

a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

(June 6, 1934, ch. 404, title I, § 7, 48 Stat. 886; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; July 29, 1968, Pub. L. 90-437, 82 Stat. 452; Oct. 26, 1970, Pub. L. 91-508, title III, § 301(a), 84 Stat. 1124; Oct. 3, 1984, Pub. L. 98-440, title I, § 102, 98 Stat. 1690; Sept. 23, 1994, Pub. L. 103-325, title II, § 203, 108 Stat. 2199.)

AMENDMENTS

1994—Subsec. (g). Pub. L. 103-325 inserted “or a small business related security” after “mortgage related security”.

1984—Subsec. (g). Pub. L. 98-440 added subsec. (g).

1970—Subsec. (f). Pub. L. 91-508 added subsec. (f).

1968—Subsec. (a). Pub. L. 90-437, § 1(1), struck out “registered on a national securities exchange” after “(other than an exempted security)”.

Subsec. (c). Pub. L. 90-437, § 1(2), struck out “who transacts a business in securities through the medium of any such member” after “any broker or dealer”, in par. (1) struck out “registered on a national securities exchange” after “(other than an exempted security)”, and in par. (2) substituted “other than securities” for “other than exempted securities and/or securities registered upon a national securities exchange”.

Subsec. (d). Pub. L. 90-437, § 1(3), struck out “registered on a national securities exchange” after “the purpose of purchasing or carrying any security”, and “registered on national securities exchanges” after “the purpose of purchasing or carrying securities”.

CHANGE OF NAME

Act Aug. 23, 1935, 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.”

CROSS REFERENCES

Effective date, see section 78hh of this title.

Rules and regulations, power of Board of Governors of Federal Reserve System to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 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) To borrow in the ordinary course of business as a broker or dealer on any security (other than an exempted security) registered on a national securities exchange except (1) from or through a member bank of the Federal Reserve System, (2) from any nonmember bank which shall have filed with the Board of Governors of the Federal Reserve System an agreement, which is still in force and which is in the form prescribed by the Board, undertaking to comply with all provisions of this chapter, the Federal Reserve Act as amended, [12 U.S.C. 221 et seq.], and the Banking Act of 1933, which are applicable to member banks and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof, or (3) in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe to permit loans between such members and/or brokers and/or dealers, or to permit loans to meet emergency needs. Any such agreement filed with the Board of Governors of the Federal Reserve System shall be subject to termination at any time by order of the Board, after appropriate notice and opportunity for hearing, because of any failure by such bank to comply with the provisions thereof or with such provisions of law or rules or regulations; and, for any willful violation of such agreement, such bank shall be subject to the penalties provided for violations of rules and regulations prescribed under this chapter. The provisions of sections 78u and 78y of this title shall apply in the case of any such proceeding or order of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply in the case of proceedings and orders of the Commission. 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 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 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.

(b) 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.

(c) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors.

(June 6, 1934, ch. 404, title I, § 8, 48 Stat. 888; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 4, 1975, Pub. L. 94-29, § 5, 89 Stat. 109; Oct. 3, 1984, Pub. L. 98-440, title I, § 103, 98 Stat. 1690; Sept. 23, 1994, Pub. L. 103-325, title II, § 204, 108 Stat. 2199.)

REFERENCES IN TEXT

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

The Federal Reserve Act, as amended, referred to in subsec. (a), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to chapter 3 (§ 221 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see References in Text note set out under section 226 of Title 12 and Tables.

The Banking Act of 1933, referred to in subsec. (a), is act June 16, 1933, ch. 89, 48 Stat. 162. For complete classification of this Act to the Code, see References in Text note set out under section 227 of Title 12 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-325 inserted "or a small business related security" after "mortgage related security" in last sentence.

1984—Subsec. (a). Pub. L. 98-440 inserted provision that no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security under certain conditions.

1975—Pub. L. 94-29, § 5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who transacts a business in securities through the medium of any such member" in provisions preceding subsec. (a).

Subsecs. (b) to (d). Pub. L. 94-29, § 5(2), redesignated subsec. (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, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

Rules and regulations, power of Board of Governors of Federal Reserve System to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 78i. Manipulation of security prices

(a) Transactions relating to purchase or sale of security

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security 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 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