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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78a. Short title

This chapter may be cited as the ``Securities Exchange Act of 1934.''

(June 6, 1934, ch. 404, title I, Sec. 1, 48 Stat. 881.)

References in Text

This chapter, referred to in text, was in the original ``This Act''. 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, which title is set out as sections 78a to 78l, 78m to 78o, 78o-3 to 78dd-1, and 78ee to 78hh, and 78kk to 78mm of this title. Title II of the act amended or repealed sections 77b to 77e, 77j, 77k, 77m, 77o, and 77s, and added former sections 78ii and 78jj of this title. For complete classification of this Act to the Code, see Tables.

Short Title of 2002 Amendments

Pub. L. 107-204, title XI, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 201, Sept. 23, 1994, 108 Stat. 2198, provided that: ``This subtitle [subtitle A (Secs. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 1, Oct. 16, 1990, 104 Stat. 963, provided that: ``This Act [enacting section 1831l 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, Sec. 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, Sec. 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, Sec. 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, Sec. 5001, Aug. 23, 1988, 102 Stat. 1415, provided that: ``This part [part I (Secs. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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

Section 1 of Pub. L. 94-29, 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

Section 1 of Pub. L. 88-467, 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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].''

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78b. Necessity for regulation

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected 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, Sec. 2, 48 Stat. 881; Pub. L. 94-29, Sec. 2, June 4, 1975, 89 Stat. 97.)

Amendments

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 preceding par. (1).

Effective Date of 1975 Amendment

Section 31(a) of Pub. L. 94-29 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.' '

Markets

Pub. L. 104-290, title V, Sec. 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, Sec. 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 [Secs. 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, Sec. 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, shall report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the following:

``(1) 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;

``(2) the efforts their respective agencies have made to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies;

``(3) the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants; and

``(4) such other issues and concerns relating to the soundness,

stability, and integrity of domestic and international capital markets as may be appropriate.

The agencies shall cooperate in the development of their reports, and prior to submitting its report to Congress, each agency shall provide copies to the other agencies.'

Securities Laws Study

Pub. L. 100-704, Sec. 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.

Ex. Ord. No. 11858. Foreign Investment in the United States

Ex. Ord. No. 11858, May 7, 1975, 40 F.R. 20263, as amended by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989; Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779; Ex. Ord. No. 12860, Sept. 3, 1993, 58 F.R. 47201; Ex. Ord. No. 13286, Sec. 57, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Act of February 14, 1903, as amended (15 U.S.C. 1501 et seq.), section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. (a) There is hereby established the Committee on Foreign Investment in the United States (hereinafter referred to as the Committee). The Committee shall be composed of the following:

- (1) The Secretary of State.
- (2) The Secretary of the Treasury.
- (3) The Secretary of Defense.
- (4) The Secretary of Commerce.
- (5) The United States Trade Representative.
- (6) The Chairman of the Council of Economic Advisers.
- (7) The Attorney General.
- (8) The Secretary of Homeland Security.
- (9) The Director of the Office of Management and Budget.

(9)[sic] the Director of the Office of Science and Technology Policy.

(10) the Assistant to the President for National Security Affairs.

(11) the Assistant to the President for Economic Policy.

The Secretary of the Treasury shall be the chairman of the Committee. The chairman, as he deems appropriate, may invite representatives of other departments and agencies to participate from time to time in activities of the Committee.

(b) The Committee shall have primary continuing responsibility within the Executive Branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of United States policy on such investment. In fulfillment of this responsibility, the Committee shall:

(1) arrange for the preparation of analyses of trends and significant developments in foreign investments in the United States;

(2) provide guidance on arrangements with foreign governments for advance consultations on prospective major foreign governmental investments in the United States;

(3) review investments in the United States which, in the judgment of the Committee, might have major implications for United States national interests;

(4) consider proposals for new legislation or regulations relating to foreign investment as may appear necessary; and

(5) coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950 [50 U.S.C. App. 2170(a), (e)], as amended (50 U.S.C. App. 2061 et seq.) ('`Defense Production Act'').

(c) As the need arises, the Committee shall submit recommendations and analyses to the National Security Council and to the Economic Policy Board. It shall also arrange for the preparation and publication of periodic reports.

Sec. 2. The Secretary of Commerce, with respect to the collection and use of data on foreign investment in the United States, shall provide, in particular, for the performance of the following activities:

(a) The obtainment, consolidation, and analysis of information on foreign investment in the United States;

(b) the improvement of procedures for the collection and dissemination of information on such foreign investment;

(c) the close observation of foreign investment in the United States;

(d) the preparation of reports and analyses of trends and of significant developments in appropriate categories of such investment;

(e) the compilation of data and preparation of evaluations of significant investment transactions; and

(f) the submission to the Committee of appropriate reports, analyses, data and recommendations relating to foreign investment in the United States, including recommendations as to how information on foreign investment can be kept current.

Sec. 3. The Secretary of the Treasury is authorized, without further approval of the President, to make reasonable use of the resources of the Exchange Stabilization Fund, in accordance with section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a) [31 U.S.C. 5302], to pay any of the expenses directly incurred by the Secretary of Commerce in the performance of the functions and activities provided by this order. This authority shall be in effect for one year, unless revoked prior thereto.

Sec. 4. All departments and agencies are directed to provide, to the

extent permitted by law, such information and assistance as may be requested by the Committee or the Secretary of Commerce in carrying out their functions and activities under this order.

Sec. 5. Information which has been submitted or received in confidence shall not be publicly disclosed, except to the extent required by law; and such information shall be used by the Committee only for the purpose of carrying out the functions and activities prescribed by this order. Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act [50 U.S.C. App. 2170(b)].

Sec. 6. Nothing in this order shall affect the data-gathering, regulatory, or enforcement authority of any existing department or agency over foreign investment, and the review of individual investments provided by this order shall not in any way supersede or prejudice any other process provided by law.

Sec. 7. (1) Investigations. (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act [50 U.S.C. App. 2170(a)]. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. (d) A unanimous decision by the Committee not to undertake an investigation with regard to a notice shall conclude action under this section on such notice. The Chairman shall advise the President of said decision.

(2) Report to the President. Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

Sec. 8. The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act [50 U.S.C. App. 2170].

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.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78bb. Effect on existing law

(a) Addition of rights and remedies; recovery of actual damages; State securities commissions

Except as provided in subsection (f) of this section, the rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter 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. Except as otherwise specifically provided in this chapter, nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ``bucket shops'' or other similar or related activities, shall invalidate any put, call, straddle, option, privilege, or other security subject to this chapter, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security. No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.

(b) Modification of disciplinary procedures

Nothing in this chapter shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby.

(c) Continuing validity of disciplinary sanctions

The stay, setting aside, or modification pursuant to section 78s(e) of this title of any disciplinary sanction imposed by a self-regulatory

organization on a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: Provided, That such action is not inconsistent with the provisions of this chapter or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

- (d) Physical location of facilities of registered clearing agencies or registered transfer agents not to subject changes in beneficial or record ownership of securities to State or local taxes

No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change in beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

- (e) Exchange, broker, and dealer commissions; brokerage and research services

(1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: Provided, however, That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this chapter or otherwise.

- (2) A person exercising investment discretion with respect to an

account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he--

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

(4) The provisions of this subsection shall not apply with regard to securities that are security futures products.

(f) Limitations on remedies

(1) Class action limitations

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging--

(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(2) Removal of covered class actions

Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

(3) Preservation of certain actions

(A) Actions under State law of State of incorporation

(i) Actions preserved

Notwithstanding paragraph (1) or (2), a covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(ii) Permissible actions

A covered class action is described in this clause if it involves--

(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that--

(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(B) State actions

(i) In general

Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

(ii) State pension plan defined

For purposes of this subparagraph, the term ``State pension plan'' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

(C) Actions under contractual agreements between issuers and indenture trustees

Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(D) Remand of removed actions

In an action that has been removed from a State court pursuant to paragraph (2), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

(4) Preservation of State jurisdiction

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the

laws of such State to investigate and bring enforcement actions.

(5) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Affiliate of the issuer

The term ``affiliate of the issuer'' means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

(B) Covered class action

The term ``covered class action'' means--

(i) any single lawsuit in which--

(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which--

(I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(C) Exception for derivative actions

Notwithstanding subparagraph (B), the term ``covered class action'' does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

(D) Counting of certain class members

For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

(E) Covered security

The term ``covered security'' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933 [15 U.S.C. 77r(b)], at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] pursuant to rules issued by the Commission under section 4(2) of that Act [15 U.S.C. 77d(2)].

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

(June 6, 1934, ch. 404, title I, Sec. 28, 48 Stat. 903; Pub. L. 94-29, Sec. 21, June 4, 1975, 89 Stat. 160; Pub. L. 97-303, Sec. 4, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100-181, title III, Secs. 327-329, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 104-290, title I, Sec. 103(b), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105-353, title I, Sec. 101(b)(1), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 106-554, Sec. 1(a)(5) [title II, Secs. 203(a)(2), 210], Dec. 21, 2000, 114 Stat. 2763, 2763A-422, 2763A-436.)

References in Text

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original ``this title''. See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (f)(5)(E), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (Sec. 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

2000--Subsec. (a). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 210], inserted ``subject to this chapter'' after ``privilege, or other security'', substituted ``any such security'' for ``any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title'', and inserted at end ``No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.''

Subsec. (e)(4). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 203(a)(2)], added par. (4).

1998--Subsec. (a). Pub. L. 105-353, Sec. 101(b)(1)(A), substituted ``Except as provided in subsection (f) of this section, the rights and remedies'' for ``The rights and remedies''.

Subsec. (f). Pub. L. 105-353, Sec. 101(b)(1)(B), added subsec. (f).

1996--Subsec. (a). Pub. L. 104-290 substituted ``Except as otherwise specifically provided in this chapter, nothing'' for ``Nothing''.

1987--Subsec. (c). Pub. L. 100-181, Sec. 327, substituted ``on'' for ``or'' after ``self-regulatory organization''.

Subsec. (d). Pub. L. 100-181, Sec. 328, substituted ``change in beneficial'' for ``change is beneficial''.

Subsec. (e)(1). Pub. L. 100-181, Sec. 329, substituted ``subsequent to the date of enactment of the Securities Acts Amendments of 1975'' for ``subsequent to the date of enactment of the Securities Acts Amendments in 1975'', which for purposes of codification was translated as ``subsequent to June 4, 1975,'' thus requiring no change in text.

1982--Subsec. (a). Pub. L. 97-303 inserted provision that no State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ``bucket shops'' or other similar or related activities, shall invalidate any put, call, straddle, option, privilege, or other security, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title.

1975--Subsec. (b). Pub. L. 94-29, Sec. 21(1), struck out provisions that nothing in this chapter be construed to modify existing law with regard to the binding effect on any member of an exchange of any disciplinary action taken by the authorities of an exchange and made the remaining provisions applicable to all members of and participants in all self-regulatory organizations as well as municipal securities professionals.

Subsecs. (c) to (e). Pub. L. 94-29, Sec. 21(2), added subsecs. (c) to (e).

Effective Date of 1998 Amendment

Amendment by Pub. L. 105-353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105-353, set out as a note under section 77p of this title.

Effective Date of 1975 Amendment

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

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78bbb. Application of Securities Exchange Act of 1934

Except as otherwise provided in this chapter, the provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] (hereinafter referred to as the ``1934 Act'') apply as if this chapter constituted an amendment to, and was included as a section of, such Act.

(Pub. L. 91-598, Sec. 2, Dec. 30, 1970, 84 Stat. 1637.)

References in Text

This chapter, referred to in text, was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to chapter 2B (Sec. 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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 780-5 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), or 4(6) of the Securities Act of 1933 [15 U.S.C. 77c(b), 77d(2), 77d(6)] 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 780(e).--The term ``broker'' does not include a bank that--

(i) was, on the day before November 12, 1999, subject to section 780(e) of this title; and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(5) Dealer.--

(A) In general.--The term ``dealer'' means any person engaged in the business of buying and selling securities 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 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, (B) a member bank of the Federal Reserve System, (C) any other banking institution, 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, 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, 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, or (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, 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.

(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.

(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) \1\ of this title) the Municipal Securities Rulemaking Board established by section 78o-4 of this title.

\1\ See References in Text note below.

(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) \1\ of title 26) the interest on which

is excludable from gross income under section 103(a)(1) \1\ of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) \1\ of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),\1\ paragraph (1) of such section 103(c) \1\ 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 or a bank operating under the Code of Law for the District of Columbia, or a subsidiary or a department or division of any such bank;

(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) or (iii) of this subparagraph, or a subsidiary or a department or division of such subsidiary;

(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 subsidiary or department or division thereof; 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 or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank;

(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, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph;

(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 subsidiary thereof; 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 bank operating under the Code of Law for the District of Columbia 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, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph 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) when the appropriate regulatory agency for such clearing agency is not the Commission; and

(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 bank operating under the Code of Law for the District of Columbia;

(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.

(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;

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

(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.]; 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 bank in the District of Columbia examined by the Comptroller of the Currency, 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) or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978);

(iv) 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; \2\

\2\ So in original. Probably should be followed by ``and''.

(v) 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 or a bank in the District of Columbia examined by the Comptroller of the Currency;

(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, 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.

(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, or government securities dealer 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, 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, or government securities dealer, 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, 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 is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, 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 evidenced \3\ by a retail installment sales contract or other instrument.

\3\ So in original. Probably should be ``evidenced''.

(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 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 Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) [15 U.S.C. 79 et seq.], the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b 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 is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization, 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) \4\ of the Small Business Investment Act of 1958;

\4\ See References in Text note below.

(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 781 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].

(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.

(June 6, 1934, ch. 404, title I, Sec. 3, 48 Stat. 882; Aug. 23, 1935, ch. 614, Sec. 203(a), 49 Stat. 704; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86-70, Sec. 12(b), June 25, 1959, 73 Stat. 143; Pub. L. 86-624, Sec. 7(b), July 12, 1960, 74 Stat. 412; Pub. L. 88-467, Sec. 2, Aug. 20, 1964, 78 Stat. 565; Pub. L. 91-373, title IV, Sec. 401(b), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91-547, Sec. 28(a), (b), Dec. 14, 1970, 84 Stat. 1435; Pub. L. 91-567, Sec. 6(b), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 94-29, Sec. 3, June 4, 1975, 89 Stat. 97; Pub. L. 95-283, Sec. 16, May 21, 1978, 92 Stat. 274; Pub. L. 96-477, title VII, Sec. 702, Oct. 21, 1980, 94 Stat. 2295; Pub. L. 97-303, Sec. 2, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 98-376, Sec. 6(a), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 98-440, title I, Sec. 101, Oct. 3, 1984, 98 Stat. 1689; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-571, title I, Sec. 102(a)-(d), Oct. 28, 1986, 100 Stat. 3214-3216; Pub. L. 100-181, title III, Secs. 301-306, Dec. 4, 1987, 101 Stat. 1253, 1254; Pub. L. 100-704, Sec. 6(a), Nov. 19, 1988, 102 Stat. 4681; Pub. L. 101-73, title VII, Sec. 744(u)(1), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101-429, title V, Sec. 503, Oct. 15, 1990, 104 Stat. 952; Pub. L. 101-550, title II, Secs. 203(b), 204, Nov. 15, 1990, 104 Stat. 2717, 2718; Pub. L. 103-202, title I, Secs. 106(b)(2)(A), 109(a), Dec. 17, 1993, 107 Stat. 2350, 2352; Pub. L. 103-325, title II, Sec. 202, title III, Sec. 347(a), Sept. 23, 1994, 108 Stat. 2198, 2241; Pub. L. 104-62, Sec. 4(a), (b), Dec. 8, 1995, 109 Stat. 684; Pub. L. 104-290, title I, Sec. 106(b), title V, Sec. 508(c), Oct. 11, 1996, 110 Stat. 3424, 3447; Pub. L. 105-353, title III, Sec. 301(b)(1)-(4), Nov. 3, 1998, 112 Stat. 3235, 3236; Pub. L. 106-102, title II, Secs. 201, 202, 207, 208, 221(b), 231(b)(1), Nov. 12, 1999, 113 Stat. 1385, 1390, 1394, 1395, 1401, 1406; Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 201], Dec. 21, 2000, 114 Stat. 2763, 2763A-413; Pub. L. 107-204, Sec. 2(b), title II, Sec. 205(a), title VI, Sec. 604(c)(1)(A), July 30, 2002, 116 Stat. 749, 773, 796.)

References in Text

This chapter, referred to in subsecs. (a), (b), (c), (e)(1), (f), and (g), 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, as amended, which is classified generally to subchapter I (Sec. 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.

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.

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, as amended, which is classified generally to subchapter II (Sec. 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, Sec. 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, Sec. 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (Sec. 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 sections 347d, 611a, and 3101 to 3111 of Title 12, 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 36, 247, 601, 611a, and 3101 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 (Sec. 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 (Sec. 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, as amended, which is classified generally to chapter 1 (Sec. 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), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (Sec. 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, as amended, which is classified generally to this chapter (Sec. 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, which is classified principally to chapter 98 (Sec. 7201 et seq.) of this title. 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 Tables.

The Public Utility Holding Company Act of 1935, referred to in subsec. (a)(47), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, as amended, which is classified generally to chapter 2C (Sec. 79 et seq.) of this title. For complete classification of this Act to the

Code, see section 79 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, as amended, which is classified generally to subchapter III (Sec. 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, as amended, which is classified generally to chapter 2B-1 (Sec. 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, Sec. 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, as amended, which is classified principally to chapter 18 (Sec. 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 ``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

2002--Subsec. (a)(39)(F). Pub. L. 107-204, Sec. 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, Sec. 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, Sec. 205(a), added pars. (58) and (59).

2000--Subsec. (a)(10). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 201(1)], inserted ``security future,' ' after ``treasury stock,' '.

Subsec. (a)(11). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 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, Sec. 1(a)(5) [title II, Sec. 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, Sec. 1(a)(5) [title II, Sec. 201(5)], added pars. (55) to (57).

1999--Subsec. (a)(4). Pub. L. 106-102, Sec. 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, Sec. 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, Sec. 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, Sec. 231(b)(1), which directed insertion of subpar. (H) at end of par. (34), was executed by inserting subpar. (H) after subpar. (G) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (a)(42)(E). Pub. L. 106-102, Sec. 208, added subpar. (E).

Subsec. (a)(54). Pub. L. 106-102, Sec. 207, added par. (54).

1998--Subsec. (a)(10). Pub. L. 105-353, Sec. 301(b)(1), substituted ``deposit for'' for ``deposit, for''.

Subsec. (a)(12)(A)(vi). Pub. L. 105-353, Sec. 301(b)(2), realigned margins.

Subsec. (a)(22)(A). Pub. L. 105-353, Sec. 301(b)(3), substituted ``section 153'' for ``section 153(h)'' and for ``section 153(t)''.

Subsec. (a)(39)(B)(i). Pub. L. 105-353, Sec. 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, Sec. 508(c)(1), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsecs. (f), (g). Pub. L. 104-290, Secs. 106(b), 508(c)(2), added subsecs. (f) and (g), respectively.

1995--Subsec. (a)(12)(A)(iv) to (vi). Pub. L. 104-62, Sec. 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, Sec. 4(b), added subsec. (e).

1994--Subsec. (a)(41)(A)(i). Pub. L. 103-325, Sec. 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, Sec. 202, added par. (53).

1993--Subsec. (a)(12)(B)(ii). Pub. L. 103-202, Sec. 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, Sec. 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, Sec. 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, Sec. 109(a)(3), redesignated par. (51) defining ``foreign financial regulatory authority'' as (52).

1990--Subsec. (a)(39)(A). Pub. L. 101-550, Sec. 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, Sec. 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, Sec. 203(b)(4), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(39)(E). Pub. L. 101-550, Sec. 203(b)(3), (5), redesignated subpar. (D) as (E) and substituted ``(A), (B), (C), or (D)'' for ``(A), (B), or (C)''.

Subsec. (a)(39)(F). Pub. L. 101-550, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 302, struck out reference to Canal Zone.

Subsec. (a)(22)(B). Pub. L. 100-181, Sec. 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, Sec. 304, substituted ``State'' for ``state''.

Subsec. (a)(39)(B). Pub. L. 100-181, Sec. 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, Sec. 306(1), added par. (47).

Subsec. (a)(49). Pub. L. 100-181, Sec. 306(2), added par. (49).

1986--Subsec. (a)(12). Pub. L. 99-571, Sec. 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, Sec. 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, Sec. 102(b)(1), added subpar. (G).

Subsec. (a)(39)(B). Pub. L. 99-571, Sec. 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, Sec. 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, Sec. 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, Sec. 102(d), added pars. (42) to (46) and (48).

1984--Subsec. (a)(39)(A). Pub. L. 98-376, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 3(4), substituted `` `separate account', and `company' '' for ``and `separate account'.''

Subsec. (a)(21). Pub. L. 94-29, Sec. 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, Sec. 3(6), added pars. (22) to (39).

Subsec. (b). Pub. L. 94-29, Sec. 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, Sec. 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, Sec. 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, Sec. 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.

Change of Name

Act Aug. 23, 1935, substituted ``Board of Governors of the Federal Reserve System'' for ``Federal Reserve Board''.

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, or upon issuance of final regulations initially implementing such amendment, whichever is earlier, with provision to commence rulemaking proceedings to implement such amendment note 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

Section 7 of Pub. L. 98-376 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

Section 13 of Pub. L. 88-467 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 781(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 781(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, 781, 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].''

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.

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

State Opt Out

Section 347(e) of Pub. L. 103-325 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. 106-554, Sec. 1(a)(5) [title III, Sec. 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, Sec. 206, Nov. 12, 1999, 113 Stat. 1393, provided that:

``(a) Definition of Identified Banking Product.--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, Secs. 206A--206C, as added by Pub. L. 106-554, Sec. 1(a)(5) [title III, Sec. 301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-449, 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 between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act [7 U.S.C. 1a(12)] as in effect on the date of the enactment of this section [Dec. 21, 2000]), other than a person that is an eligible contract participant under section 1a(12)(C) of the Commodity Exchange Act, the material terms of which (other than price and quantity) are subject to individual negotiation, and 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).

``SEC. 206B. SECURITY-BASED SWAP AGREEMENT.

``As used in this section, the term `security-based swap agreement' means a swap agreement (as defined in section 206A) 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.

``SEC. 206C. NON-SECURITY-BASED SWAP AGREEMENT.

``As used in this section, the term `non-security-based swap agreement' means any swap agreement (as defined in section 206A) that is not a security-based swap agreement (as defined in section 206B).'

Section Referred to in Other Sections

This section is referred to in sections 77b, 77g, 77r, 77r-1, 77s, 77z-2, 78c-1, 78j-1, 78m, 78o-4, 78o-5, 78q, 78w, 78y, 78mm, 78ccc, 78fff-2, 78lll, 80a-2, 80a-3a, 80a-30, 80b-2, 80b-4, 6102, 6603, 6821, 6827, 7201, 7246 of this title; title 2 section 1602; title 5 section 4802; title 6 section 131; title 7 sections 1a, 2, 6c, 6d, 7a, 12a, 27; title 10 sections 4357, 6975, 9356; title 11 sections 101, 523; title 12 sections 24, 371c-1, 1441b, 1464, 1757, 1787, 1821, 1828, 18311, 2290; title 22 sections 282k, 283h, 283ii, 285h, 286k-1, 290i-9, 290l-7, 290m, 290o-7; title 26 sections 543, 1234B, 1256, 7603; title 28 section 1658; title 29 section 1021; title 31 sections 3121, 9110.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78c-1. Swap agreements

(a) Non-security-based swap agreements

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).

(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 (as defined in section 206B of the Gramm-Leach-Bliley Act).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this chapter of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). 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 (as defined in section 206B of the Gramm-Leach-Bliley Act).

(4) References in this chapter to the ``purchase'' or ``sale'' of a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) 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, Sec. 3A, as added Pub. L. 106-554, Sec. 1(a)(5) [title III, Sec. 303(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-452.)

References in Text

Sections 206B and 206C of the Gramm-Leach-Bliley Act, referred to in text, are sections 206B and 206C of Pub. L. 106-102, which are set out in a note under section 78c of this title.

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.

Section Referred to in Other Sections

This section is referred to in sections 78i, 78o, 78p, 78t, 78u-1 of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78cc. Validity of contracts

(a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of an exchange required thereby shall be void.

(b) Contract provisions in violation of chapter

Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation: Provided, (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title, and (B) that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) or (2) of subsection (c) of section 78o of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation. The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.

(c) Validity of loans, extensions of credit, and creation of liens;
actual knowledge of violation

Nothing in this chapter shall be construed (1) to affect the

validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(June 6, 1934, ch. 404, title I, Sec. 29, 48 Stat. 903; June 25, 1938, ch. 677, Sec. 3, 52 Stat. 1076; Pub. L. 101-429, title V, Sec. 507, Oct. 15, 1990, 104 Stat. 956.)

References in Text

This chapter, referred to in subsecs. (a), (b), and (c), was in the original ``this title''. See References in Text note set out under section 78a of this title.

Amendments

1990--Subsec. (b). Pub. L. 101-429 substituted in cl. (A) ``paragraph (3)'' for ``paragraph (2) or (3)'' and in cl. (B) ``paragraph (1) or (2)'' for ``paragraph (1)'' , and inserted at end ``The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.''

1938--Subsec. (b). Act June 25, 1938, inserted proviso.

Effective Date of 1990 Amendment

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

Section Referred to in Other Sections

This section is referred to in section 78o-4 of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78ccc. Securities Investor Protection Corporation

(a) Creation and membership

(1) Creation

There is hereby established a body corporate to be known as the ``Securities Investor Protection Corporation'' (hereafter in this chapter referred to as ``SIPC''). SIPC shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. SIPC shall--

(A) not be an agency or establishment of the United States Government; and

(B) except as otherwise provided in this chapter, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act.

(2) Membership

(A) Members of SIPC

SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 78o(b) of this title, other than--

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions;

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and

(iii) persons who are registered as a broker or dealer pursuant to section 78o(b)(11)(A) of this title.

(B) Commission review

SIPC shall file with the Commission a copy of any determination made pursuant to subparagraph (A)(i). Within

thirty days after the date of such filing, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall, consistent with the public interest and the purposes of this chapter, affirm, reverse, or amend any such determination of SIPC.

(C) Additional members

SIPC shall provide by rule that persons excluded from membership in SIPC under subparagraph (A)(i) may become members of SIPC under such conditions and upon such terms as SIPC shall require by rule, taking into account such matters as the availability of assets and the ability to conduct a liquidation if necessary.

(D) Disclosure

Any broker or dealer excluded from membership in SIPC under subparagraph (A)(i) shall, as required by the Commission by rule, make disclosures of its exclusion and other relevant information to the customers of such broker or dealer who are living in the United States or its territories and possessions.

(b) Powers

In addition to the powers granted to SIPC elsewhere in this chapter, SIPC shall have the power--

- (1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any State, Federal, or other court;
- (2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;
- (3) to adopt, amend, and repeal, by its Board of Directors, such bylaws as may be necessary or appropriate to carry out the purposes of this chapter, including bylaws relating to--
 - (A) the conduct of its business; and
 - (B) the indemnity of its directors, officers, and employees (including any such person acting as trustee or otherwise in connection with a liquidation proceeding) for liabilities and expenses actually and reasonably incurred by any such person in connection with the defense or settlement of an action or suit if such person acted in good faith and in a manner reasonably believed to be consistent with the purposes of this chapter.
- (4) to adopt, amend, and repeal, by its Board of Directors, such rules as may be necessary or appropriate to carry out the purposes of this chapter, including rules relating to--
 - (A) the definition of terms used in this chapter, other than those terms for which a definition is provided in section 78111 of this title;
 - (B) the procedures for the liquidation of members and direct payment procedures, including the transfer of customer accounts, the distribution of customer property, and the advance and payment of SIPC funds; and
 - (C) the exercise of all other rights and powers granted to

it by this chapter;

(5) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(6) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(7) subject to the provisions of subsection (c) of this section, to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter; and

(9) by bylaw, to establish its fiscal year.

(c) Board of Directors

(1) Functions

SIPC shall have a Board of Directors which, subject to the provisions of this chapter, shall determine the policies which shall govern the operations of SIPC.

(2) Number and appointment

The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows--

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group, and who have not had any such association during the two years

preceding appointment.

(3) Chairman and Vice Chairman

The President shall designate a Chairman and Vice Chairman from among those directors appointed under paragraph (2)(C)(ii) of this subsection.

(4) Terms

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)--

(i) two shall hold office for a term expiring on December 31, 1971,

(ii) two shall hold office for a term expiring on December 31, 1972, and

(iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) Compensation

All matters relating to compensation of directors shall be as provided in the bylaws of SIPC.

(d) Meetings of Board

The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) Bylaws and rules

(1) Proposed bylaw changes

The Board of Directors of SIPC shall file with the Commission a copy of any proposed bylaw or any proposed amendment to or repeal of any bylaw of SIPC (hereinafter in this paragraph collectively referred to as a ``proposed bylaw change''), accompanied by a concise general statement of the basis and purpose of such proposed bylaw change. Each such proposed bylaw change shall take effect thirty days after the date of the filing of a copy thereof with the Commission, or upon such later date as SIPC may designate or such earlier date as the Commission may determine, unless--

(A) the Commission, by notice to SIPC setting forth the

reasons therefor, disapproves such proposed bylaw change as being contrary to the public interest or contrary to the purposes of this chapter; or

(B) the Commission finds that such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures set forth in paragraph (2) be followed with respect to such proposed bylaw change, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(2) Proposed rule changes

(A) Filing of proposed rule changes

The Board of Directors of SIPC shall file with the Commission, in accordance with such rules as the Commission may prescribe, a copy of any proposed rule or any proposed amendment to or repeal of any rule of SIPC (hereinafter in this subsection collectively referred to as a ``proposed rule change''), accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof, together with the terms of substance of such proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments with respect to such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this paragraph.

(B) Action by the Commission

Within thirty-five days after the date of publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which SIPC consents, the Commission shall--

- (i) by order approve such proposed rule change; or
- (ii) institute proceedings to determine whether such proposed rule change should be disapproved.

(C) Proceedings

Proceedings instituted with respect to a proposed rule change pursuant to subparagraph (B)(ii) shall include notice of the grounds for disapproval under consideration and opportunity for hearing, and shall be concluded within one hundred eighty days after the date of publication of notice of the filing of such proposed rule change. At the conclusion of such proceedings, the Commission shall, by order, approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for not more than sixty days if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period

as to which SIPC consents.

(D) Grounds for approval or disapproval

The Commission shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of this chapter, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The Commission shall disapprove a proposed rule change if it does not make the finding referred to in the preceding sentence. The Commission shall not approve any proposed rule change prior to thirty days after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(E) Exception

Notwithstanding any other provision of this paragraph, a proposed rule change may take effect--

(i) upon the date of filing with the Commission, if such proposed rule change is designated by SIPC as relating solely to matters which the Commission, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the Commission shall for good cause determine. Any proposed rule change which takes effect under this clause shall be filed promptly thereafter and reviewed in accordance with the provisions of subparagraph (A).

At any time within sixty days after the date of filing of any rule change which has taken effect pursuant to this subparagraph, the Commission may summarily abrogate such rule change and require that it be refiled and reviewed in accordance with the provisions of this paragraph, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any action of the Commission pursuant to the preceding sentence shall not affect the validity or force of a rule change during the period it was in effect and shall not be reviewable under section 78y of this title or deemed to be final agency action for purposes of section 704 of title 5.

(3) Action required by Commission

The Commission may, by such rules as it determines to be necessary or appropriate in the public interest or to carry out the purposes of this chapter, require SIPC to adopt, amend, or repeal any SIPC bylaw or rule, whenever adopted.

(Pub. L. 91-598, Sec. 3, Dec. 30, 1970, 84 Stat. 1637; Pub. L. 95-283, Secs. 2-5, May 21, 1978, 92 Stat. 249-251; Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 203(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-424.)

References in Text

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1)(B), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

Amendments

2000--Subsec. (a)(2)(A)(iii). Pub. L. 106-554 added cl. (iii).

1978--Subsec. (a). Pub. L. 95-283, Sec. 2(a), substituted ``Creation and membership'' for ``Creation'' in heading, redesignated introductory text and cls. (1) and (3) as par. (1), and added par. 2 which incorporated provisions formerly contained in cl. (2) as par. (2)(A).

Subsec. (b). Pub. L. 95-283, Sec. 3, in par. (1) substituted ``State, Federal, or other court'' for ``court, State, or Federal'', in par. (3) substituted provisions relating to adoption, etc., of bylaws by the Board of Directors, for provisions relating to adoption, etc., of bylaws and rules by the Board of Directors, added par. (4), and redesignated former pars. (4) to (8) as (5) to (9), respectively.

Subsec. (c)(2)(C)(ii). Pub. L. 95-283, Sec. 4(a), substituted ``a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group,'' for ``any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group''.

Subsec. (c)(5). Pub. L. 95-283, Sec. 4(b), substituted ``Compensation'' for ``Compensation, etc.'' in heading, and in text struck out provisions relating to determinations of dollar volume of trading on exchanges.

Subsec. (e). Pub. L. 95-283, Sec. 5, inserted ``and rules'' after ``Bylaws'' in heading, and in text substituted provisions relating to procedures applicable to proposed changes in the bylaws and rules of SIPC and required action by the Commission with respect to any SIPC bylaw or rule, for provisions relating to procedures applicable to adoption of initial bylaws and rules of SIPC and any alteration, supplement, repeal, or addition, effective date of any such bylaw or rule, and required action by the Commission with respect to any SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, Sec. 2(b), struck out subsec. (f) which set forth qualifications for other members of SIPC.

Section Referred to in Other Sections

This section is referred to in section 78ggg of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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 \1\ 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.

\1\ So in original. Probably should be ``Notwithstanding''.

(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.

(June 6, 1934, ch. 404, title I, Sec. 4, 48 Stat. 885; Oct. 28, 1949, ch. 782, title XI, Sec. 1106(a), 63 Stat. 972; Pub. L. 86-619, Sec. 3, July 12, 1960, 74 Stat. 408; Pub. L. 86-771, Sept. 13, 1960, 74 Stat. 913; Pub. L. 88-426, title III, Sec. 305(20), Aug. 14, 1964, 78 Stat. 425; Pub. L. 98-38, Sec. 1, June 6, 1983, 97 Stat. 205; Pub. L. 100-181, title III, Sec. 307, Dec. 4, 1987, 101 Stat. 1254; Pub. L. 101-550, title I, Sec. 103, title II, Sec. 207, Nov. 15, 1990, 104 Stat. 2713, 2721; Pub. L. 104-290, title IV, Sec. 406, Oct. 11, 1996, 110 Stat. 3444; Pub. L. 105-353, title II, Sec. 203, Nov. 3, 1998, 112 Stat. 3234; Pub. L. 107-123, Sec. 8(d)(2), Jan. 16, 2002, 115 Stat. 2399.)

References in Text

This chapter, referred to in subsec. (a), was in the original ``this title'' and ``this Act'', respectively. See References in Text note set out under section 78a of this title.

Amendments

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, Sec. 103, inserted heading, designated existing provision as par. (1) and inserted heading, and added par. (2).

Subsec. (f). Pub. L. 101-550, Sec. 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''.

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, Sec. 8, 80 Stat. 632, 655.

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out below.

Compensation of Chairman and Commissioners

Compensation of Chairman and Commissioners, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

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.

Section Referred to in Other Sections

This section is referred to in sections 77uuu, 78c, 79z-5, 80a-45, 80b-18 of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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, Sec. 4A, as added Pub. L. 100-181, title III, Sec. 308(a), Dec. 4, 1987, 101 Stat. 1254.)

Prior Provisions

A prior section 78d-1, Pub. L. 87-592, Sec. 1, Aug. 20, 1962, 76 Stat. 394; Pub. L. 94-29, Sec. 25, June 4, 1975, 89 Stat. 163; Pub. L. 95-251, Sec. 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.

Section Referred to in Other Sections

This section is referred to in section 78d-2 of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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, Sec. 4B, as added Pub. L. 100-181, title III, Sec. 308(a), Dec. 4, 1987, 101 Stat. 1255.)

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, Sec. 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.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78dd-3. Prohibited foreign trade practices by persons other
than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 78dd-1 of this title or a domestic concern (as defined in section 78dd-2 of this title), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

(1) any foreign official for purposes of--

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised,

directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that--

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to--

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this

section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Penalties

(1)(A) Any juridical person that violates subsection (a) of this section shall be fined not more than \$2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

(1) The term ``person'', when referring to an offender, means any natural person other than a national of the United States (as defined in section 1101 of title 8 \1\ or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof.

\1\ So in original. A closing parenthesis probably should appear.

(2)(A) The term ``foreign official'' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any

such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term ``public international organization'' means--

- (i) an organization that is designated by Executive order pursuant to section 288 of title 22; or
- (ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is knowing, with respect to conduct, a circumstance or a result if--

- (i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
- (ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term ``routine governmental action'' means only an action which is ordinarily and commonly performed by a foreign official in--

- (i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- (ii) processing governmental papers, such as visas and work orders;
- (iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
- (iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
- (v) actions of a similar nature.

(B) The term ``routine governmental action'' does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term ``interstate commerce'' means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of--

- (A) a telephone or other interstate means of communication,
- or
- (B) any other interstate instrumentality.

Codification

Section was enacted as part of Pub. L. 95-213, the Foreign Corrupt Practices Act of 1977, and not as part of act June 6, 1934, ch. 404, 48 Stat. 881, the Securities Exchange Act of 1934, which comprises this chapter.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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, Sec. 5, 48 Stat. 885.)

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Section Referred to in Other Sections

This section is referred to in sections 78o, 78o-4, 78o-5, 78p, 78hh of this title; title 25 section 646.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78ee. Transaction fees

(a) Recovery of cost of services

The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals, and costs related to such supervision and regulation, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

(b) Exchange-traded securities

Subject to subsection (j) of this section, each national securities exchange shall pay to the Commission a fee at a rate equal to \$15 per \$1,000,000 of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) transacted on such national securities exchange.

(c) Off-exchange trades of exchange registered and last-sale-reported securities

Subject to subsection (j) of this section, each national securities association shall pay to the Commission a fee at a rate equal to \$15 per \$1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.

(d) Assessments on security futures transactions

Each national securities exchange and national securities association shall pay to the Commission an assessment equal to \$0.009 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 and each succeeding fiscal year such

assessment shall be equal to \$0.0042 for each such transaction.

(e) Dates for payments

The fees and assessments required by subsections (b), (c), and (d) of this section shall be paid--

(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and

(2) on or before September 30, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.

(f) Exemptions

The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

(g) Publication

The Commission shall publish in the Federal Register notices of the fee and assessment rates applicable under this section for each fiscal year not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based.

(h) Pro rata application

The rates per \$1,000,000 required by this section shall be applied pro rata to amounts and balances of less than \$1,000,000.

(i) Deposit of fees

(1) Offsetting collections

Fees collected pursuant to subsections (b), (c), and (d) of this section for any fiscal year--

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in subsection (k) of this section, shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(2) General revenues prohibited

No fees collected pursuant to subsections (b), (c), and (d) of this section for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(j) Recapture of projection windfalls for further rate reductions

(1) Annual adjustment

For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) of this section for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d) of this section) that are equal to the target offsetting collection amount for such fiscal year.

(2) Mid-year adjustment

For each of the fiscal years 2002 through 2011, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year (or \$48,800,000,000,000 in the case of fiscal year 2002) is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than such March 1, adjust each of the rates applicable under subsections (b) and (c) of this section for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees collected during such 5-month period and assessments collected under subsection (d) of this section) that are equal to the target offsetting collection amount for such fiscal year. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by subsection (1)(2) of this section.

(3) Final rate adjustment

For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) of this section for all of such fiscal years to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this section in fiscal year 2012 (including assessments collected under subsection (d) of this section) equal to the target offsetting collection amount for fiscal year 2011.

(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 (1), (2), or (3) and published under subsection (g) of this section shall not be subject to judicial review. Subject to subsections (i)(1)(B) and (k) of this section--

(A) an adjusted rate prescribed under paragraph (1) shall take effect on the later of--

- (i) the first day of the fiscal year to which such rate applies; or
- (ii) thirty days after the date on which a regular appropriation to the Commission for such fiscal year is enacted;

(B) an adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies; and

(C) an adjusted rate prescribed under paragraph (3) shall take effect on the later of--

- (i) the first day of fiscal year 2012; or
- (ii) thirty days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

(k) Lapse of appropriation

If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) of this section at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

(l) Definitions

For purposes of this section:

(1) Target offsetting collection amount

The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

Fiscal year:	Target offsetting collection amount
2002.....	\$732,000,000
2003.....	\$849,000,000
2004.....	\$1,028,000,000
2005.....	\$1,220,000,000
2006.....	\$1,435,000,000
2007.....	\$881,000,000
2008.....	\$892,000,000
2009.....	\$1,023,000,000
2010.....	\$1,161,000,000
2011.....	\$1,321,000,000

(2) Baseline estimate of the aggregate dollar amount of sales

The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than

on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 907 of title 2.

(June 6, 1934, ch. 404, title I, Sec. 31, 48 Stat. 904; Mar. 17, 1944, ch. 101, 58 Stat. 117; Pub. L. 94-29, Sec. 22, June 4, 1975, 89 Stat. 162; Pub. L. 104-290, title IV, Sec. 405(a), Oct. 11, 1996, 110 Stat. 3442; Pub. L. 105-353, title III, Sec. 301(b)(14), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-432; Pub. L. 107-123, Secs. 2, 3, Jan. 16, 2002, 115 Stat. 2390.)

Amendments

2002--Subsec. (b). Pub. L. 107-123, Sec. 3(a)(1), substituted ``Subject to subsection (j) of this section, each'' for ``Every'' and struck out at end ``Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.''

Pub. L. 107-123, Sec. 2(1)-(3), substituted ``\$15 per \$1,000,000'' for ``\1/300\ of one percent'' and ``security futures products, and options on securities indexes (excluding a narrow-based security index)'' for ``and security futures products'' and struck out ``, except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to \1/800\ of one percent of such aggregate dollar amount of sales'' before period at end of first sentence.

Subsec. (c). Pub. L. 107-123, Sec. 3(a)(3), redesignated subsec. (d) as (c), substituted ``Off-exchange trades of exchange registered and last-sale-reported securities'' for ``Off-exchange trades of last-sale-reported securities'' in subsec. heading, struck out par. (1) heading, substituted ``Subject to subsection (j) of this section, each national securities'' for ``Each national securities'', inserted ``registered on a national securities exchange or'' after ``narrow-based security index))'', struck out ``, excluding any sales for which a fee is paid under subsection (c) of this section'' after ``national securities association'', and struck out pars. (2) and (3), which related to deposit of fees and lapse of appropriations.

Pub. L. 107-123, Sec. 3(a)(2), struck out heading and text of former subsec. (c). Text read as follows: ``Each national securities association shall pay to the Commission a fee at a rate equal to \1/300\ of one percent of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities registered on such an exchange (other than bonds, debentures, other evidences of indebtedness, and security futures products), except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to \1/800\ of one percent of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.''

Pub. L. 107-123, Sec. 2(1),(2), (4), which directed that subsec. (d) be amended by substituting ``\$15 per \$1,000,000'' for ``\1/300\ of one percent'' and ``security futures products, and options on securities indexes (excluding a narrow-based security index)'' for ``and security futures products'', and striking out ``, except that for fiscal year 2007, or any succeeding fiscal year, such rate shall be equal to \1/800\

of one percent of such aggregate dollar amount of sale'' before period at end of par. (1), was executed by making the amendment in subsec. (c), to reflect the probable intent of Congress and the amendment by Pub. L. 107-123, Sec. 3(a)(3), which redesignated subsec. (d) as (c). See above.

Subsec. (d). Pub. L. 107-123, Sec. 3(a)(4), (6), redesignated subsec. (e) as (d) and substituted ``except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to \$0.0042 for each such transaction'' for ``except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to \$0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury''. Former subsec. (d) redesignated (c).

Pub. L. 107-123, Sec. 2(5), which directed that subsec. (e) be amended by substituting ``\$0.009'' for ``\$0.02'', was executed by making the amendment in subsec. (d), to reflect the probable intent of Congress and the amendment by Pub. L. 107-123, Sec. 3(a)(4), (6) which redesignated subsec. (e) as (d). See above.

Subsec. (e). Pub. L. 107-123, Sec. 3(a)(5), (6), redesignated subsec. (f) as (e) and substituted ``Dates for payments'' for ``Dates for payment of fees'' in heading and ``The fees and assessments required'' for ``The fees required'' in introductory provisions. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 107-123, Sec. 3(a)(6), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 107-123, Sec. 3(a)(6), (b)(2), redesignated subsec. (h) as (g) and inserted before period at end ``not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based''. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 107-123, Sec. 3(a)(6), redesignated subsec. (i), as enacted by Pub. L. 107-123, Sec. 2(6), as (h). See below. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107-123, Sec. 3(a)(7), added subsec. (i).

Pub. L. 107-123, Sec. 2(6), added subsec. (i).

Subsecs. (j) to (l). Pub. L. 107-123, Sec. 3(b)(1), added subsecs. (j) to (l).

2000--Subsec. (a). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(1)], inserted ``and assessments'' after ``fees''.

Subsecs. (b), (c), (d)(1). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(2)], substituted ``other evidences of indebtedness, and security futures products'' for ``and other evidences of indebtedness''.

Subsec. (e). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(6)], added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(5)], redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(3)], inserted ``or assessment'' after ``fee''.

Subsec. (g). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(5)], redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(4)], inserted ``and assessment'' after ``fee''.

Subsec. (h). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(f)(5)], redesignated subsec. (g) as (h).

1998--Subsec. (a). Pub. L. 105-353 substituted ``this section'' for ``this subsection''.

1996--Pub. L. 104-290 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

``Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: Provided, however, That no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.''

1975--Pub. L. 94-29 amended section generally, extending provisions requiring the payment of fees to include transactions in listed securities which occur in the over-the-counter market.

1944--Act Mar. 17, 1944, amended section generally, inserting provisions exempting from the payment of the fee securities designated for exemption by the Secretary of the Treasury.

Effective Date of 2002 Amendment

Pub. L. 107-123, Sec. 11, Jan. 16, 2002, 115 Stat. 2401, provided that:

``(a) In General.--Except as provided in subsections (b) and (c), the amendments made by this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] shall take effect on October 1, 2001.

``(b) Immediate Transaction Fee Reductions.--The amendments made by section 2 [amending this section] shall take effect on the later of--

``(1) the first day of fiscal year 2002; or

``(2) thirty days after the date on which a regular appropriation to the Commission for such fiscal year is enacted.

``(c) Additional Exceptions.--The authorities provided by section 6(b)(9) of the Securities Act of 1933 [15 U.S.C. 77f(b)(9)] and sections 13(e)(9), 14(g)(9), and 31(k) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(e)(9), 78n(g)(9), and 78ee(k)], as so designated by this Act, shall not apply until October 1, 2002.''

Effective Date of 1996 Amendment

Section 405(b) of Pub. L. 104-290 provided that:

``(1) In general.--Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions in securities that occur on or after October 1, 1997.

``(2) Off-exchange trades of last sale reported transactions.--The

amendment made by subsection (a) [amending this section] shall apply with respect to transactions described in section 31(d)(1) of the Securities Exchange Act of 1934 [subsec. (d)(1) of this section] (as amended by subsection (a) of this section) that occur on or after September 1, 1997.'

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective Jan. 1, 1976, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Study of the Effect of Fee Reductions

Pub. L. 107-123, Sec. 9, Jan. 16, 2002, 115 Stat. 2400, provided that:

``(a) Study.--The Office of Economic Analysis of the Securities and Exchange Commission (hereinafter referred to as the `Office') shall conduct a study of the extent to which the benefits of reductions in fees effected as a result of this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] are passed on to investors.

``(b) Factors for Consideration.--In conducting the study under subsection (a), the Office shall--

``(1) consider the various elements of the securities industry directly and indirectly benefiting from the fee reductions, including purchasers and sellers of securities, members of national securities exchanges, issuers, broker-dealers, underwriters, participants in investment companies, retirement programs, and others;

``(2) consider the impact on different types of investors, such as individual equity holders, individual investment company shareholders, businesses, and other types of investors;

``(3) include in the interpretation of the term `investor' shareholders of entities subject to the fee reductions; and

``(4) consider the economic benefits to investors flowing from the fee reductions to include such factors as market efficiency, expansion of investment opportunities, and enhanced liquidity and capital formation.

``(c) Report to Congress.--Not later than 2 years after the date of the enactment of this Act [Jan. 16, 2002], the Securities and Exchange Commission shall submit to the Congress the report prepared by the Office on the findings of the study conducted under subsection (a).'

Fees From National Securities Associations for Member Transactions Other Than on National Securities Exchanges

Pub. L. 104-208, div. A, title I, Sec. 101(a) [title V], Sept. 30,

1996, 110 Stat. 3009, 3009-61, provided in part: ``That effective January 1, 1997, every national securities association shall pay to the Commission a fee at a rate of one-three-hundredth of one percentum of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee), and such increase shall be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals: Provided further, That the fee due from every national securities association shall be paid on or before September 30, 1997, with respect to transactions and sales occurring during the period beginning on January 1, 1997, and ending at the close of August 31, 1997''.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78eee. Protection of customers

(a) Determination of need of protection

(1) Notice to SIPC

If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by self-regulatory organization

If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) of this section with respect to a broker or dealer, and such broker or dealer undertakes to liquidate or reduce its business either pursuant to the direction of a self-regulatory organization or voluntarily, such self-regulatory organization may render such assistance or oversight to such broker or dealer as it considers appropriate to protect the interests of customers of such broker or dealer. The assistance or oversight by a self-regulatory organization shall not be deemed the assumption or adoption by such self-regulatory organization of any obligation or liability to customers, other creditors, shareholders, or partners of the broker or dealer, and shall not prevent or act as a bar to any action by SIPC.

(3) Action by SIPC

If SIPC determines that--

(A) any member of SIPC (including any person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers; and

(B) one or more of the conditions specified in subsection (b)(1) of this section exist with respect to such member,

SIPC may, upon notice to such member, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa, except that no such application shall be filed with respect to a member the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff-3.

(4) Effect of other pending actions

An application with respect to a member of SIPC filed with a court under paragraph (3)--

(A) may, with the consent of the Commission, be combined with any action brought by the Commission, including an action by the Commission for a temporary receiver pending an appointment of a trustee under subsection (b)(3) of this section; and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3) of this section, the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor--

(A) is insolvent within the meaning of section 101 of title 11, or is unable to meet its obligations as they mature;

(B) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(C) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(D) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court--

(i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);

(ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation

proceeding; and

(iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under title 11, together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed--

(i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);

(ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interferes with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);

(iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and

(iv) may appoint a temporary receiver.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than \$750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11, except that neither SIPC nor any employee of SIPC shall be

required to file a bond when appointed as trustee.

(4) Removal to bankruptcy court

Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of the United States in the same judicial district having jurisdiction over cases under title 11. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this chapter upon the court to which application for the issuance of the protective decree was made.

(5) Compensation for services and reimbursement of expenses

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as ``allowances'') by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of title 11 governing applications for allowances under such title. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(C) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (B), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the

court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(D) Applicable restrictions

The restrictions on sharing of compensation set forth in section 504 of title 11 shall apply to allowances.

(E) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged against the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

(6) Disinterestedness

(A) Standards

For purposes of paragraph (3), a person shall not be deemed disinterested if--

- (i) such person is a creditor (including a customer), stockholder, or partner of the debtor;
- (ii) such person is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the filing date was the underwriter of any securities of the debtor;
- (iii) such person is, or was within two years prior to the filing date, a director, partner, officer, or employee of the debtor or such an underwriter, or an attorney for the debtor or such an underwriter; or
- (iv) it appears that such person has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such an underwriter, or for any other reason, an interest materially adverse to the interests of any class of creditors (including customers) or stockholders,

except that SIPC shall in all cases be deemed disinterested, and an employee of SIPC shall be deemed disinterested if such employee would, except for his association with SIPC, meet the standards set forth in this subparagraph.

(B) Hearing

The court shall fix a time for a hearing on disinterestedness, to be held promptly after the appointment of a trustee. Notice of such hearing shall be mailed at least ten days prior thereto to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor, and to the creditors and stockholders of the debtor, to SIPC, and to such other persons as the court may designate. The court may, in its discretion, also require that

notice be given by publication in such newspaper or newspapers of general circulation as it may designate. At such hearing, at any adjournment thereof, or upon application, the court shall hear objections to the retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.

(c) SEC participation in proceedings

The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

(d) SIPC participation

SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.

(Pub. L. 91-598, Sec. 5, Dec. 30, 1970, 84 Stat. 1644; Pub. L. 95-283, Sec. 7, May 21, 1978, 92 Stat. 254; Pub. L. 95-598, title III, Sec. 308(a)-(f), Nov. 6, 1978, 92 Stat. 2674.)

References in Text

The 1934 Act, referred to in subsec. (b)(1)(C), means act June 6, 1934, ch. 404, 48 Stat. 881, as amended, known as the Securities Exchange Act of 1934, which is classified principally to chapter 2B (Sec. 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

This chapter, referred to in subsecs. (b)(2)(A)(iii), (5)(C), and (c), was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

Amendments

1978--Subsec. (a). Pub. L. 95-283, Sec. 7(a), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, revised format of provisions by setting out cls. (A) and (B) and inserted provisions relating to any person who was a member within 180 days prior to such determination and provisions relating to claims filed under section 78fff-3 of this title, and redesignated former par. (3) as (4) and, as so redesignated, substituted ``with respect to a member of SIPC filed with a court under paragraph (3)'' for ``under paragraph (2)'' in introductory text and inserted ``may,'' before ``with the'' in cl. (A).

Subsec. (b)(1)(A). Pub. L. 95-598, Sec. 308(a)(1), substituted ``section 101 of title 11'' for ``the Bankruptcy Act''.

Subsec. (b)(1)(B) to (E). Pub. L. 95-598, Sec. 308(a)(2), (3), redesignated subpars. (C) to (E) as subpars. (B) to (D), respectively. Former subpar. (B), which provided for issuance of protective decree where court found that debtor had committed act of bankruptcy within meaning of Bankruptcy Act, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 95-598, Sec. 308(b), substituted

``the United States having jurisdiction over cases under title 11'' for ``bankruptcy by the Bankruptcy Act''.

Subsec. (b)(2)(B)(iii). Pub. L. 95-598, Sec. 308(c), substituted ``any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate'' for ``the right of setoff provided in section 68 of the Bankruptcy Act''.

Subsec. (b)(3). Pub. L. 95-598, Sec. 308(d), substituted ``section 322 of title 11'' for ``the applicable provisions of the Bankruptcy Act''.

Subsec. (b)(4). Pub. L. 95-598, Sec. 308(e), substituted provisions relating to removal of proceeding to Bankruptcy Court for provisions relating to reference of proceeding to referee in bankruptcy.

Subsec. (b)(5)(B). Pub. L. 95-598, Sec. 308(f)(1), (2), (5), redesignated subpar. (C) as (B) and substituted ``title 11 governing applications for allowances under such title'' for ``the Bankruptcy Act governing applications for allowances under such Act''. Former subpar. (B), which covered allowances to a referee in bankruptcy or special master, was struck out.

Subsec. (b)(5)(C). Pub. L. 95-598, Sec. 308(f)(2), (3), (5), redesignated subpar. (D) as (C) and substituted ``subparagraph (B)'' for ``subparagraph (C)''.

Subsec. (b)(5)(D). Pub. L. 95-598, Sec. 308(f)(2), (4), (5), redesignated subpar. (E) as (D) and substituted ``Section 504 of title 11'' for ``the Bankruptcy Act''. Former subpar. (D) redesignated (C).

Subsec. (b)(5)(E), (F). Pub. L. 95-598, Sec. 308(f)(5), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (b). Pub. L. 95-283, Sec. 7(b), in par. (1) inserted ``protective'' after ``of'' in heading and substituted provisions relating to issuance of protective decrees, for provisions relating to specific findings necessary for issuance of a decree and uncontested, etc., applications, in par. (2) substituted ``Jurisdiction and powers of court'' for ``Exclusive jurisdiction over debtor'' in heading and substituted provisions setting forth jurisdiction and powers of court with respect to exclusivity of such jurisdiction, for provisions relating to exclusive jurisdiction over the debtor, in par. (3) inserted ``and attorney'' after ``trustee'' in heading and substituted provisions relating to appointment of trustee and attorney, for provisions relating to appointment of trustee, in par. (4) substituted ``Reference to referee in bankruptcy'' for ``Debtor and filing date defined'' in heading and substituted provisions relating to reference to referee in bankruptcy, for provisions defining terms ``debtor'' and ``filing date'', and added pars. (5) and (6).

Subsec. (d). Pub. L. 95-283, Sec. 7(c), added subsec. (d).

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.

Section Referred to in Other Sections

This section is referred to in sections 78fff-4, 78iii, 78111 of this title; title 11 section 362.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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) 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--

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

- (i) an appraisal and compensation;
- (ii) retention of a security under substantially the same terms and conditions as the original issue;
- (iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;
- (iv) the use of a committee 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;

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

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

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

As used in this paragraph, the term ``dissenting limited partner'' means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the 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.

(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 fixed 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 fixed 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--

(i) 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; or

(ii) is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act [7 U.S.C. 7a] and such registration is not suspended by 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) of this section, 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) 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(12)(B)(ii) of the Commodity Exchange Act [7 U.S.C. 1a(12)(B)(ii)]; and
 - (II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(12) [7 U.S.C. 1a(12)(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 781 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) of this section 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) of this section shall implement the procedures specified in subsection (h)(5)(A) of this section and adopt the rules specified in subparagraphs (B) and (C) of subsection (h)(5) of this section 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.

(June 6, 1934, ch. 404, title I, Sec. 6, 48 Stat. 885; Pub. L. 94-29, Sec. 4, June 4, 1975, 89 Stat. 104; Pub. L. 100-181, title III, Secs. 309-312, Dec. 4, 1987, 101 Stat. 1255; Pub. L. 103-202, title III, Sec. 303(b), Dec. 17, 1993, 107 Stat. 2365; Pub. L. 106-554, Sec. 1(a)(5) [title II, Secs. 202(a), 206(a), (i), (k)(2), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A-416, 2763A-426, 2763A-433, 2763A-434.)

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 Commodity Exchange Act, referred to in subsecs. (g)(1)(A) and (h)(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (Sec. 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

2000--Subsec. (g). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 202(a)], added subsec. (g).

Subsec. (h). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(a)], added subsec. (h).

Subsec. (i). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(i)], added subsec. (i).

Subsec. (j). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(k)(2)], added subsec. (j).

Subsec. (k). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(l)], added subsec. (k).

1993--Subsec. (b)(9). Pub. L. 103-202 added par. (9).

1987--Subsec. (c)(2). Pub. L. 100-181, Sec. 309, substituted ``protection of investors shall'' for ``protection shall''.

Subsec. (c)(3)(A). Pub. L. 100-181, Sec. 310, substituted ``associated'' for ``association''.

Subsec. (c)(4). Pub. L. 100-181, Sec. 311, substituted ``may limit (A)'' for ``may (A) limit''.

Subsec. (e)(1). Pub. L. 100-181, Sec. 312(1), substituted ``paragraph (3) of this subsection'' for ``paragraph (4) of this section''.

Subsec. (e)(3), (4). Pub. L. 100-181, Sec. 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.

Effective Date of 1993 Amendment

Section 304 of title III of Pub. L. 103-202 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.

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Changes in Organization and Rules of National Securities Exchanges and Registered Securities Associations

Section 31(b) of Pub. L. 94-29 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.''

Section Referred to in Other Sections

This section is referred to in sections 78c, 78e, 78g, 78k-1, 78o, 78o-3, 78o-5, 78q, 78q-1, 78s, 78u, 78y, 78hh, 80a-2, 80b-2 of this title; title 5 section 8477; title 7 sections 2, 7a-2; title 29 section 1002.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding \$25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)(A) Any issuer that violates subsection (a) or (g) of section 78dd-1 of this title shall be fined not more than \$2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd-1 of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(2)(A) Any officer, director, employee, or agent of an issuer, or

stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd-1 of this title shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd-1 of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

(June 6, 1934, ch. 404, title I, Sec. 32, 48 Stat. 904; May 27, 1936, ch. 462, Sec. 9, 49 Stat. 1380; June 25, 1938, ch. 677, Sec. 4, 52 Stat. 1076; Pub. L. 88-467, Sec. 11, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, Secs. 23, 27(b), June 4, 1975, 89 Stat. 162, 163; Pub. L. 95-213, title I, Sec. 103(b), Dec. 19, 1977, 91 Stat. 1496; Pub. L. 98-376, Sec. 3, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 100-418, title V, Sec. 5003(b), Aug. 23, 1988, 102 Stat. 1419; Pub. L. 100-704, Sec. 4, Nov. 19, 1988, 102 Stat. 4680; Pub. L. 105-366, Sec. 2(d), Nov. 10, 1998, 112 Stat. 3303; Pub. L. 107-204, title XI, Sec. 1106, July 30, 2002, 116 Stat. 810.)

References in Text

This chapter, referred to in subsec. (a), was in the original ``this title''. See References in Text note set out under section 78a of this title.

Amendments

2002--Subsec. (a). Pub. L. 107-204 substituted ``\$5,000,000, or imprisoned not more than 20 years'' for ``\$1,000,000, or imprisoned not more than 10 years'' and ``\$25,000,000'' for ``\$2,500,000''.

1998--Subsec. (c)(1). Pub. L. 105-366, Sec. 2(d)(1), (2), substituted ``subsection (a) or (g) of section 78dd-1'' for ``section 78dd-1(a)'' in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 105-366, Sec. 2(d)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

``(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) of this title shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

``(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 78dd-1(a) of this title, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

``(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 78dd-1(a) of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.''

1988--Subsec. (a). Pub. L. 100-704 substituted ``\$1,000,000'' for ``\$100,000'', ``10 years'' for ``five years'', ``is a person other than a natural person'' for ``is an exchange'', and ``\$2,500,000'' for

``\$500,000''.

Subsec. (c). Pub. L. 100-418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

``(1) Any issuer which violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$1,000,000.

``(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

``(3) Whenever an issuer is found to have violated section 78dd-1(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

``(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.''

1984--Subsec. (a). Pub. L. 98-376 substituted ``\$100,000'' for ``\$10,000''.

1977--Subsec. (a). Pub. L. 95-213, Sec. 103(b)(1), inserted ``(other than section 78dd-1 of this title)'' after ``Any person who willfully violates any provision of this chapter''.

Subsec. (c). Pub. L. 95-213, Sec. 103(b)(2), added subsec. (c).

1975--Subsec. (a). Pub. L. 94-29, Secs. 23(1), 27(b), inserted ``or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof,' and substituted ``or imprisoned not more than five years'' for ``or imprisoned not more than two years''.

Subsec. (c). Pub. L. 94-29, Sec. 23(2), struck out subsec. (c) which rendered this section inapplicable to violations of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title.

1964--Subsec. (b). Pub. L. 88-467 substituted ``required to be filed under'' for ``pursuant to an undertaking contained in a registration statement as provided in'' and inserted ``or any rule or regulation thereunder'' after ``section 78o of this title.''

1938--Subsec. (c). Act June 25, 1938, added subsec. (c).

1936--Subsec. (a). Act May 27, 1936, inserted ``or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title''.

Subsec. (b). Act May 27, 1936, added subsec. (b).

Effective Date of 1988 Amendment

Amendment by Pub. L. 100-704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704, set out as a note under section 78o of this title.

Effective Date of 1984 Amendment

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

Effective Date of 1975 Amendment

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

Effective Date of 1964 Amendment

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

Section Referred to in Other Sections

This section is referred to in title 7 section 12a; title 22 section 2197; title 26 sections 162, 952, 964.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78fff. General provisions of a liquidation proceeding

(a) Purposes

The purposes of a liquidation proceeding under this chapter shall be--

(1) as promptly as possible after the appointment of a trustee in such liquidation proceeding, and in accordance with the provisions of this chapter--

(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 78fff-2(c)(2) of this title; and

(B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;

(2) to sell or transfer offices and other productive units of the business of the debtor;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Application of title 11

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.

(c) Determination of customer status

In a liquidation proceeding under this chapter, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment

In a liquidation proceeding under this chapter, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 78111(5)(A) of this title.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the general estate shall be as provided in section 726 of title 11. Costs and expenses of administration shall include payments pursuant to section 78fff-2(e) of this title and section 78fff-3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d) of this section) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff-1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under section 507(a)(1) of title 11.

(Pub. L. 91-598, Sec. 6, Dec. 30, 1970, 84 Stat. 1646; Pub. L. 95-283, Sec. 8, May 21, 1978, 92 Stat. 259; Pub. L. 95-598, title III, Sec. 308(g), (h), Nov. 6, 1978, 92 Stat. 2675.)

References in Text

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), and (d), was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

Amendments

1978--Pub. L. 95-283 substituted ``General provisions of a liquidation proceeding'' for ``Liquidation proceedings'' in section catchline.

Subsec. (a). Pub. L. 95-283 in heading substituted ``Purposes'' for ``General purposes of liquidation proceeding'', in introductory text substituted provisions relating to purposes of liquidation proceedings under this chapter, for provisions relating to purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title, in par. (1) substituted provisions requiring execution of authorities to deliver customer name securities and distribute customer property in accordance with this chapter, for provisions requiring execution of authorities to return specifically identifiable property and distribute the single and separate fund in accordance with this section, and in par. (2) substituted provisions authorizing sale, etc., of productive units of the debtor, for provisions authorizing operation of the business of the debtor.

Subsec. (b). Pub. L. 95-598, Sec. 308(g), in heading substituted ``title 11'' for ``Bankruptcy Act'' and in text ``under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.'' for ``under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this chapter, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this chapter.''

Pub. L. 95-283 in heading substituted ``Application of Bankruptcy Act'' for ``Powers and Duties of Trustee'', and in text substituted provisions relating to applicability of Bankruptcy Act to liquidation proceedings, for provisions relating to the powers and duties of trustees. See section 78fff-1 of this title.

Subsec. (c). Pub. L. 95-283 in heading substituted ``Determination of customer status'' for ``Application of Bankruptcy Act'', and in text substituted provisions relating to determination of status of a customer with respect to cash or securities, for provisions setting forth general and special provisions of the Bankruptcy Act applicable to liquidation proceedings, and defining terms for purposes of such applicability and the provisions of this section. See subsec. (b) of this section and section 78fff-2(c) of this title.

Subsec. (d). Pub. L. 95-283 in heading substituted ``Apportionment'' for ``Completion of open contractual commitments'', and in text substituted provisions relating to apportionment of cash or securities remaining after the liquidation of a lien or pledge made by a debtor, for provisions relating to completion by the trustee of open contractual commitments, which were made in the ordinary course of the debtor's business and which were outstanding on the filing date. See section 78fff-2(e) of this title.

Subsec. (e). Pub. L. 95-598, Sec. 308(h), substituted in first sentence ``section 726 of title 11'' for ``the Bankruptcy Act'' and in last sentence ``under section 507(a)(1) of title 11'' for ``as a first priority under the Bankruptcy Act''.

Pub. L. 95-283 in heading substituted ``Costs and expense of administration'' for ``Notice'', and in text substituted provisions relating to costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, for provisions relating to notice requirements for the trustee subsequent to appointment as trustee. See section 78fff-2(a)(1) of this title.

Subsec. (f). Pub. L. 95-283 struck out subsec. (f) requiring advances by the SIPC to the trustee for customers' claims and completion of open contractual commitments, and authorizing discretionary advances to the trustee for compensation of personnel deemed necessary for the liquidation proceeding. See section 78fff-3 of this title.

Subsec. (g). Pub. L. 95-283 struck out subsec. (g) setting forth provisions relating to payments to customers by the trustee, and provisions respecting the quantum of proof of claim required for such payment. See section 78fff-2(a)(2) and (b) of this title.

Subsec. (h). Pub. L. 95-283 struck out subsec. (h) relating to nonapplicability of provisions to proof of claim by associates and others connected in some way with the debtor. See section 78fff-2(a)(2) of this title.

Subsec. (i). Pub. L. 95-283 struck out subsec. (i) setting forth provisions relating to reports by the trustee to the court. See section 78fff-1(c) of this title.

Subsec. (j). Pub. L. 95-283 struck out subsec. (j) which related to nonapplicability of provisions to rights of persons to establish by formal proof such claims as they may have to payment or delivery of specific securities. See section 78fff-2(a)(4) of this title.

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.

Section Referred to in Other Sections

This section is referred to in sections 78fff-2, 78lll of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78fff-1. Powers and duties of a trustee

(a) Trustee powers

A trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, including the same rights to avoid preferences, as a trustee in a case under title 11. In addition, a trustee may, with the approval of SIPC but without any need for court approval--

(1) hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including accountants) that are deemed by the trustee necessary for all or any purposes of the liquidation proceeding;

(2) utilize SIPC employees for all or any purposes of a liquidation proceeding; and

(3) margin and maintain customer accounts of the debtor for the purposes of section 78fff-2(f) of this title.

(b) Trustee duties

To the extent consistent with the provisions of this chapter or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7, except that a trustee may, but shall have no duty to, reduce to money any securities constituting customer property or in the general estate of the debtor. In addition, the trustee shall--

(1) deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer; and

(2) subject to the prior approval of SIPC but without any need for court approval, pay or guarantee all or any part of the indebtedness of the debtor to a bank, lender, or other person if the trustee determines that the aggregate market value of securities to be made available to the trustee upon the payment or guarantee of such indebtedness does not appear to be less than the total amount of such payment or guarantee.

(c) Reports by trustee to court

The trustee shall make to the court and to SIPC such written reports as may be required of a trustee in a case under chapter 7 of

title 11, and shall include in such reports information with respect to the progress made in distributing cash and securities to customers. Such reports shall be in such form and detail as the Commission determines by rule to present fairly the results of the liquidation proceeding as of the date of or for the period covered by such reports, having due regard for the requirements of section 78q of this title and the rules prescribed under such section and the magnitude of items and transactions involved in connection with the operations of a broker or dealer.

(d) Investigations

The trustee shall--

(1) as soon as practicable, investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court;

(2) examine, by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any of the matters referred to in paragraph (1);

(3) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate; and

(4) as soon as practicable, prepare and submit, to SIPC and such other persons as the court designates and in such form and manner as the court directs, a statement of his investigation of matters referred to in paragraph (1).

(Pub. L. 91-598, Sec. 7, as added Pub. L. 95-283, Sec. 9, May 21, 1978, 92 Stat. 260; amended Pub. L. 95-598, title III, Sec. 308(i)-(k), Nov. 6, 1978, 92 Stat. 2675.)

Prior Provisions

A prior section 7 of Pub. L. 91-598 was renumbered section 11 and is classified to section 78ggg of this title.

Amendments

1978--Subsec. (a). Pub. L. 95-598, Sec. 308(i), substituted ``trustee in a case under title 11'' for ``trustee in bankruptcy under the Bankruptcy Act has with respect to a bankrupt and the property of a bankrupt''.

Subsec. (b). Pub. L. 95-598, Sec. 308(j), substituted ``trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7,'' for ``trustee in bankruptcy''.

Subsec. (c). Pub. L. 95-598, Sec. 308(k), substituted ``required of a trustee in a case under chapter 7 of title 11'' for ``required by the Bankruptcy Act''.

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.

Section Referred to in Other Sections

This section is referred to in sections 78fff, 78fff-2, 78fff-3, 78fff-4 of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78fff-2. Special provisions of a liquidation proceeding

(a) Notice and claims

(1) Notice of proceedings

Promptly after the appointment of the trustee, such trustee shall cause notice of the commencement of proceedings under this section to be published in one or more newspapers of general circulation in the form and manner determined by the court, and at the same time shall cause a copy of such notice to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor. Notice to creditors other than customers shall be given in the manner prescribed by title 11, except that such notice shall be given by the trustee.

(2) Statement of claim

A customer shall file with the trustee a written statement of claim but need not file a formal proof of claim, except that no obligation of the debtor to any person associated with the debtor within the meaning of section 78c(a)(18) of this title or section 78c(a)(21) of this title, any beneficial owner of 5 per centum or more of the voting stock of the debtor, or any member of the immediate family of any such person or owner may be satisfied without formal proof of claim.

(3) Time limitations

No claim of a customer or other creditor of the debtor which is received by the trustee after the expiration of the six-month period beginning on the date of publication of notice under paragraph (1) shall be allowed, except that the court may, upon application within such period and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian. Any claim of a customer for net equity which is received by the trustee after the expiration of such period of time as may be fixed by the court (not exceeding sixty days after the date of publication of notice under paragraph (1)) need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from moneys advanced by SIPC,

it shall be satisfied in cash or securities (or both) as the trustee determines is most economical to the estate.

(4) Effect on claims

Except as otherwise provided in this section, and without limiting the powers and duties of the trustee to discharge obligations promptly as specified in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise as the court may provide such claims as such person may have against the debtor, including claims for the payment of money and the delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

(b) Payments to customers

After receipt of a written statement of claim pursuant to subsection (a)(2), of this section, the trustee shall promptly discharge, in accordance with the provisions of this section, all obligations of the debtor to a customer relating to, or net equity claims based upon, securities or cash, by the delivery of securities or the making of payments to or for the account of such customer (subject to the provisions of subsection (d) of this section and section 78fff-3(a) of this title) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the filing date. For purposes of this subsection, the court shall, among other things--

(1) with respect to net equity claims, authorize the trustee to satisfy claims out of moneys made available to the trustee by SIPC notwithstanding the fact that there has not been any showing or determination that there are sufficient funds of the debtor available to satisfy such claims; and

(2) with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute, in a form to be determined by the trustee, appropriate receipts, supporting affidavits, releases, and assignments, but shall be without prejudice to any right of a claimant to file formal proof of claim within the period specified in subsection (a)(3) of this section for any balance of securities or cash to which such claimant considers himself entitled.

(c) Customer related property

(1) Allocation of customer property

The trustee shall allocate customer property of the debtor as

follows:

- (A) first, to SIPC in repayment of advances made by SIPC pursuant to section 78fff-3(c)(1) of this title, to the extent such advances recovered securities which were apportioned to customer property pursuant to section 78fff(d) of this title;
- (B) second, to customers of such debtor, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;
- (C) third, to SIPC as subrogee for the claims of customers;
- (D) fourth, to SIPC in repayment of advances made by SIPC pursuant to section 78fff-3(c)(2) of this title.

Any customer property remaining after allocation in accordance with this paragraph shall become part of the general estate of the debtor. To the extent customer property and SIPC advances pursuant to section 78fff-3(a) of this title are not sufficient to pay or otherwise satisfy in full the net equity claims of customers, such customers shall be entitled, to the extent only of their respective unsatisfied net equities, to participate in the general estate as unsecured creditors. For purposes of allocating customer property under this paragraph, securities to be delivered in payment of net equity claims for securities of the same class and series of an issuer shall be valued as of the close of business on the filing date.

(2) Delivery of customer name securities

The trustee shall deliver customer name securities to or on behalf of a customer of the debtor entitled thereto if the customer is not indebted to the debtor. If the customer is so indebted, such customer may, with the approval of the trustee, reclaim customer name securities upon payment to the trustee, within such period of time as the trustee determines, of all indebtedness of such customer to the debtor.

(3) Recovery of transfers

Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of title 11. Such recovered property shall be treated as customer property. For purposes of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

(d) Purchase of securities

The trustee shall, to the extent that securities can be purchased in a fair and orderly market, purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities under section 78fff-1(b)(1) of this title and for the transfer of customer accounts under subsection (f) of this section, in order to restore the accounts of such customers as of

the filing date. To the extent consistent with subsection (c) of this section, customer property and moneys advanced by SIPC may be used by the trustee to pay for securities so purchased. Moneys advanced by SIPC for each account of a separate customer may not be used to purchase securities to the extent that the aggregate value of such securities on the filing date exceeded the amount permitted to be advanced by SIPC under the provisions of section 78fff-3(a) of this title.

(e) Closeouts

(1) In general

Any contract of the debtor for the purchase or sale of securities in the ordinary course of its business with other brokers or dealers which is wholly executory on the filing date shall not be completed by the trustee, except to the extent permitted by SIPC rule. Upon the adoption by SIPC of rules with respect to the closeout of such a contract but prior to the adoption of rules with respect to the completion of such a contract, the other broker or dealer shall close out such contract, without unnecessary delay, in the best available market and pursuant to such SIPC rules. Until such time as SIPC adopts rules with respect to the completion or closeout of such a contract, such a contract shall be closed out in accordance with Commission Rule S6(d)-1 as in effect on May 21, 1978, or any comparable rule of the Commission subsequently adopted, to the extent not inconsistent with the provisions of this subsection.

(2) Net profit or loss

A broker or dealer shall net all profits and losses on all contracts closed out under this subsection and--

- (A) if such broker or dealer shows a net profit on such contracts, he shall pay such net profit to the trustee; and
- (B) if such broker or dealer sustains a net loss on such contracts, he shall be entitled to file a claim against the debtor with the trustee in the amount of such net loss.

To the extent that a net loss sustained by a broker or dealer arises from contracts pursuant to which such broker or dealer was acting for its own customer, such broker or dealer shall be entitled to receive funds advanced by SIPC to the trustee in the amount of such loss, except that such broker or dealer may not receive more than \$40,000 for each separate customer with respect to whom it sustained a loss. With respect to a net loss which is not payable under the preceding sentence from funds advanced by SIPC, the broker or dealer shall be entitled to participate in the general estate as an unsecured creditor.

(3) Registered clearing agencies

Neither a registered clearing agency which by its rules has an established procedure for the closeout of open contracts between an insolvent broker or dealer and its participants, nor its participants to the extent such participants' claims are or may be processed within the registered clearing agency, shall be entitled to receive SIPC funds in payment of any losses on such contracts,

except as SIPC may otherwise provide by rule. If such registered clearing agency or its participants sustain a net loss on the closeout of such contracts with the debtor, they shall have the right to participate in the general estate as unsecured creditors to the extent of such loss. Any funds or other property owed to the debtor, after the closeout of such contracts, shall be promptly paid to the trustee. Rules adopted by SIPC under this paragraph shall provide that in no case may a registered clearing agency or its participants, to the extent such participants' claims are or may be processed within the registered clearing agency, be entitled to receive funds advanced by SIPC in an amount greater, in the aggregate, than could be received by the participants if such participants proceeded individually under paragraph (1) and (2).

(4) ``Customer'' defined

For purposes of this subsection, the term ``customer'' does not include any person who--

(A) is a broker or dealer;

(B) had a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, was part of the capital of the claiming broker or dealer or was subordinated to the claims of any or all creditors of such broker or dealer; or

(C) had a relationship of the kind specified in section 78fff-3(a)(5) of this title with the debtor.

A claiming broker or dealer shall be deemed to have been acting on behalf of its customer if it acted as agent for such customer or if it held such customer's order which was to be executed as a part of its contract with the debtor.

(f) Transfer of customer accounts

In order to facilitate the prompt satisfaction of customer claims and the orderly liquidation of the debtor, the trustee may, pursuant to terms satisfactory to him and subject to the prior approval of SIPC, sell or otherwise transfer to another member of SIPC, without consent of any customer, all or any part of the account of a customer of the debtor. In connection with any such sale or transfer to another member of SIPC and subject to the prior approval of SIPC, the trustee may--

(1) waive or modify the need to file a written statement of claim pursuant to subsection (a)(2) of this section; and

(2) enter into such agreements as the trustee considers appropriate under the circumstances to indemnify any such member of SIPC against shortages of cash or securities in the customer accounts sold or transferred.

The funds of SIPC may be made available to guarantee or secure any indemnification under paragraph (2). The prior approval of SIPC to such indemnification shall be conditioned, among such other standards as SIPC may determine, upon a determination by SIPC that the probable cost of any such indemnification can reasonably be expected not to exceed the cost to SIPC of proceeding under section 78fff-3(a) of this title and section 78fff-3(b) of this title.

(Pub. L. 91-598, Sec. 8, as added Pub. L. 95-283, Sec. 9, May 21, 1978,

92 Stat. 261; amended Pub. L. 95-598, title III, Sec. 308(1), (m), Nov. 6, 1978, 92 Stat. 2675.)

Prior Provisions

A prior section 8 of Pub. L. 91-598 was renumbered section 12 and is classified to section 78hhh of this title.

Amendments

1978--Subsecs. (a)(1), (c)(3). Pub. L. 95-598 substituted ``title 11'' for ``the Bankruptcy Act''.

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.

Section Referred to in Other Sections

This section is referred to in sections 78fff, 78fff-1, 78fff-3, 78fff-4, 78lll of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78fff-3. SIPC advances

(a) Advances for customers' claims

In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed \$500,000 for each customer, as may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that--

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities, the amount advanced to satisfy such claim for cash shall not exceed \$100,000 for each such customer;

(2) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(3) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is satisfied by the delivery of securities purchased by the trustee pursuant to section 78fff-2(d) of this title, the securities so purchased shall be valued as of the filing date for purposes of applying the dollar limitations of this subsection;

(4) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any net equity claim of a customer who is a general partner, officer, or director of the debtor, a beneficial owner of five per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights), a limited partner with a participation of five per centum or more in the net assets or net profits of the debtor, or a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the debtor; and

(5) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy any net equity claim of any customer who is a broker or dealer or bank, other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank, or otherwise, that the net equity claim of such broker or dealer or bank against the debtor arose out of transactions for customers of such broker or dealer or bank (which customers are not themselves a broker or dealer or bank or a person

described in paragraph (4)), in which event each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent moneys are advanced by SIPC to the trustee to pay or otherwise satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this chapter, except that SIPC as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 78fff-2(c) of this title.

(b) Other advances

SIPC shall advance to the trustee--

(1) such moneys as may be required to carry out section 78fff-2(e) of this title; and

(2) to the extent the general estate of the debtor is not sufficient to pay any and all costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, the amount of such costs and expenses.

(c) Discretionary advances

SIPC may advance to the trustee such moneys as may be required to--

(1) pay or guarantee indebtedness of the debtor to a bank, lender, or other person under section 78fff-1(b)(2) of this title;

(2) guarantee or secure any indemnity under section 78fff-2(f) of this title; and

(3) purchase securities under section 78fff-2(d) of this title.

(Pub. L. 91-598, Sec. 9, as added Pub. L. 95-283, Sec. 9, May 21, 1978, 92 Stat. 265; amended Pub. L. 96-433, Sec. 1, Oct. 10, 1980, 94 Stat. 1855.)

References in Text

This chapter, referred to in subsec. (a), was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

Prior Provisions

A prior section 9 of Pub. L. 91-598 was renumbered section 13 and is classified to section 78iii of this title.

Amendments

1980--Subsec. (a). Pub. L. 96-433, Sec. 1(1), substituted in opening par. ``\$500,000'' for ``\$100,000''.

Subsec. (a)(1). Pub. L. 96-433, Sec. 1(2), substituted ``\$100,000'' for ``\$40,000''.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96-433 effective Oct. 10, 1980, see section 5(a) of Pub. L. 96-433, set out as a note under section 78u of this title.

Section Referred to in Other Sections

This section is referred to in sections 78eee, 78fff, 78fff-2, 78fff-4 of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78fff-4. Direct payment procedure

(a) Determination regarding direct payments

If SIPC determines that--

(1) any member of SIPC (including a person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers;

(2) one or more of the conditions specified in section 78eee(b)(1) of this title exist with respect to such member;

(3) the claim of each customer of the member is within the limits of protection provided in section 78fff-3(a) of this title;

(4) the claims of all customers of the member aggregate less than \$250,000;

(5) the cost to SIPC of satisfying customer claims under this section will be less than the cost under a liquidation proceeding; and

(6) such member's registration as a broker-dealer under section 78o(b) of this title has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

(b) Notice

Promptly after a determination under subsection (a) of this section that the direct payment procedure is to be used with respect to a member, SIPC shall cause notice of such direct payment procedure to be published in one or more newspapers of general circulation in a form and manner determined by SIPC, and at the same time shall cause to be mailed a copy of such notice to each person who appears, from the books and records of such member, to have been a customer of the member with an open account within the past twelve months, to the address of such person as it appears from the books and records of such member. Such notice shall state that SIPC will satisfy customer claims directly, without a liquidation proceeding, and shall set forth the form and manner in which claims may be presented. A direct payment procedure shall be deemed to commence on the date of first publication under this subsection and no claim by a customer shall be paid or otherwise satisfied by SIPC unless received within the six-month period beginning

on such date, except that SIPC shall, upon application within such period, and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian.

(c) Payments to customers

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff-2(d) of this title and section 78fff-3(a) of this title insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b) of this section. Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.

(d) Effect on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise such claims as such person may have against the member, including claims for the payment of money and the delivery of specific securities, without resort to moneys of SIPC.

(e) Jurisdiction of Bankruptcy Courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) of this section may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The courts of the United States having jurisdiction over cases under title 11 shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim, without regard to the citizenship of the parties or the amount in controversy. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) of this section shall not prejudice any other right or remedy of the customer against the member.

(f) Discontinuance of direct payment procedures

If, at any time after the institution of a direct payment procedure with respect to a member, SIPC determines, in its discretion, that continuation of such direct payment procedure is not appropriate, SIPC may cease such direct payment procedure and, upon so doing, may seek a protective decree pursuant to section 78eee of this title. To the extent payments of cash, distributions of securities, or determinations with

respect to the validity of a customer's claim are made under this section, such payments, distributions, and determinations shall be recognized and given full effect in the event of any subsequent liquidation proceeding. Any action brought under subsection (e) of this section and pending at the time of the appointment of a trustee under section 78eee(b)(3) of this title shall be permanently stayed by the court at the time of such appointment, and the court shall enter an order directing the transfer or removal to it of such suit. Upon such removal or transfer the complaint in such action shall constitute the plaintiff's claim in the liquidation proceeding, if appropriate, and shall be deemed received by the trustee on the date of his appointment regardless of the date of actual transfer or removal of such action.

(g) References

For purposes of this section, any reference to the trustee in sections 78fff-1(b)(1), 78fff-2(d), 78fff-2(f), 78fff-3(a), 78lll(5) and 78lll(12) of this title shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 78fff-2(a) of this title shall be deemed a reference to the publication of notice under this section.

(Pub. L. 91-598, Sec. 10, as added Pub. L. 95-283, Sec. 9, May 21, 1978, 92 Stat. 266; amended Pub. L. 95-598, title III, Sec. 308(n), Nov. 6, 1978, 92 Stat. 2675.)

Prior Provisions

A prior section 10 of Pub. L. 91-598 was renumbered section 14 and is classified to section 78jjj of this title.

Amendments

1978--Subsec. (e). Pub. L. 95-598 substituted in heading ``Bankruptcy Courts'' for ``District Courts'' and in text ``courts of the United States having jurisdiction over cases under title 11'' for ``district courts of the United States'' and struck out `` , without regard to the citizenship of the parties or the amount in controversy'' after ``adjudication of such claim''.

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.

Section Referred to in Other Sections

This section is referred to in section 78lll of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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) of this section; and

(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) 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 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.

(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, Sec. 7, 48 Stat. 886; Aug. 23, 1935, ch. 614, Sec. 203(a), 49 Stat. 704; Pub. L. 90-437, July 29, 1968, 82 Stat. 452; Pub. L. 91-508, title III, Sec. 301(a), Oct. 26, 1970, 84 Stat. 1124; Pub. L. 98-440, title I, Sec. 102, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, Sec. 203, Sept. 23, 1994, 108 Stat.

2199; Pub. L. 104-290, title I, Sec. 104(a), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105-353, title III, Sec. 301(b)(5), (6), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-429.)

Amendments

2000--Subsec. (a). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(b)(1)], inserted ``or a security futures product'' after ``exempted security'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(b)(2)], inserted ``except as provided in paragraph (2),'' after ``security),''.

Subsec. (c)(2), (3). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(b)(3), (4)], added par. (2) and redesignated former par. (2) as (3).

1998--Subsecs. (a), (b). Pub. L. 105-353, Sec. 301(b)(5), substituted ``Board of Governors of the Federal Reserve System'' for ``Federal Reserve Board''.

Subsec. (d). Pub. L. 105-353, Sec. 301(b)(6), substituted ``exceptions'' for ``exception'' in heading.

1996--Subsec. (c). Pub. L. 104-290, Sec. 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, Sec. 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, Sec. 1(1), struck out ``registered on a national securities exchange'' after ``(other than an exempted security)''.

Subsec. (c). Pub. L. 90-437, Sec. 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, Sec. 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''.

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 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.

Section 401(c) of Pub. L. 91-508 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

Section 301(b) of Pub. L. 91-508 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.''

Section Referred to in Other Sections

This section is referred to in sections 78c, 78f, 78m, 78o, 78hh, 80a-2, 80a-54 of this title; title 7 section 2; title 31 section 5315.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78gg. Separability

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 6, 1934, ch. 404, title I, Sec. 33, 48 Stat. 905.)

References in Text

This chapter, referred to in text, was in the original ``this Act''. See References in Text note set out under section 78a of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules pursuant to section 78ccc(e)(3) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rulemaking procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) Enforcement of actions

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

(c) Examinations and reports

(1) Examination of SIPC, etc.

The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this chapter.

(2) Reports from SIPC

As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this chapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be

examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(Pub. L. 91-598, Sec. 11, formerly Sec. 7, Dec. 30, 1970, 84 Stat. 1652, 1653; renumbered Sec. 11 and amended Pub. L. 95-283, Secs. 9, 10, May 21, 1978, 92 Stat. 260, 268.)

References in Text

This chapter, referred to in subsecs. (b) and (c), was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

Codification

Section is comprised of section 11 of Pub. L. 91-598. Subsec. (d) of section 11 of Pub. L. 91-598 amended section 78o of this title.

Prior Provisions

A prior section 11 of Pub. L. 91-598 was renumbered section 15 and is classified to section 78kkk of this title.

Amendments

1978--Subsec. (a). Pub. L. 95-283 substituted ``pursuant to section 78ccc(e)(3) and section 78iii(f) of this title'' for ``or regulations pursuant to section 78ccc(e) and 78iii(f) of this title''.

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to submittal of annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103-7.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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, Sec. 8, 48 Stat. 888; Aug. 23, 1935, ch. 614, Sec. 203(a), 49 Stat. 704; Pub. L. 94-29, Sec. 5, June 4, 1975, 89 Stat. 109; Pub. L. 98-440, title I, Sec. 103, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, Sec. 204, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-290, title I, Sec. 104(b), Oct. 11, 1996, 110 Stat. 3423.)

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, Sec. 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, Sec. 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.

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.

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Section Referred to in Other Sections

This section is referred to in sections 78f, 78o, 78o-3, 78hh of this title; title 7 section 6d.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78hh. Effective date

This chapter shall become effective on July 1, 1934, except that sections 78f and 78l(b to e) of this title shall become effective on September 1, 1934; and sections 78e, 78g, 78h, 78i(a)(6), 78j, 78k, 78l(a), 78m, 78n, 78o, 78p, 78q, 78r, 78s, and 78dd of this title shall become effective on October 1, 1934.

(June 6, 1934, ch. 404, title I, Sec. 34, 48 Stat. 905.)

References in Text

This chapter, referred to in text, was in the original ``This Act''. See References in Text note set out under section 78a of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78hh-1. Effective date of certain sections

This Act shall become effective on May 27, 1936; except that clause (2) of subsection (f) of section 78l of this title, and subsections (a) and (d) of section 78o of this title, shall become effective ninety days after May 27, 1936, and that clause (3) of subsection (f) of section 78l of this title shall become effective six months after May 27, 1936.

(May 27, 1936, ch. 462, Sec. 12, 49 Stat. 1380.)

References in Text

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

Codification

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

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 78ddd of this title. The examining authority or collection agent shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91-598, Sec. 12, formerly Sec. 8, Dec. 30, 1970, 84 Stat. 1653; renumbered Sec. 12 and amended Pub. L. 95-283, Secs. 9, 11, May 21, 1978, 92 Stat. 260, 268.)

Prior Provisions

A prior section 12 of Pub. L. 91-598 was renumbered section 16 and is classified to section 78111 of this title.

Amendments

1978--Pub. L. 95-283 inserted provisions relating to applicability to a collection agent.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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 registered on a national securities exchange, 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 one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) 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 or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) 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 one or more persons conducted for the purpose of raising or depressing the price of such security.

(4) If a dealer or broker, or the person selling or offering for

sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, for the purpose of inducing the purchase or sale of such security 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 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 or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) 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 one 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 registered on a national securities exchange 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, or options

It shall be unlawful for any person to effect, by use of any facility of a national securities exchange, 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; 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.

(c) Endorsement or guarantee of puts, calls, straddles, or options

It shall be unlawful for any 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 registered on a national securities exchange, 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) 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.

(e) 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.

(f) Subsection (a) not applicable to exempted securities

The provisions of subsection (a) of this section shall not apply to an exempted security.

(g) 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.

(h) 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.

(i) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, Sec. 9, 48 Stat. 889; Pub. L. 97-303, Sec. 3, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 101-432, Sec. 6(a), Oct. 16, 1990, 104 Stat. 975; Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 205(a)(1), (2), title III, Sec. 303(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-425, 2763A-426, 2763A-453, 2763A-454.)

References in Text

Section 206B of the Gramm-Leach-Bliley Act, referred to in subsecs. (a)(2) to (5) and (i), is section 206B of Pub. L. 106-102, which is set out in a note under section 78c of this title.

The Commodity Exchange Act, referred to in subsec. (g)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (Sec. 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

2000--Subsec. (a)(2) to (5). Pub. L. 106-554, Sec. 1(a)(5) [title III, Sec. 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, Sec. 1(a)(5) [title II, Sec. 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, Sec. 1(a)(5) [title II, Sec. 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, Sec. 1(a)(5) [title II, Sec. 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, Sec. 1(a)(5) [title II, Sec. 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, Sec. 1(a)(5) [title III, Sec. 303(c)], added subsec. (i).

1990--Subsec. (h). Pub. L. 101-432 added subsec. (h).

1982--Subsec. (f). Pub. L. 97-303, Sec. 3(1), substituted “The provisions of subsection (a) of this section shall not apply” for “The provisions of this section shall not apply”.

Subsec. (g). Pub. L. 97-303, Sec. 3(2), added subsec. (g).

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Section Referred to in Other Sections

This section is referred to in sections 78j, 78y, 78hh of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78ii. Omitted

Codification

Section, act June 6, 1934, ch. 404, title II, Sec. 210, 48 Stat. 908, transferred the powers, duties and functions of the Federal Trade Commission under subchapter I of chapter 2A of this title to the Securities and Exchange Commission. Pending proceedings before the Federal Trade Commission were continued before the Securities and Exchange Commission.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B-1--SECURITIES INVESTOR PROTECTION

Sec. 78iii. Functions of self-regulatory organizations

(a) Collection agent

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, unless SIPC designates a self-regulatory organization other than the examining authority to act as collection agent for any member of SIPC who is a member of or participant in more than one self-regulatory organization. If the only self-regulatory organization of which a member of SIPC is a member or in which it is a participant is a registered clearing agency that is not the examining authority for the member, SIPC may, nevertheless, designate such registered clearing agency as collection agent for the member or may require that payments be made directly to SIPC. The collection agent shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessment are received by such collection agent. Members of SIPC who are not members of or participants in a self-regulatory organization shall make payments directly to SIPC.

(b) Immunity

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) and section 78eee(a)(2) of this title.

(c) Inspections

The self-regulatory organization of which a member of SIPC is a member or in which it is a participant shall inspect or examine such member for compliance with applicable financial responsibility rules, except that--

(1) if the self-regulatory organization is a registered clearing agency, the Commission may designate itself as responsible for the examination of such member for compliance with applicable financial responsibility rules; and

(2) if a member of SIPC is a member of or participant in more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations or itself as responsible for the examination of such member for compliance with applicable financial responsibility rules.

(d) Reports

There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) Consultation

SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) Financial condition of members

The Commission may, by such rules as it determines necessary or appropriate in the public interest and to carry out the purposes of this chapter, require any self-regulatory organization to furnish SIPC with reports and records (or copies thereof) relating to the financial condition of members of or participants in such self-regulatory organization.

(Pub. L. 91-598, Sec. 13, formerly Sec. 9, Dec. 30, 1970, 84 Stat. 1654; amended Pub. L. 94-29, Sec. 26, June 4, 1975, 89 Stat. 163; renumbered Sec. 13 and amended Pub. L. 95-283, Secs. 9, 12, May 21, 1978, 92 Stat. 260, 269.)

References in Text

This chapter, referred to in subsec. (f), was in the original ``this Act'', meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

Amendments

1978--Subsec. (a). Pub. L. 95-283, Sec. 12(a), in heading substituted ``Collection'' for ``Collecting'', and in text inserted provisions relating to designation of a self-regulatory organization other than the examining authority to act as collection agent and provisions relating to designation of a registered clearing agency as collection agent, and substituted provisions relating to remittances by the collection agent to SIPC, for provisions relating to remittances by an examining authority to SIPC.

Subsec. (b). Pub. L. 95-283, Sec. 12(b), inserted reference to section 78eee(a)(2) of this title.

Subsec. (c). Pub. L. 95-283, Sec. 12(c), revised existing format and provisions into introductory text and cl. (2) and, as so revised, in introductory text inserted provisions respecting participation by a member of SIPC in a self-regulatory organization and in cl. (2) inserted provisions respecting such participation and authorization for the Commission to designate itself as responsible for the statutory examination, and added cl. (1).

Subsec. (f). Pub. L. 95-283, Sec. 12(d), substituted provisions authorizing the Commission to set out rules requiring self-regulatory organizations to furnish SIPC with reports and records of members or participants in such self-regulatory organizations, for provisions authorizing the Commission to set out rules, and regulations requiring self-regulatory organizations to adopt rules, practices, and procedures respecting inspections and examinations of members and examiners, to furnish SIPC and the Commission with reports and records of members, and to inspect or examine members.

1975--Subsec. (c). Pub. L. 94-29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

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.

Section Referred to in Other Sections

This section is referred to in sections 78ddd, 78ggg, 78hhh, 78lll of this title.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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 registered on a national securities exchange, 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 (as defined in section 206B of the Gramm-Leach-Bliley Act), 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.

Rules promulgated under subsection (b) of this section 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) of this section and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) 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 (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities.

(June 6, 1934, ch. 404, title I, Sec. 10, 48 Stat. 891; Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(g), title III, Sec. 303(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-432, 2763A-454.)

References in Text

Section 206B of the Gramm-Leach-Bliley Act, referred to in text, is section 206B of Pub. L. 106-102, which is set out in a note under

section 78c of this title.

Amendments

2000--Pub. L. 106-554, Sec. 1(a)(5) [title III, Sec. 303(d)(2)], inserted concluding provisions at end.

Subsec. (a). Pub. L. 106-554, Sec. 1(a)(5) [title II, Sec. 206(g)], designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 106-554, Sec. 1(a)(5) [title III, Sec. 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''.

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, Secs. 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Section Referred to in Other Sections

This section is referred to in sections 78k, 78u, 78u-3, 78aa-1, 78hh, 3904 of this title; title 42 section 9675.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 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) of this section 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) of this section, 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) of this section, 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) of this section, 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) of this section, 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) of this section for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i) of this section.

(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 minimus 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 nonaudit 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) of this section, 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, Sec. 10A, as added Pub. L. 104-67, title III, Sec. 301(a), Dec. 22, 1995, 109 Stat. 762; amended Pub. L. 107-204, title II, Secs. 201(a), 202-204, 205(b), (d), 206, title III, Sec. 301, July 30, 2002, 116 Stat. 771-775.)

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, as amended, which is classified generally to subchapter I (Sec. 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

2002--Subsec. (a). Pub. L. 107-204, Sec. 205(b)(1), substituted ``a registered public accounting firm'' for ``an independent public accountant'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107-204, Sec. 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, Sec. 205(b)(4)(B), substituted ``such firm'' for ``such accountant''.

Subsec. (b)(2). Pub. L. 107-204, Sec. 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, Sec. 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, Sec. 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, Sec. 205(b)(3), substituted ``No

registered public accounting firm'' for ``No independent public accountant''.

Subsec. (d). Pub. L. 107-204, Sec. 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, Sec. 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, Sec. 201(a), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 107-204, Sec. 202, added subsec. (i).

Subsec. (j). Pub. L. 107-204, Sec. 203, added subsec. (j).

Subsec. (k). Pub. L. 107-204, Sec. 204, added subsec. (k).

Subsec. (l). Pub. L. 107-204, Sec. 206, added subsec. (l).

Subsec. (m). Pub. L. 107-204, Sec. 301, added subsec. (m).

Effective Date

Section 301(b) of Pub. L. 104-67 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

Section 203 of Pub. L. 104-67 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.]''

Section Referred to in Other Sections

This section is referred to in sections 781, 7231, 7233 of this title; title 18 section 1520.

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TITLE 15--COMMERCE AND TRADE

CHAPTER 2B--SECURITIES EXCHANGES

Sec. 78jj. Repealed. Pub. L. 100-181, title III, Sec. 330, Dec.
4, 1987, 101 Stat. 1259

Section, act June 6, 1934, ch. 404, title II, Sec. 211, 48 Stat.
909, provided for a study and report by Securities and Exchange
Commission of reorganization proceedings. Study as basis for Trust
Indenture Act of 1939, see section 77bbb of this title.