

Public Law 98-376
98th Congress

An Act

Aug. 10, 1984

[H.R. 559]

To amend the Securities Exchange Act of 1934 to increase the sanctions against trading in securities while in possession of material nonpublic information.

Insider Trading
Sanctions Act of
1984.

15 USC 78a note.

15 USC 78u.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Insider Trading Sanctions Act of 1984".

SEC. 2. Section 21 of the Securities Exchange Act of 1934 is amended by redesignating subsection (d) as subsection (d)(1), and adding at the end thereof the following new paragraph:

"(2)(A) Whenever it shall appear to the Commission that any person has violated any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material nonpublic information in a transaction (i) on or through the facilities of a national securities exchange or from or through a broker or dealer, and (ii) which is not part of a public offering by an issuer of securities other than standardized options, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by such person, or any person aiding and abetting the violation of such person. The amount of such penalty shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase or sale, and shall be payable into the Treasury of the United States. If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. The actions authorized by this paragraph may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring. For purposes of section 27 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title. The Commission, by rule or regulation, may exempt from the provisions of this paragraph any class of persons or transactions.

15 USC 78aa.

Prohibition.

15 USC 78t.

"(B) No person shall be subject to a sanction under subparagraph (A) of this paragraph solely because that person aided and abetted a transaction covered by such subparagraph in a manner other than by communicating material nonpublic information. Section 20(a) of this title shall not apply to an action brought under this paragraph. No person shall be liable under this paragraph solely by reason of employing another person who is liable under this paragraph.

"(C) For purposes of this paragraph 'profit gained' or 'loss avoided' is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

“(D) No action may be brought under this paragraph more than five years after the date of the purchase or sale. This paragraph shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this title, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within five years of such transaction.” Prohibitions.

SEC. 3. Section 32 of the Securities Exchange Act of 1934 is amended by striking “\$10,000” from subsection (a) and inserting in lieu thereof “\$100,000”. 15 USC 78ff.

SEC. 4. Section 15(c)(4) of the Securities Exchange Act of 1934 is amended to read as follows: 15 USC 78o.

“(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.” 15 USC 78l, 78m-78o.

SEC. 5. Section 20 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following: 15 USC 78t.

“(d) Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this title, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, or privilege with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.”

SEC. 6. (a) Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)) is amended—

(1) by inserting before the semicolon at the end of subparagraph (A) the following: “, 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”;

(2) by inserting before the semicolon at the end of subparagraph (B) the following: “, 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.)”; and

(3) by inserting after “municipal securities dealer,” in subparagraph (C) the following: “or while associated with an entity or person required to be registered under the Commodity Exchange Act,”.

(b) Section 15(b)(4) of such Act (15 U.S.C. 78o(b)(4)) is amended— 15 USC 78o.

(1) by striking out “or fiduciary” in subparagraph (B)(ii) and inserting in lieu thereof “fiduciary, or any entity or person

required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(2) in subparagraph (C)—

(A) by inserting "entity or person required to be registered under the Commodity Exchange Act," before "or municipal securities dealer"; and

(B) by inserting "entity or person required to be registered under such Act," before "or insurance company"; and

(3) by inserting "the Commodity Exchange Act," after "Investment Company Act of 1940," each place it appears in subparagraphs (D) and (E).

Effective date.
15 USC 78c note.

SEC. 7. The amendments made by this Act shall become effective immediately upon enactment of this Act.

Approved August 10, 1984.

SEC. 6. (a) Section 3(a)(3) of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following: "(b) Whoever communicates or purchases or sells a security while in possession of material nonpublic information would violate or result in liability to any purchaser or seller of the security under any provision of this title or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a call, puttable option, or privilege with respect to such security or with respect to a group or other of securities including such security shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation."

SEC. 5. (a) Section 3(a)(3) of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following:

(1) by inserting before the sentence at the end of subparagraph (A) the following: "contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7c) or futures association registered under section 17 of such Act (7 U.S.C. 81c) or has been and is deemed trading privileges on any such contract traded";

(2) by inserting before the sentence at the end of subparagraph (B) the following: "or is subject to an order of the Commodity Futures Trading Commission";

(3) by inserting before the sentence at the end of subparagraph (C) the following: "or is subject to an order of the Commodity Futures Trading Commission";

(4) by inserting before the sentence at the end of subparagraph (D) the following: "or is subject to an order of the Commodity Futures Trading Commission";

(5) by inserting before the sentence at the end of subparagraph (E) the following: "or is subject to an order of the Commodity Futures Trading Commission";

LEGISLATIVE HISTORY—H.R. 559 (S. 910):

HOUSE REPORT No. 98-355 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Sept. 19, considered and passed House.

Vol. 130 (1984): June 29, considered and passed Senate, amended, in lieu of S. 910.

July 25, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 33 (1984):

Aug. 11, Presidential statement.