 16, 2016, 130 Stat. 1515, provided that:

"(a) **SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.**—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b).

"(b) [Amended this section.]

"(c) **STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.**—

"(1) **STRATEGY.**—

"(A) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act [July 21, 2010], the Secretary of State, in consultation with the Administrator of the United States Agency for



International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.

"(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

"(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

"(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

"(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

"(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

"(iii) A description of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations in the Democratic Republic of the Congo.

"(2) MAP.—

"(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 21, 2010], the Secretary of State shall, in accordance with the recommendation of the United Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

"(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

"(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

"(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

"(III) local and international nongovernmental organizations;

"(ii) make such map available to the public; and

"(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

"(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the 'Conflict Minerals Map', and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as 'Conflict Zone Mines'.

"(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

"(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502 [amending this section and enacting this note], as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

"(d) REPORTS.—

"(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act [July 21, 2010] and annually thereafter through 2020, in 2022, and in 2024, the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

"(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act [July 21, 2010] and annually thereafter through 2020, in 2022, and in 2024, the Comptroller General of the United States shall submit to the appropriate congressional committees a report

that includes the following:

"(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

"(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

"(C)(i) A general review of persons described in clause (ii) and whether information is publicly available about—

"(I) the use of conflict minerals by such persons; and

"(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

"(ii) A person is described in this clause if—

"(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)(1)(A)], as added by subsection (b); and

"(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

"(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act [July 21, 2010], and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

"(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)].

"(B) Recommendations for the processes used to carry out such audits, including ways to—

"(i) improve the accuracy of such audits; and

"(ii) establish standards of best practices.

"(C) A listing of all known conflict mineral processing facilities worldwide.

"(e) DEFINITIONS.—For purposes of this section:

"(1) ADJOINING COUNTRY.—The term 'adjoining country', with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

"(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(3) ARMED GROUP.—The term 'armed group' means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country.

"(4) CONFLICT MINERAL.—The term 'conflict mineral' means—

"(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

"(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

"(5) UNDER THE CONTROL OF ARMED GROUPS.—The term 'under the control of armed groups' means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

"(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

"(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

"(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country."

## CONSULTATION

Pub. L. 106–102, title II, §241, Nov. 12, 1999, 113 Stat. 1407, provided that:

"(a) IN GENERAL.—The Securities and Exchange Commission shall consult and coordinate comments

with the appropriate Federal banking agency before taking any action or rendering any opinion with respect to the manner in which any insured depository institution or depository institution holding company reports loan loss reserves in its financial statement, including the amount of any such loan loss reserve.

"(b) DEFINITIONS.—For purposes of subsection (a), the terms 'insured depository institution', 'depository institution holding company', and 'appropriate Federal banking agency' have the same meaning as given in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]."

#### **ADJUSTMENT OF REGISTRATION FEE RATE**

By order dated Aug. 25, 2023, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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. (e) 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.

##### **ASSIGNMENT OF FUNCTION RELATING TO GRANTING OF AUTHORITY FOR ISSUANCE OF CERTAIN DIRECTIVES**

Memorandum of President of the United States, May 5, 2006, 71 F.R. 27943, provided:

Memorandum for the Director of National Intelligence

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 13(b)(3)(A) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m(b)(3)(A)). In performing such function, you should consult the heads of departments and agencies, as appropriate.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

<sup>1</sup> [\*See Adjustment of Registration Fee Rate notes below.\*](#)

<sup>2</sup> [\*So in original. Probably should be "account."\*](#)

<sup>3</sup> So in original. Section 78c-3(a) of this title does not contain a par. (6).

<sup>4</sup> So in original. Probably should be "clause (i).".

<sup>5</sup> So in original. The word "a" probably should appear.

## **§78m-1. Reporting and recordkeeping for certain security-based swaps**

### **(a) Required reporting of security-based swaps not accepted by any clearing agency or derivatives clearing organization**

#### **(1) In general**

Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—

(A) a security-based swap data repository described in section 78m(n) of this title; or

(B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

#### **(2) Transition rule for preenactment security-based swaps**

##### **(A) Security-based swaps entered into before July 21, 2010**

Each security-based swap entered into before July 21, 2010, the terms of which have not expired as of July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than—

(i) 30 days after issuance of the interim final rule; or

(ii) such other period as the Commission determines to be appropriate.

##### **(B) Commission rulemaking**

The Commission shall promulgate an interim final rule within 90 days of July 21, 2010, providing for the reporting of each security-based swap entered into before July 21, 2010, as referenced in subparagraph (A).

##### **(C) Effective date**

The reporting provisions described in this section shall be effective upon July 21, 2010.

### **(3) Reporting obligations**

#### **(A) Security-based swaps in which only 1 counterparty is a security-based swap dealer or major security-based swap participant**

With respect to a security-based swap in which only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under paragraphs (1) and (2).

#### **(B) Security-based swaps in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant**

With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-based swap as required under paragraphs (1) and (2).

#### **(C) Other security-based swaps**

With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).

**(b) Duties of certain individuals**

Any individual or entity that enters into a security-based swap shall meet each requirement described in subsection (c) if the individual or entity did not—

- (1) clear the security-based swap in accordance with section 78c–3(a)(1) of this title; or
- (2) have the data regarding the security-based swap accepted by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this chapter.

**(c) Requirements**

An individual or entity described in subsection (b) shall—

- (1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and
- (2) maintain books and records pertaining to the security-based swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—
  - (A) any representative of the Commission;
  - (B) an appropriate prudential regulator;
  - (C) the Commodity Futures Trading Commission;
  - (D) the Financial Stability Oversight Council; and
  - (E) the Department of Justice.

**(d) Identical data**

In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by security-based swap data repositories under this chapter.

(June 6, 1934, ch. 404, title I, §13A, as added Pub. L. 111–203, title VII, §766(a), July 21, 2010, 124 Stat. 1797.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsecs. (b)(2) and (d), 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 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.

**§78m–2. Reporting requirements regarding coal or other mine safety**

**(a) Reporting mine safety information**

Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a), 78o(d)] and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after July 21, 2010, the following information for the time period covered by such report:

- (1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

(G) the total number of mining-related fatalities.

(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

#### **(b) Reporting shutdowns and patterns of violations**

Beginning on and after July 21, 2010, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8-K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

#### **(c) Rule of construction**

Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after July 21, 2010.

#### **(d) Commission authority**

##### **(1) Enforcement**

A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.

##### **(2) Rules and regulations**

The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

**(e) Definitions**

In this section—

(1) the terms "issuer" and "securities laws" have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term "coal or other mine" means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

(3) the term "operator" has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

**(f) Effective date**

This section shall take effect on the day that is 30 days after July 21, 2010.

(Pub. L. 111–203, title XV, §1503, July 21, 2010, 124 Stat. 2218.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Such Act, referred to in subsecs. (a)(1)(F) and (e)(2), is the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, which is classified principally to chapter 22 (§801 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (d)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 78a of this title and Tables.

**CODIFICATION**

Section was enacted 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**

**DEFINITIONS**

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

**§78n. Proxies**

**(a) Solicitation of proxies in violation of rules and regulations**

(1) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, 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, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).

**(b) Giving or refraining from giving proxy in respect of any security carried for account of**

**customer**

(1) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this chapter, or any bank, association, or other entity that exercises fiduciary powers, 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, to give, or to refrain from giving a proxy, consent, authorization, or information statement in respect of any security registered pursuant to section 78l of this title, or any security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], and carried for the account of a customer.

(2) With respect to banks, the rules and regulations prescribed by the Commission under paragraph (1) shall not require the disclosure of the names of beneficial owners of securities in an account held by the bank on December 28, 1985, unless the beneficial owner consents to the disclosure. The provisions of this paragraph shall not apply in the case of a bank which the Commission finds has not made a good faith effort to obtain such consent from such beneficial owners.

**(c) Information to holders of record prior to annual or other meeting**

Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 78l of this title, or a security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

**(d) Tender offer by owner of more than five per centum of class of securities; exceptions**

(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78l(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 78m(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group



shall be deemed a "person" for purposes of this subsection.

(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made 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.

(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

(A) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

(B) by the issuer of such security; or

(C) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

**(e) Untrue statement of material fact or omission of fact with respect to tender offer**

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

**(f) Election or designation of majority of directors of issuer by owner of more than five per centum of class of securities at other than meeting of security holders**

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 78m of this title,

any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

**(g) Filing fees**

(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee at a rate that, subject to paragraph (4), is equal to \$92 <sup>1</sup>/<sub>100</sub> per \$1,000,000 of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee at a rate that, subject to paragraph (4), is equal to \$92 <sup>1</sup>/<sub>100</sub> per \$1,000,000 of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under section 77f(b) of this title, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to \$92 <sup>1</sup>/<sub>100</sub> per \$1,000,000 of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—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 (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

(8) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation, sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, or otherwise.

**(h) Proxy solicitations and tender offers in connection with limited partnership rollup transactions**

**(1) Proxy rules to contain special provisions**

It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under subsections (a) and (d) as required by this subsection. Such rules shall—

(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership rollup transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that—

(i) nothing in this subparagraph shall be construed to limit the application of any provision of this chapter prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this chapter; and

(ii) any holder of not less than 5 percent of the outstanding securities that are the subject of the proposed limited partnership rollup transaction who engages in the business of buying and selling limited partnership interests in the secondary market shall be required to disclose such ownership interests and any potential conflicts of interests in such preliminary communications;

(B) require the issuer to provide to holders of the securities that are the subject of the limited partnership rollup transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to such terms and conditions as the Commission may specify;

(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a limited partnership rollup transaction—

(i) on the basis of whether the solicited proxy, consent, or authorization either approves or disapproves the proposed limited partnership rollup transaction; or

(ii) contingent on the approval, disapproval, or completion of the limited partnership rollup transaction;

(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure with respect to—

(i) any changes in the business plan, voting rights, form of ownership interest, or the compensation of the general partner in the proposed limited partnership rollup transaction from each of the original limited partnerships;

(ii) the conflicts of interest, if any, of the general partner;

(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

(iv) the valuation of the limited partnerships and the method used to determine the value of the interests of the limited partners to be exchanged for the securities in the limited partnership rollup transaction;

- (v) the differing risks and effects of the limited partnership rollup transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the limited partnership rollup transaction with less than all limited partnerships;
- (vi) the statement by the general partner required under subparagraph (E);
- (vii) such other matters deemed necessary or appropriate by the Commission;

(E) require a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and an evaluation and a description by the general partner of alternatives to the limited partnership rollup transaction, such as liquidation;

(F) provide that, if the general partner or sponsor has obtained any opinion (other than an opinion of counsel), appraisal, or report that is prepared by an outside party and that is materially related to the limited partnership rollup transaction, such soliciting materials shall contain or be accompanied by clear, concise, and comprehensible disclosure with respect to—

- (i) the analysis of the transaction, scope of review, preparation of the opinion, and basis for and methods of arriving at conclusions, and any representations and undertakings with respect thereto;

- (ii) the identity and qualifications of the person who prepared the opinion, the method of selection of such person, and any material past, existing, or contemplated relationships between the person or any of its affiliates and the general partner, sponsor, successor, or any other affiliate;

- (iii) any compensation of the preparer of such opinion, appraisal, or report that is contingent on the transaction's approval or completion; and

- (iv) any limitations imposed by the issuer on the access afforded to such preparer to the issuer's personnel, premises, and relevant books and records;

(G) provide that, if the general partner or sponsor has obtained any opinion, appraisal, or report as described in subparagraph (F) from any person whose compensation is contingent on the transaction's approval or completion or who has not been given access by the issuer to its personnel and premises and relevant books and records, the general partner or sponsor shall state the reasons therefor;

(H) provide that, if the general partner or sponsor has not obtained any opinion on the fairness of the proposed limited partnership rollup transaction to investors in each of the affected partnerships, such soliciting materials shall contain or be accompanied by a statement of such partner's or sponsor's reasons for concluding that such an opinion is not necessary in order to permit the limited partners to make an informed decision on the proposed transaction;

(I) require that the soliciting material include a clear, concise, and comprehensible summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of subparagraph (D) and a summary of the matter referred to in subparagraphs (F), (G), and (H)), with the risks of the limited partnership rollup transaction set forth prominently in the fore part thereof;

(J) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

(K) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

## **(2) Exemptions**

The Commission may, consistent with the public interest, the protection of investors, and the purposes of this chapter, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or from the definition contained in paragraph (4).