

“(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, 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 of this title; title 2 section 1602; title 5 section 4802; title 7 sections 1a, 2, 6c, 6d, 7a, 12a, 27; title 10 sections 4357, 6975, 9356; title 11 section 101; title 12 sections 24, 371c-1, 1441b, 1464, 1757, 1787, 1821, 1828, 1831l, 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 31 sections 3121, 9110.

### § 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, §3A, as added Pub. L. 106-554, §1(a)(5) [title III, §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.

### § 78d. Securities and Exchange Commission

#### (a) Establishment; composition; limitations on commissioners; terms of office

There is hereby established a Securities and Exchange Commission (hereinafter referred to as the “Commission”) to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years,

one at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934.

**(b) Appointment and compensation of staff and leasing authority**

**(1) Appointment and compensation**

The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5.

**(2) Reporting of information**

In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1833b of title 12 and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

**(3) Leasing authority**

Notwithstanding<sup>1</sup> any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

**(c) Acceptance of travel support for Commission activities from non-Federal sources; regulations**

Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

**(d) Acceptance of relocation expenses from former employers by professional fellows program participants**

Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

**(e) Fee payments**

Notwithstanding any other provision of law, whenever any fee is required to be paid to the

Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

**(f) Reimbursement of expenses for assisting foreign securities authorities**

Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 78u(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

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

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

Subsec. (f). Pub. L. 101-550, § 207, added subsec. (f).

1987—Subsec. (e). Pub. L. 100-181 added subsec. (e).

1983—Subsecs. (c), (d). Pub. L. 98-38 added subsecs. (c) and (d).

1964—Subsec. (a). Pub. L. 88-426 repealed provisions which prescribed the compensation of the Chairman and the Commissioners.

1960—Subsec. (a). Pub. L. 86-771 authorized the chairman to receive an additional \$500 a year.

Pub. L. 86-619 increased the salary of each commissioner from \$15,000 to \$20,000 a year, and provided for continuation in office of a commissioner upon termination of his term until a successor is appointed and has qualified, not beyond expiration of next session of Congress subsequent to the expiration of said fixed term of office.

<sup>1</sup> So in original. Probably should be "Notwithstanding".

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, § 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, §§ 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.

### § 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