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## SUBCHAPTER I—DOMESTIC SECURITIES

## § 77a. Short title

This subchapter may be cited as the “Securities Act of 1933”.

(May 27, 1933, ch. 38, title I, § 1, 48 Stat. 74.)

## SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112-142, § 1, July 9, 2012, 126 Stat. 989, provided that: “This Act [amending section 77c of this title] may be cited as the ‘Church Plan Investment Clarification Act.’”

Pub. L. 112-106, title III, § 301, Apr. 5, 2012, 126 Stat. 315, provided that: “This title [enacting section 77d-1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] may be cited as the ‘Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012’ or the ‘CROWDFUND Act.’”

## SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-477, title VI, § 601, Oct. 21, 1980, 94 Stat. 2294, provided that: “This title [amending sections 77b and 77d of this title] may be cited as the ‘Small Business Issuers’ Simplification Act of 1980.’”

## § 77b. Definitions; promotion of efficiency, competition, and capital formation

## (a) Definitions

When used in this subchapter, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term “trust” shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer,

or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager

pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 77f of this title, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 77j of this title) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 77j of this title at the time of<sup>1</sup> such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 77j of this title may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Com-

<sup>1</sup> So in original.

mission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term “underwriter” means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commission. As used in this paragraph the term “issuer” shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term “dealer” means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term “insurance company” means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term “separate account” means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term “accredited investor” shall mean—

(i) a bank as defined in section 77c(a)(2) of this title whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] or a business development company as defined in section 2(a)(48) of that Act [15 U.S.C. 80a-2(a)(48)]; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], if the investment decision is made by a plan

fiduciary, as defined in section 3(21) of such Act [29 U.S.C. 1002(21)], which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms “security future”, “narrow-based security index”, and “security futures product” have the same meanings as provided in section 78c(a)(55) of this title.

(17) The terms “swap” and “security-based swap” have the same meanings as in section 1a of title 7.

(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this subchapter;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a “large accelerated filer”, as defined in section 240.12b-2 of title 17, Code of Federal Regulations, or any successor thereto.

**(b) Consideration of promotion of efficiency, competition, and capital formation**

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether

the action will promote efficiency, competition, and capital formation.

(May 27, 1933, ch. 38, title I, § 2, 48 Stat. 74; June 6, 1934, ch. 404, title II, § 201, 48 Stat. 905; Aug. 10, 1954, ch. 667, title I, §§ 1–4, 68 Stat. 683, 684; Pub. L. 86–70, § 12(a), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, § 7(a), July 12, 1960, 74 Stat. 412; Pub. L. 91–547, § 27(a), Dec. 14, 1970, 84 Stat. 1433; Pub. L. 96–477, title VI, § 603, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 97–303, § 1, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100–181, title II, §§ 201, 202, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104–290, title I, § 106(a), Oct. 11, 1996, 110 Stat. 3424; Pub. L. 105–353, title III, § 301(a)(1), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 106–554, § 1(a)(5) [title II, § 208(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–434; Pub. L. 111–203, title VII, § 768(a), July 21, 2010, 124 Stat. 1800; Pub. L. 112–106, title I, §§ 101(a), 105(a), Apr. 5, 2012, 126 Stat. 307, 310.)

#### AMENDMENT OF SECTION

*Unless otherwise provided, amendment by subtitle B (§§ 761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

#### REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(15)(i), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(15)(i), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

#### CODIFICATION

Words “Philippine Islands” deleted from definition of term “Territory” under authority of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

#### AMENDMENTS

2012—Subsec. (a)(3). Pub. L. 112–106, § 105(a), inserted at end “The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term ‘research report’ means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.”

Subsec. (a)(19). Pub. L. 112–106, § 101(a), added par. (19). 2010—Subsec. (a)(1). Pub. L. 111–203, § 768(a)(1), inserted “security-based swap,” after “security future,”.

Subsec. (a)(3). Pub. L. 111–203, § 768(a)(2), inserted at end “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”

Subsec. (a)(17), (18). Pub. L. 111–203, § 768(a)(3), added pars. (17) and (18).

2000—Subsec. (a)(1). Pub. L. 106–554, § 1(a)(5) [title II, § 208(a)(1)(A)], inserted “security future,” after “treasury stock,”.

Subsec. (a)(3). Pub. L. 106–554, § 1(a)(5) [title II, § 208(a)(1)(B)], inserted at end “Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.”

Subsec. (a)(16). Pub. L. 106–554, § 1(a)(5) [title II, § 208(a)(1)(C)], added par. (16).

1998—Subsec. (a)(15)(i). Pub. L. 105–353 made technical amendment to reference in original act which appears in text as reference to section 77c(a)(2) of this title and inserted “of this subsection” after “paragraph (13)”.

1996—Pub. L. 104–290 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Par. (5). Pub. L. 100–181, § 201, substituted “Securities and Exchange Commission” for “Federal Trade Commission”.

Par. (6). Pub. L. 100–181, § 202, struck out reference to Canal Zone.

1982—Par. (1). Pub. L. 97–303 inserted “any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,” after “mineral rights,”.

1980—Par. (15). Pub. L. 96–477 added par. (15).

1970—Pars. (13), (14). Pub. L. 91–547 added pars. (13) and (14).

1960—Par. (6). Pub. L. 86–624 struck out reference to Hawaii.

1959—Par. (6). Pub. L. 86–70 struck out reference to Alaska.

1954—Act Aug. 10, 1954, in pars. (3), (8), (10), and (11), redefined term “sale” so as to distinguish between “offers” and “sales”, clarified definition of “registration statement”, and conformed definition of “prospectus” to changes made by act Aug. 10, 1954, to sections 77e and 77j of this title.

1934—Act June 6, 1934, amended pars. (1), (4), and (10).

#### EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–106, title I, § 101(d), Apr. 5, 2012, 126 Stat. 308, provided that: “Notwithstanding section 2(a)(19) of the Securities Act of 1933 [15 U.S.C. 77b(a)(19)] and section 3(a)(80) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(80)], an issuer shall not be an emerging growth company for purposes of such Acts [15 U.S.C. 77a et seq., 78a et seq.] if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] occurred on or before December 8, 2011.”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VII, § 774, July 21, 2010, 124 Stat. 1802, provided that: “Unless otherwise provided, the provisions of this subtitle [subtitle B (§§ 761–774) of title VII of Pub. L. 111–203, enacting subchapter II (§ 8341 et seq.) of chapter 109 and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amending this section and sections 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2,

and 80b-2 of this title, and amending provisions set out as a note under section 78c of this title] shall take effect on the later of 360 days after the date of the enactment of this subtitle [July 21, 2010] or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 10, 1954, ch. 667, §501, 68 Stat. 689, provided that: “This Act [amending this section and sections 77c to 77e, 77j, 77l, 77q, 77v, 77ccc to 77fff, 77xxx, 78k, 78l, 80a-2 and 80a-24 of this title] shall take effect sixty days after the date of its enactment [Aug. 10, 1954].”

#### 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.

#### ADJUSTING THE ACCREDITED INVESTOR STANDARD

Pub. L. 111-203, title IV, §413, July 21, 2010, 124 Stat. 1577, provided that:

“(a) IN GENERAL.—The [Securities and Exchange] Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than \$1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act [July 21, 2010], any net worth standard shall be \$1,000,000, excluding the value of the primary residence of such natural person.

#### “(b) REVIEW AND ADJUSTMENT.—

##### “(1) INITIAL REVIEW AND ADJUSTMENT.—

“(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ‘accredited investor’, as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

“(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ‘accredited investor’, excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

##### “(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

“(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act [July 21, 2010], and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ‘accredited investor’, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

“(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ‘accredited investor’, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.”

## § 77b-1. Swap agreements

### (a) [Reserved]

### (b) Security-based swap agreements

(1) The definition of “security” in section 77b(a)(1) of this title does not include any security-based swap agreement (as defined in section 78c(a)(78) of this title).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this subchapter of any security-based swap agreement (as defined in section 78c(a)(78) of this title). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

(3) The Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this subchapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 78c(a)(78) of this title).

(4) References in this subchapter to the “purchase” or “sale” of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement (as defined in section 78c(a)(78) of this title), as the context may require.

(May 27, 1933, ch. 38, title I, §2A, as added Pub. L. 106-554, §1(a)(5) [title III, §302(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-451; amended Pub. L. 111-203, title VII, §762(c)(1), July 21, 2010, 124 Stat. 1759.)

#### AMENDMENT OF SECTION

*Unless otherwise provided, amendment by subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §762(c)(1)(A), struck out subsec. (a) and reserved subsec. (a) designation. Text read as follows: “The definition of ‘security’ in

section 77b(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).”

Subsec. (b). Pub. L. 111-203, § 762(c)(1)(B), substituted “(as defined in section 78c(a)(78) of this title)” for “(as defined in section 206B of the Gramm-Leach-Bliley Act)” wherever appearing.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

### § 77c. Classes of securities under this subchapter

#### (a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term “investment company” under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(3)]; or any security which is an industrial development bond (as defined in section 103(c)(2)<sup>1</sup> of title 26) the interest on which is excludable from gross income under section 103(a)(1)<sup>1</sup> of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c)<sup>1</sup> of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),<sup>1</sup> paragraph (1) of such section 103(c)<sup>1</sup> does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (B) an annuity plan which meets the requirements for the deduction of the employer’s contributions under section 404(a)(2) of title 26, (C) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or

their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer’s contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 (other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26), or (iii) which is a plan funded by an annuity contract described in section 403(b) of title 26 (other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term “bank” means any national bank, or banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term “bank” has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.];

(3) Any note, draft, bill of exchange, or banker’s acceptance which arises out of a cur-

<sup>1</sup> See References in Text note below.

rent transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof of the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)];

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of title 26, (ii) a corporation described in section 501(c)(16) of title 26 and exempt from tax under section 501(a) of title 26, or (iii) a corporation described in section 501(c)(2) of title 26 which is exempt from tax under section 501(a) of title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons

to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 1842(a) of title 12 or a savings association under section 1467a(e) of title 12, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 1813(b) of title 12) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)].

(14) Any security futures product that is—

(A) cleared by a clearing agency registered under section 78q-1 of this title or exempt from registration under subsection (b)(7) of such section 78q-1; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title.

#### **(b) Additional exemptions**

##### **(1) Small issues exemptive authority**

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed

therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

**(2) Additional issues**

The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed \$50,000,000.

(B) The securities may be offered and sold publicly.

(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

(D) The civil liability provision in section 771(a)(2) of this title shall apply to any person offering or selling such securities.

(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

**(3) Limitation**

Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible

or exchangeable to equity interests, including any guarantees of such securities.

**(4) Periodic disclosures**

Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

**(5) Adjustment**

Not later than 2 years after April 5, 2012,<sup>1</sup> and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.

**(c) Securities issued by small investment company**

The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title I, § 3, 48 Stat. 75; June 6, 1934, ch. 404, title II, § 202, 48 Stat. 906; Feb. 4, 1887, ch. 104, title II, § 214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557; amended June 29, 1938, ch. 811, § 15, 52 Stat. 1240; May 15, 1945, ch. 122, 59 Stat. 167; Aug. 10, 1954, ch. 667, title I, § 5, 68 Stat. 684; Pub. L. 85-699, title III, § 307(a), Aug. 21, 1958, 72 Stat. 694; Pub. L. 91-373, title IV, § 401(a), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91-547, § 27(b), (c), Dec. 14, 1970, 84 Stat. 1434; Pub. L. 91-565, Dec. 19, 1970, 84 Stat. 1480; Pub. L. 91-567, § 6(a), Dec. 22, 1970, 84 Stat. 1498; Pub. L. 94-210, title III, § 308(a)(1), (3), Feb. 5, 1976, 90 Stat. 56, 57; Pub. L. 95-283, § 18, May 21, 1978, 92 Stat. 275; Pub. L. 95-425, § 2, Oct. 6, 1978, 92 Stat. 962; Pub. L. 95-598, title III, § 306, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 96-477, title III, § 301, title VII, § 701, Oct. 21, 1980, 94 Stat. 2291, 2294; Pub. L. 97-261, § 19(d), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-181, title II, §§ 203, 204, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 103-325, title III, § 320, Sept. 23, 1994, 108 Stat. 2225; Pub. L. 104-62, § 3, Dec. 8, 1995, 109 Stat. 684; Pub. L. 104-290, title V, § 508(b), Oct. 11, 1996, 110 Stat. 3447; Pub. L. 106-102, title II, § 221(a), Nov.



12, 1999, 113 Stat. 1401; Pub. L. 106-554, §1(a)(5) [title II, §208(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435; Pub. L. 108-359, §1(b), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111-203, title IX, §985(a)(1), July 21, 2010, 124 Stat. 1933; Pub. L. 112-106, title IV, §401(a), Apr. 5, 2012, 126 Stat. 323; Pub. L. 112-142, §2, July 9, 2012, 126 Stat. 989.)

## REFERENCES IN TEXT

Section 103 of title 26, referred to in subsec. (a)(2), which related to interest on certain governmental obligations was amended generally by Pub. L. 99-514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Investment Company Act of 1940, referred to in subsec. (a)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (b)(2)(G)(ii), is section 926 of Pub. L. 111-203, which is set out as a note under section 77d of this title.

April 5, 2012, referred to in subsec. (b)(5), was in the original “the date of enactment of the Small Company Capital Formation Act of 2011”, and was translated as meaning the date of enactment of the Jumpstart Our Business Startups Act, Pub. L. 112-106, which enacted subsec. (b)(5), to reflect the probable intent of Congress.

The Small Business Investment Act of 1958, referred to in subsec. (c), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

## AMENDMENTS

2012—Subsec. (a)(2). Pub. L. 112-142 inserted “(other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account)” after “403(b) of title 26” and “(other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26)” after “(ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26”.

Subsec. (b). Pub. L. 112-106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added pars. (2) to (5).

2010—Subsec. (a)(4). Pub. L. 111-203 substituted “individual,” for “individual;”.

2004—Subsec. (a)(2). Pub. L. 108-359 struck out “or” before “(C) a governmental plan” and substituted “or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)” for “other than any plan described in clause (A), (B), or (C)”.

2000—Subsec. (a)(14). Pub. L. 106-554 added par. (14).

1999—Subsec. (a)(2). Pub. L. 106-102 substituted “or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940” for “or any interest or participation in any common trust fund or simi-

lar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian”.

1996—Subsec. (a)(13). Pub. L. 104-290 added par. (13).

1995—Subsec. (a)(4). Pub. L. 104-62 inserted at end “or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;”.

1994—Subsec. (a)(12). Pub. L. 103-325 added par. (12).

1987—Subsec. (a)(1). Pub. L. 100-181, §203, substituted “Reserved.” for “Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;”.

Subsec. (a)(5)(A). Pub. L. 100-181, §204, struck out “, except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security” after “any such institution”.

1986—Subsec. (a)(2), (5). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” wherever appearing, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1982—Subsec. (a)(6). Pub. L. 97-261 struck out provisions relating to any security issued by a motor carrier subject to provisions of section 314 [11302] of title 49.

1980—Subsec. (a)(2). Pub. L. 96-477, §701, provided that single trust funds did not have to be maintained by banks in order to qualify for exemption from the provisions of this subchapter, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, provided that an interest, participation, or security could be issued in connection with certain governmental plans as defined in section 414(d) of title 26 and qualify for exemption from the provisions of this subchapter, and excluded from exemption plans described in cls. (A), (B), or (C) of par. (2) which were funded by annuity contracts described in section 403(b) of title 26.

Subsec. (b). Pub. L. 96-477, §301, substituted “\$5,000,000” for “\$2,000,000”.

1978—Subsec. (a)(7). Pub. L. 95-598, §306(a), substituted “or debtor in possession in a case under title 11” for “in bankruptcy”.

Subsec. (a)(9), (10). Pub. L. 95-598, §306(b), substituted “Except with respect to a security exchanged in a case under title 11, any” for “Any”.

Subsec. (b). Pub. L. 95-425 substituted “\$2,000,000” for “\$1,500,000”.

Pub. L. 95-283 substituted “\$1,500,000” for “\$500,000”.

1976—Subsec. (a)(6). Pub. L. 94-210 substituted provisions relating to any security issued by a motor carrier subject to the provisions of section 314 of title 49 or any interest in a railroad equipment trust, and provisions defining “interest in a railroad equipment trust”, for provisions relating to any security issued by a common or contract carrier, subject to the provisions of section 20a of title 49.

1970—Subsec. (a)(2). Pub. L. 91-567 exempted any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian, any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26, any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with a stock bonus, pension, or profit-sharing

plan which meets the requirements for qualification under section 401 of title 26, or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, directed the Commission to exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors, and provided that for the purposes of this paragraph a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank, and that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940.

Pub. L. 91-547, §27(b), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and exempted from registration provisions interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity interests or participations in bank collective trust funds maintained for funding of employees' stock bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and interests or participations issued by bank collective trust funds or insurance company separate accounts for funding certain stock-bonus, pension, profit-sharing, or annuity plans when the Commission by rule, regulation, or order determines this to be necessary in the public interest; provided that a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; substituted where first appearing "security issued or guaranteed by any bank" for "security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official", the latter provision now incorporated in a separate definition of term "bank"; and made the Investment Company Act definition of bank applicable as in the case of a common trust fund or similar fund, or a collective trust fund.

Pub. L. 91-373 inserted reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26.

Subsec. (a)(5). Pub. L. 91-547, §27(c), designated existing provisions as cl. (A), included cooperative bank issues, required the issuer to be an institution which is supervised and examined by State or Federal authority having supervision over such institution, struck out "substantially all the business of which is confined to the making of loans to members" after "similar institution" and substituted provisions designated as cl. (B) for prior provision relating to a security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932.

Subsec. (b). Pub. L. 91-565 substituted "\$500,000" for "\$300,000".

1958—Subsec. (c). Pub. L. 85-699 added subsec. (c).

1954—Subsec. (a)(11). Act Aug. 10, 1954, inserted "offered and" before "sold".

1945—Subsec. (b). Act May 15, 1945, substituted "\$300,000" for "\$100,000".

1938—Subsec. (a)(6). Act June 29, 1938, reenacted par. (6) without change.

1935—Subsec. (a)(6). Act Feb. 4, 1887, as added by act Aug. 9, 1935, included a security issued by a contract carrier.

1934—Subsec. (a). Act June 6, 1934, amended pars. (2), (4), and (8) and added pars. (9) to (11).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-102, title II, §225, Nov. 12, 1999, 113 Stat. 1402, provided that: "This subtitle [subtitle B (§§211-225) of title II of Pub. L. 106-102, enacting section 80b-10a of this title and amending this section and sections 78c, 80a-2, 80a-3, 80a-9, 80a-10, 80a-17, 80a-26, 80a-34, and 80b-2 of this title] shall take effect 18 months after the date of the enactment of this Act [Nov. 12, 1999]."

#### EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-62, §7, Dec. 8, 1995, 109 Stat. 686, provided that: "This Act [enacting section 80a-3a of this title, amending this section and sections 78c, 78f, 80a-3, 80a-7, and 80b-3 of this title, and enacting provisions set out as a note under section 80a-51 of this title] and the amendments made by this Act shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act [Dec. 8, 1995], as a defense to any claim that any person, security, interest, or participation of the type described in this Act and the amendments made by this Act is subject to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or any State statute or regulation preempted as provided in section 6 of this Act [enacting section 80a-3a of this title], except as otherwise specifically provided in such Acts or State law."

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-261, §31, Sept. 20, 1982, 96 Stat. 1129, provided that:

"(a) Except as provided in subsections (b) and (c) of this section, this Act [see Tables for classification] shall take effect on the 60th day after the date of enactment of this Act [Sept. 20, 1982].

"(b) The amendment made by section 10(e)(4) of this Act [amending provisions set out as a note under former section 10706 of Title 49, Transportation] shall take effect on October 1, 1982.

"(c) The provisions of sections 6(g) and 30 of this Act [amending former sections 10922 and 10525 of Title 49, respectively] shall take effect on the date of enactment of this Act [Sept. 20, 1982]."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-210, §308(d)(1), Feb. 5, 1976, 90 Stat. 57, provided that: "The amendments made by subsection (a) of this section [amending this section, section 77s of this title, and section 314 of former Title 49, Transportation] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976], but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day."

#### EFFECTIVE DATE OF 1970 AMENDMENTS

Pub. L. 91-567, §6(d), Dec. 22, 1970, 84 Stat. 1499, provided that: "The amendments made by this section [amending this section and sections 77ddd and 78c of this title] shall apply with respect to securities sold after January 1, 1970."

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

Pub. L. 91-373, title IV, § 401(c), Aug. 10, 1970, 84 Stat. 718, provided that: "The amendments made by this section [amending this section and section 78c of this title] shall apply with respect to securities sold after January 1, 1970."

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

#### REPEALS

Section 214 of act Feb. 4, 1887 (the Interstate Commerce Act), as added Aug. 9, 1935, ch. 498, 49 Stat. 557, cited as a credit to this section, was repealed by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2443, 2444.

#### 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.

#### FURTHER PROMOTING THE ADOPTION OF THE NAIC MODEL REGULATIONS THAT ENHANCE PROTECTION OF SENIORS AND OTHER CONSUMERS

Pub. L. 111-203, title IX, § 989J, July 21, 2010, 124 Stat. 1949, provided that:

"(a) IN GENERAL.—The Commission shall treat as exempt securities described under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance or endowment policy or annuity contract or optional annuity contract—

"(1) the value of which does not vary according to the performance of a separate account;

"(2) that—

"(A) satisfies standard nonforfeiture laws or similar requirements of the applicable State at the time of issue; or

"(B) in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners; and

"(3) that is issued—

"(A) on and after June 16, 2013, in a State, or issued by an insurance company that is domiciled in a State, that—

"(i) adopts rules that govern suitability requirements in the sale of an insurance or endowment policy or annuity contract or optional annuity contract, which shall substantially meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation adopted by the National Association of Insurance Commissioners in March 2010; and

"(ii) adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulations described in subparagraph (A) within 5 years of the adoption by the Association of any further successors thereto; or

"(B) by an insurance company that adopts and implements practices on a nationwide basis for the sale of any insurance or endowment policy or annuity contract or optional annuity contract that meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto, and is therefore subject to examination by the State of domicile of the insurance company, or by any other State where the insurance company con-

ducts sales of such products, for the purpose of monitoring compliance under this section.

"(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect whether any insurance or endowment policy or annuity contract or optional annuity contract that is not described in this section is or is not an exempt security under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8))."

[For definitions of terms used in section 989J of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

#### SECURITIES AND INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959

Pub. L. 91-547, § 29, Dec. 14, 1970, 84 Stat. 1436, provided that: "The provisions of the Securities Act of 1933 [this subchapter] and the Investment Company Act of 1940 [section 80a-1 et seq. of this title] shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other fund providing for the sharing of income or gains and losses, and any interest or participation in such account or fund) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses. Nothing herein contained shall be taken to imply that any such interest or participation constitutes a 'security' under any other laws of the United States."

#### § 77d. Exempted transactions

(a) The provisions of section 77e of this title shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 77c(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 77d-1(a) of this title; and

(D) the issuer complies with the requirements of section 77d-1(b) of this title.

(b)<sup>1</sup> Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(b)(1)<sup>1</sup> With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pur-

suant to section 78o(a)(1) of this title,<sup>2</sup> solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 78c(a)(39) of this title<sup>2</sup> and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term "ancillary services" means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(May 27, 1933, ch. 38, title I, § 4, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 203, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 6, 68 Stat. 684; Pub. L. 88-467, § 12, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, § 30, June 4, 1975, 89 Stat. 169; Pub. L. 96-477, title VI, § 602, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 111-203, title IX, § 944(a), July 21, 2010, 124 Stat. 1897; Pub. L. 112-106, title II, § 201(b), (c), title III, § 302(a), title IV, § 401(c), Apr. 5, 2012, 126 Stat. 314, 315, 325.)

#### REFERENCES IN TEXT

Section 201 of the Jumpstart Our Business Startups Act, referred to in subsec. (b), is section 201 of Pub. L. 112-106, which amended this section and enacted provisions set out as a note under this section.

Section 78o(a)(1) of this title, referred to in subsec. (b)(1), was in the original "section 15(a)(1) of this title" and was translated as meaning section 15(a)(1) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

Section 78c(a)(39) of this title, referred to in subsec. (b)(2)(C), was in the original "section 3(a)(39) of this

<sup>1</sup> So in original. Two subsecs. (b) have been enacted.

<sup>2</sup> See References in Text note below.

title” and was translated as meaning section 3(a)(39) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

#### AMENDMENTS

2012—Pub. L. 112–106, §201(b)(1), (c)(1), made identical amendments, designating existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 112–106, §401(c), which directed amendment of this section by substituting “section 77c(b)(1)” for “section 77c(b)” in par. (5), was executed by making the substitution in subsec. (a)(5) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (a)(6). Pub. L. 112–106, §302(a), which directed amendment of this section by adding par. (6) at the end, was executed by making the addition at the end of subsec. (a) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (b). Pub. L. 112–106, §201(c)(2), added subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter.

Pub. L. 112–106, §201(b)(2), added subsec. (b) relating to offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations.

2010—Pars. (5), (6). Pub. L. 111–203 redesignated par. (6) as (5) and struck out former par. (5) which related to exemption for certain transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and exemption for certain transactions between entities involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years.

1980—Par. (6). Pub. L. 96–477 added par. (6).

1975—Par. (5). Pub. L. 94–29 added par. (5).

1964—Pub. L. 88–467 substituted “shall not apply to—” for “shall not apply to any of the following transactions:” in introductory text.

Par. (1). Pub. L. 88–467 reenacted existing first provision of par. (1) and struck out second and third provisions, which are incorporated in pars. (2) and (3)(A) to (C).

Par. (2). Pub. L. 88–467 redesignated existing second provision of par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 88–467 redesignated existing third provision of par. (1) as (3), designated the excepted transactions as cls. (A) to (C), inserted in cl. (B) “or such shorter period as the Commission may specify by rules and regulations or order” and inserted sentence relating to the applicable period to transactions referred to in clause (B).

Par. (4). Pub. L. 88–467 redesignated former par. (2) as (4) and substituted “over-the-counter market” for “open or counter market”.

1954—Act Aug. 10, 1954, reduced from 1 year to 40 days the period during which the delivery of a prospectus is required in trading transactions as distinguished from initial distribution of the new securities.

1934—Act June 6, 1934, among other changes, repealed par. (3), provisions of which were replaced by section 77c(9), (10) of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 1975 AMENDMENT

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

#### EFFECTIVE DATE OF 1964 AMENDMENT

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

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

#### 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.

#### MODIFICATION OF EXEMPTION RULES

Pub. L. 112–106, title II, §201(a), Apr. 5, 2012, 126 Stat. 313, provided that:

“(1) Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 [now] 15 U.S.C. 77d[(a)](2)).

“(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.”

#### RULEMAKING

Pub. L. 112–106, title III, §302(c), Apr. 5, 2012, 126 Stat. 320, provided that: “Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission (in this title [enacting section 77d–1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] referred to as the ‘Commission’) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) [probably means “section 4(a)(6)”] and section 4A of the Securities Act of 1933 [15 U.S.C. 77d(a)(6), 77d–1], as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.”

#### DISQUALIFICATION

Pub. L. 112–106, title III, §302(d), Apr. 5, 2012, 126 Stat. 320, provided that:

“(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the [Securities and Exchange] Commission shall, by rule, establish disqualification provisions under which—

“(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) [probably means “section 4(a)(6)”] of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)], as added by this title; and

“(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

“(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

“(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

“(B) disqualify any offering or sale of securities by a person that—

“(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

“(I) bars the person from—

“(aa) association with an entity regulated by such commission, authority, agency, or officer;

“(bb) engaging in the business of securities, insurance, or banking; or

“(cc) engaging in savings association or credit union activities; or

“(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

“(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.”

DISQUALIFYING FELONS AND OTHER “BAD ACTORS”  
FROM REGULATION D OFFERINGS

Pub. L. 111-203, title IX, §926, July 21, 2010, 124 Stat. 1851, provided that: “Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

“(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

“(2) disqualify any offering or sale of securities by a person that—

“(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

“(i) bars the person from—

“(I) association with an entity regulated by such commission, authority, agency, or officer;

“(II) engaging in the business of securities, insurance, or banking; or

“(III) engaging in savings association or credit union activities; or

“(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

“(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.”

[For definitions of terms used in section 926 of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

**§ 77d-1. Requirements with respect to certain small transactions**

**(a) Requirements on intermediaries**

A person acting as an intermediary in a transaction involving the offer or sale of securities

for the account of others pursuant to section 77d(6)<sup>1</sup> of this title shall—

(1) register with the Commission as—

(A) a broker; or

(B) a funding portal (as defined in section 78c(a)(80)<sup>2</sup> of this title);

(2) register with any applicable self-regulatory organization (as defined in section 78c(a)(26) of this title);

(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

(4) ensure that each investor—

(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

(C) answers questions demonstrating—

(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(ii) an understanding of the risk of illiquidity; and

(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 77d(6)<sup>1</sup> of this title that, in the aggregate, from all issuers, exceed the investment limits set forth in section 77d(6)(B)<sup>1</sup> of this title;

(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

(10) not compensate promoters, finders, or lead generators for providing the broker or

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Two pars. (a)(80) of section 78c have been enacted.

funding portal with the personal identifying information of any potential investor;

(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

**(b) Requirements for issuers**

For purposes of section 77d(6)<sup>1</sup> of this title, an issuer who offers or sells securities shall—

(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

(A) the name, legal status, physical address, and website address of the issuer;

(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

(C) a description of the business of the issuer and the anticipated business plan of the issuer;

(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 77d(6)<sup>1</sup> of this title within the preceding 12-month period, have, in the aggregate, target offering amounts of—

(i) \$100,000 or less—

(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

(H) a description of the ownership and capital structure of the issuer, including—

(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

**(c) Liability for material misstatements and omissions**

**(1) Actions authorized**

**(A) In general**

Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 77d(6)<sup>1</sup> of this title may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for

such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

**(B) Liability**

An action brought under this paragraph shall be subject to the provisions of section 77l(b) of this title and section 77m of this title, as if the liability were created under section 77l(a)(2) of this title.

**(2) Applicability**

An issuer shall be liable in an action under paragraph (1), if the issuer—

(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 77d(6)<sup>1</sup> of this title, makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

**(3) Definition**

As used in this subsection, the term “issuer” includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 77d(6)<sup>1</sup> of this title, and any person who offers or sells the security in such offering.

**(d) Information available to States**

The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

**(e) Restrictions on sales**

Securities issued pursuant to a transaction described in section 77d(6)<sup>1</sup> of this title—

(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

(A) to the issuer of the securities;

(B) to an accredited investor;

(C) as part of an offering registered with the Commission; or

(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or

other similar circumstance, in the discretion of the Commission; and

(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

**(f) Applicability**

Section 77d(6)<sup>1</sup> of this title shall not apply to transactions involving the offer or sale of securities by any issuer that—

(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

(2) is subject to the requirement to file reports pursuant to section 78m of this title or section 78o(d) of this title;

(3) is an investment company, as defined in section 80a-3 of this title, or is excluded from the definition of investment company by section 80a-3(b) of this title or section 80a-3(c) of this title; or

(4) the Commission, by rule or regulation, determines appropriate.

**(g) Rule of construction**

Nothing in this section or section 77d(6)<sup>1</sup> of this title shall be construed as preventing an issuer from raising capital through methods not described under section 77d(6)<sup>1</sup> of this title.

**(h) Certain calculations**

**(1) Dollar amounts**

Dollar amounts in section 77d(6)<sup>1</sup> of this title and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

**(2) Income and net worth**

The income and net worth of a natural person under section 77d(6)(B)<sup>1</sup> of this title shall be calculated in accordance with any rules of the Commission under this subchapter regarding the calculation of the income and net worth, respectively, of an accredited investor.

(May 27, 1933, ch. 38, title I, §4A, as added Pub. L. 112-106, title III, §302(b), Apr. 5, 2012, 126 Stat. 315.)

REFERENCES IN TEXT

Section 77d(6) of this title, referred to in text, was redesignated section 77d(a)(6) of this title by Pub. L. 112-106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

**§ 77e. Prohibitions relating to interstate commerce and the mails**

**(a) Sale or delivery after sale of unregistered securities**

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any



means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

**(b) Necessity of prospectus meeting requirements of section 77j of this title**

It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

**(c) Necessity of filing registration statement**

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

**(d) Limitation**

Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

**(e) Security-based swaps**

Notwithstanding the provisions of section 77c or 77d of this title, unless a registration statement meeting the requirements of section 77j(a) of this title is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of title 7.

(May 27, 1933, ch. 38, title I, § 5, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 204, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 7, 68 Stat. 684; Pub. L. 111-203, title VII, § 768(b), July 21, 2010, 124 Stat.

1801; Pub. L. 112-106, title I, § 105(c), Apr. 5, 2012, 126 Stat. 311.)

AMENDMENT OF SECTION

*Unless otherwise provided, amendment by subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

AMENDMENTS

2012—Subsecs. (d), (e). Pub. L. 112-106 added subsec. (d) and redesignated former subsec. (d) as (e).

2010—Subsec. (d). Pub. L. 111-203 added subsec. (d).

1954—Subsec. (a)(1). Act Aug. 10, 1954, struck out “or offer to buy” after “to sell”.

Subsec. (b). Act Aug. 10, 1954, in par. (1) substituted “with respect to which a registration statement has been filed” for “registered” and in par. (2) omitted “to” after “to carry or” and inserted “subsection (a) of” before “section 77j of this title”.

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

1934—Act June 6, 1934, repealed subsec. (c), the provisions of which were replaced by section 77c(a)(11) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

INCREASED ACCESS TO FOREIGN BUSINESS INFORMATION

Pub. L. 104-290, title I, § 109, Oct. 11, 1996, 110 Stat. 3426, provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall adopt rules under the Securities Act of 1933 [15 U.S.C. 77a et seq.] concerning the status under the registration provisions of the Securities Act of 1933 of foreign press conferences and foreign press releases by persons engaged in the offer and sale of securities.”

**§ 77f. Registration of securities**

**(a) Method of registration**

Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political

subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this subchapter. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

**(b) Registration fee**

**(1) Fee payment required**

At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to \$92 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

**(2) Annual adjustment**

For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target fee collection amount for such fiscal year.

**(3) Pro rata application**

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

**(4) Review and effective date**

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

**(5) Publication**

The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 78m(e) and 78n(g)<sup>1</sup> of this title for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

**(6) Definitions**

For purposes of this subsection:

**(A) Target fee collection amount**

The target fee collection amount for each fiscal year is determined according to the following table:

2002 .....	\$377,000,000
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2003 .....	\$435,000,000
2004 .....	\$467,000,000
2005 .....	\$570,000,000
2006 .....	\$689,000,000
2007 .....	\$214,000,000
2008 .....	\$234,000,000
2009 .....	\$284,000,000
2010 .....	\$334,000,000
2011 .....	\$394,000,000
2012 .....	\$425,000,000
2013 .....	\$455,000,000
2014 .....	\$485,000,000
2015 .....	\$515,000,000
2016 .....	\$550,000,000
2017 .....	\$585,000,000
2018 .....	\$620,000,000
2019 .....	\$660,000,000
2020 .....	\$705,000,000
2021 and each fiscal year thereafter.	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.

**(B) Baseline estimate of the aggregate maximum offering prices**

The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 907 of title 2.

**(c) Time registration effective**

The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b) of this section.

**(d) Information available to public**

The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

**(e) Emerging growth companies**

**(1) In general**

Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not

<sup>1</sup> See References in Text note below.

later than 21 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto.

## (2) Confidentiality

Notwithstanding any other provision of this subchapter, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 78x(b)(2) of this title.

(May 27, 1933, ch. 38, title I, § 6, 48 Stat. 78; Pub. L. 89-289, § 1, Oct. 22, 1965, 79 Stat. 1051; Pub. L. 100-181, title II, § 205, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104-290, title IV, § 404, Oct. 11, 1996, 110 Stat. 3441; Pub. L. 107-123, § 4, Jan. 16, 2002, 115 Stat. 2393; Pub. L. 111-203, title IX, § 991(b)(1), July 21, 2010, 124 Stat. 1951; Pub. L. 112-106, title I, § 106(a), Apr. 5, 2012, 126 Stat. 312.)

## REFERENCES IN TEXT

Sections 78m(e) and 78n(g) of this title, referred to in subsec. (b)(5), were in the original, “sections 13(e) and 14(g)” and were translated as meaning sections 13(e) and 14(g) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

## AMENDMENTS

2012—Subsec. (e). Pub. L. 112-106 added subsec. (e).

2010—Subsec. (b). Pub. L. 111-203, § 991(b)(1)(A)–(G), in par. (5), substituted “target fee” for “target offsetting” and, in par. (11)(A), substituted “Target fee” for “Target offsetting” in heading and table and “target fee” for “target offsetting” in introductory provisions, redesignated pars. (2), (5), (7), (10), and (11) as (1), (2), (3), (5), and (6), respectively, and struck out former pars. (1), (3), (4), (6), (8), and (9) which related to recovery of cost of services, offsetting collections, prohibition of treatment of fees as general revenues, final rate adjustment, review and effective date of rates, and rate during lapse of appropriation, respectively.

Subsec. (b)(1). Pub. L. 111-203, § 991(b)(1)(H), substituted “paragraph (2).” for “paragraph (5) or (6).”

Subsec. (b)(2). Pub. L. 111-203, § 991(b)(1)(I), substituted “For each fiscal year” for “For each of the fiscal years 2003 through 2011” and “paragraph (1)” for “paragraph (2).”

Subsec. (b)(4). Pub. L. 111-203, § 991(b)(1)(J), added par. (4). Former par. (4) struck out.

Subsec. (b)(5). Pub. L. 111-203, § 991(b)(1)(K), substituted “August 31” for “April 30”.

Subsec. (b)(6)(A). Pub. L. 111-203, § 991(b)(1)(L), substituted “each fiscal year” for “each of the fiscal years 2002 through 2011” in introductory provisions and, in table, added items for fiscal years 2012 to 2021 and each fiscal year thereafter.

2002—Subsec. (b)(2) to (11). Pub. L. 107-123 added pars. (2) to (11) and struck out former pars. (2) to (5), which required fee payment, set out rates for general revenue and offsetting collection fees, and required pro rata rates for amounts and balances equal to less than \$1,000,000.

1996—Subsec. (b). Pub. L. 104-290 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: “At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than \$100.”

1987—Subsec. (e). Pub. L. 100-181 struck out subsec. (e) which provided that no registration statement should be filed within the first 40 days following May 27, 1933.

1965—Subsec. (b). Pub. L. 89-289 substituted “one-fiftieth” for “one one-hundredth” and “\$100” for “\$25”.

## EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title IX, § 991(b)(4), July 21, 2010, 124 Stat. 1953, provided that: “The amendments made by this subsection [amending this section and sections 78m and 78n of this title] shall take effect on October 1, 2011, except that for fiscal year 2012, the [Securities and Exchange] Commission shall publish the rate established under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), as amended by this Act, on August 31, 2011.”

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-123 effective Oct. 1, 2001, except that authorities provided by subsec. (b)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107-123, set out as a note under section 78ee of this title.

## EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-289, § 2, Oct. 22, 1965, 79 Stat. 1051, provided that: “The amendment made by the first section of this Act [amending this section] shall take effect January 1, 1966.”

## 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.

## INCREASE IN REGISTRATION FEES AND DEPOSIT INTO TREASURY

Pub. L. 105-46, § 113, Sept. 30, 1997, 111 Stat. 1156, provided that the amount made available to the Securities and Exchange Commission, under the heading Salaries and Expenses, was to include, in addition to direct appropriations, the amount collected under the fee rate and offsetting collection authority contained in Public Law 104-208, which fee rate and offsetting collection authority was to remain in effect during the period of Pub. L. 105-46 which provided continuing appropriations for fiscal year 1998.

Pub. L. 104-208, div. A, title I, § 101(a) [title V], Sept. 30, 1996, 110 Stat. 3009, 3009-61, which provided in part that on Sept. 30, 1996, the rate of fees under subsec. (b) of this section were increased from one-fiftieth of one percentum to one-thirty-third of one percentum, and such increase was to be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover costs of services of the securities registration process, was from the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-134, title I, § 101(a) [title V], Apr. 26, 1996, 110 Stat. 1321, 1321-60; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 104-99, title II, § 209, Jan. 26, 1996, 110 Stat. 37.

Pub. L. 104-56, § 119, Nov. 20, 1995, 109 Stat. 552.

Pub. L. 104-54, § 119, Nov. 19, 1995, 109 Stat. 544.

Pub. L. 104-31, § 120, Sept. 30, 1995, 109 Stat. 282.

Pub. L. 103-352, Oct. 10, 1994, 108 Stat. 3148.

Pub. L. 103-121, title I, Oct. 27, 1993, 107 Stat. 1168.

Pub. L. 102-395, title I, Oct. 6, 1992, 106 Stat. 1848.

Pub. L. 102-140, title I, Oct. 28, 1991, 105 Stat. 798.

Pub. L. 101-515, title V, Nov. 5, 1990, 104 Stat. 2139.

Pub. L. 101-162, title V, Nov. 21, 1989, 103 Stat. 1022.

**§ 77g. Information required in registration statement**

**(a) Information required in registration statement**

**(1) In general**

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A of section 77aa of this title, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B of section 77aa of this title; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

**(2) Treatment of emerging growth companies**

An emerging growth company—

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and

(B) may not be required to comply with any new or revised financial accounting

standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

**(b) Registration statement for blank check companies**

(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors—

(A) require such issuers to provide timely disclosure, prior to or after such statement becomes effective under section 77h of this title, of (i) information regarding the company to be acquired and the specific application of the proceeds of the offering, or (ii) additional information necessary to prevent such statement from being misleading;

(B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and

(C) provide a right of rescission to shareholders of such securities.

(2) The Commission may, as it determines consistent with the public interest and the protection of investors, by rule or order exempt any issuer or class of issuers from the rules prescribed under paragraph (1).

(3) For purposes of paragraph (1) of this subsection, the term “blank check company” means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title) and that—

(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.

**(c) Disclosure requirements**

**(1) In general**

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

**(2) Content of regulations**

In adopting regulations under this subsection, the Commission shall—

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

(i) data having unique identifiers relating to loan brokers or originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

(iii) the amount of risk retention by the originator and the securitizer of such assets.

**(d) Registration statement for asset-backed securities**

Not later than 180 days after July 21, 2010, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 78c(a)(77)<sup>1</sup> of this title) that require any issuer of an asset-backed security—

- (1) to perform a review of the assets underlying the asset-backed security; and
- (2) to disclose the nature of the review under paragraph (1).

(May 27, 1933, ch. 38, title I, § 7, 48 Stat. 78; Pub. L. 101-429, title V, § 508, Oct. 15, 1990, 104 Stat. 956; Pub. L. 111-203, title IX, §§ 942(b), 945, July 21, 2010, 124 Stat. 1897, 1898; Pub. L. 112-106, title I, § 102(b)(1), Apr. 5, 2012, 126 Stat. 309.)

REFERENCES IN TEXT

Section 78c(a)(77) of this title, referred to in subsec. (d), was redesignated section 78c(a)(79) of this title by Pub. L. 112-106, title I, § 101(b)(1), Apr. 5, 2012, 126 Stat. 307.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112-106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

2010—Subsec. (c). Pub. L. 111-203, § 942(b), added subsec. (c).

Subsec. (d). Pub. L. 111-203, § 945, added subsec. (d).

1990—Pub. L. 101-429 designated existing provision as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-429, § 1(c), Oct. 15, 1990, 104 Stat. 931, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this Act [enacting sections 77h-1, 78q-2, 78u-2, and 78u-3 of this title, amending this section and sections 77t, 78c, 78o, 78o-3, 78o-4, 78q-1, 78u, 78u-1, 78w, 78cc, 80a-9, 80a-41, 80b-3, 80b-9, and 80b-14 of this title, and enacting provisions set out as notes under sections 78a, 78o, and 78s of this title] shall be effective upon enactment [Oct. 15, 1990].

“(2) CIVIL PENALTIES.—

“(A) IN GENERAL.—No civil penalty may be imposed pursuant to the amendments made by this Act on the basis of conduct occurring before the date of enactment of this Act [Oct. 15, 1990].

“(B) ACCOUNTING AND DISGORGEMENT.—Subparagraph (A) shall not operate to preclude the Securities and Exchange Commission from ordering an accounting or disgorgement pursuant to the amendments made by this Act.

“(3) SPECIAL RULES FOR TITLE V.—

“(A) SECTIONS 503 AND 504.—Except as provided in subparagraph (C), sections 503 [amending section 78c of this title] and 504 [amending section 78o of this title and enacting provisions set out as a note under section 78o of this title] shall be effective 12 months after the date of enactment of this Act [Oct. 15, 1990] or upon the issuance of final regulations initially implementing such section [Such regulations were is-

sued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

“(B) SECTIONS 505 AND 508.—Except as provided in subparagraph (C), sections 505 [amending section 78o of this title] and 508 [amending this section] shall be effective 18 months after the date of enactment of this Act or upon the issuance of final regulations initially implementing such sections [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

“(C) COMMENCEMENT OF RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Commission shall commence rulemaking proceedings to implement sections 503, 505, and 508.”

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.

OTHER DISCLOSURES

Pub. L. 112-106, title I, § 102(c), Apr. 5, 2012, 126 Stat. 310, provided that: “An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations, or any successor thereto, by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than \$75,000,000.”

**§ 77h. Taking effect of registration statements and amendments thereto**

**(a) Effective date of registration statement**

Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

**(b) Incomplete or inaccurate registration statement**

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the

<sup>1</sup> See References in Text note below.

sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) of this section or upon the date of such declaration, whichever date is the later.

**(c) Effective date of amendment to registration statement**

An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

**(d) Untrue statements or omissions in registration statement**

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.

**(e) Examination for issuance of stop order**

The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d) of this section. In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

**(f) Notice requirements**

Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement,

properly directed in each case of telegraphic notice to the address given in such statement.

(May 27, 1933, ch. 38, title I, § 8, 48 Stat. 79; Aug. 22, 1940, ch. 686, title III, § 301, 54 Stat. 857.)

AMENDMENTS

1940—Subsec. (a). Act Aug. 22, 1940, amended subsec. (a) generally.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

**§ 77h-1. Cease-and-desist proceedings**

**(a) Authority of Commission**

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

**(b) Hearing**

The notice instituting proceedings pursuant to subsection (a) of this section shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

**(c) Temporary order**

**(1) In general**

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conver-

sion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceeding. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

**(2) Applicability**

This subsection shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

**(d) Review of temporary orders**

**(1) Commission review**

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (c) of this section, the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

**(2) Judicial review**

Within—

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

**(3) No automatic stay of temporary order**

The commencement of proceedings under paragraph (2) of this subsection shall not, un-

less specifically ordered by the court, operate as a stay of the Commission's order.

**(4) Exclusive review**

Section 77i(a) of this title shall not apply to a temporary order entered pursuant to this section.

**(e) Authority to enter order requiring accounting and disgorgement**

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

**(f) Authority of the Commission to prohibit persons from serving as officers or directors**

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 77q(a)(1) of this title or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.

**(g) Authority to impose money penalties**

**(1) Grounds**

In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

(A) such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation thereunder; and

(B) such penalty is in the public interest.

**(2) Maximum amount of penalty**

**(A) First tier**

The maximum amount of a penalty for each act or omission described in paragraph (1) shall be \$7,500 for a natural person or \$75,000 for any other person.

**(B) Second tier**

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$75,000 for a natural person or \$375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

**(C) Third tier**

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for

each such act or omission shall be \$150,000 for a natural person or \$725,000 for any other person, if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in—

(I) substantial losses or created a significant risk of substantial losses to other persons; or

(II) substantial pecuniary gain to the person who committed the act or omission.

### (3) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.

(May 27, 1933, ch. 38, title I, §8A, as added Pub. L. 101-429, title I, §102, Oct. 15, 1990, 104 Stat. 933; amended Pub. L. 107-204, title XI, §1105(b), July 30, 2002, 116 Stat. 809; Pub. L. 111-203, title IX, §929P(a)(1), July 21, 2010, 124 Stat. 1862.)

#### AMENDMENTS

2010—Subsec. (g). Pub. L. 111-203 added subsec. (g).

2002—Subsec. (f). Pub. L. 107-204 added subsec. (f).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### EFFECTIVE DATE

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

### § 77i. Court review of orders

(a) Any person aggrieved by an order of the Commission may obtain a review of such order in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such Court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. No objection to the order of the Commission shall be considered by the

court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(May 27, 1933, ch. 38, title I, §9, 48 Stat. 80; Pub. L. 85-791, §9, Aug. 28, 1958, 72 Stat. 945; Pub. L. 100-181, title II, §206, Dec. 4, 1987, 101 Stat. 1252.)

#### AMENDMENTS

1987—Subsec. (a). Pub. L. 100-181 substituted "court of appeals" for "Circuit Court of Appeals", "United States Court of Appeals for the District of Columbia, by filing in such Court" for "Court of Appeals of the District of Columbia, by filing in such court", and "section 1254 of title 28" for "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)".

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", struck out "certify and" before "file in the court", struck out "a transcript of" after "file in the court", and inserted "as provided in section 2112 of title 28".

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 77j. Information required in prospectus

#### (a) Information in registration statement; documents not required

Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e) of this section—

(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A of section 77aa of this title;



(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B of section 77aa of this title;

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

(4) there may be omitted from any prospectus any of the information required under this subsection which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

**(b) Summarizations and omissions allowed by rules and regulations**

In addition to the prospectus permitted or required in subsection (a) of this section, the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 77e of this title which omits in part or summarizes information in the prospectus specified in subsection (a) of this section. A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 77k of this title. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection, if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

**(c) Additional information required by rules and regulations**

Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

**(d) Classification of prospectuses**

In the exercise of its powers under subsections (a), (b), or (c) of this section, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

**(e) Information in conspicuous part of prospectus**

The statements or information required to be included in a prospectus by or under authority of subsections (a), (b), (c), or (d) of this section, when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

**(f) Prospectus consisting of radio or television broadcast**

In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this subchapter.

(May 27, 1933, ch. 38, title I, § 10, 48 Stat. 81; June 6, 1934, ch. 404, title II, § 205, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 8, 68 Stat. 685.)

AMENDMENTS

1954—Act Aug. 10, 1954, complemented changes in section 77e of this title by act Aug. 10, 1954, permitted offering activities in the waiting period and in so doing rearranged the sequence of the subsections, added new text contained in subsec. (b), and renumbered subsecs. (c) and (d) as (e) and (f), respectively.

1934—Subsec. (b)(1). Act June 6, 1934, amended par. (1).

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

**§ 77k. Civil liabilities on account of false registration statement**

**(a) Persons possessing cause of action; persons liable**

In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such un-

truth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions) or partner in the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

**(b) Persons exempt from liability upon proof of issues**

Notwithstanding the provisions of subsection (a) of this section no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—

(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1) of this subsection, and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3) that (A) as regards any part of the registration statement not purporting to be made

on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

**(c) Standard of reasonableness**

In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

**(d) Effective date of registration statement with regard to underwriters**

If any person becomes an underwriter with respect to the security after the part of the reg-

istration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

**(e) Measure of damages; undertaking for payment of costs**

The suit authorized under subsection (a) of this section may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided*, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) of this section for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this subchapter the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

**(f) Joint and several liability; liability of outside director**

(1) Except as provided in paragraph (2), all or any one or more of the persons specified in subsection (a) of this section shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract

from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(2)(A) The liability of an outside director under subsection (e) of this section shall be determined in accordance with section 78u-4(f) of this title.

(B) For purposes of this paragraph, the term "outside director" shall have the meaning given such term by rule or regulation of the Commission.

**(g) Offering price to public as maximum amount recoverable**

In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

(May 27, 1933, ch. 38, title I, § 11, 48 Stat. 82; June 6, 1934, ch. 404, title II, § 206, 48 Stat. 907; Pub. L. 104-67, title II, § 201(b), Dec. 22, 1995, 109 Stat. 762; Pub. L. 105-353, title III, § 301(a)(2), Nov. 3, 1998, 112 Stat. 3235.)

AMENDMENTS

1998—Subsec. (f)(2)(A). Pub. L. 105-353 made technical amendment to reference in original act which appears in text as reference to section 78u-4(f) of this title.

1995—Subsec. (f). Pub. L. 104-67 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), all" for "All", and added par. (2).

1934—Subsec. (a). Act June 6, 1934, inserted last par. Subsecs. (b)(3), (c) to (e). Act June 6, 1934, amended subsecs. (b)(3) and (c) to (e).

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-67, title II, § 202, Dec. 22, 1995, 109 Stat. 762, provided that: "The amendments made by this title [amending this section and section 78u-4 of this title] shall not affect or apply to any private action arising under the securities laws commenced before and pending on the date of enactment of this Act [Dec. 22, 1995]."

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

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.

**§ 771. Civil liabilities arising in connection with prospectuses and communications**

**(a) In general**

Any person who—

(1) offers or sells a security in violation of section 77e of this title, or

(2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of

the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable, subject to subsection (b) of this section, to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

**(b) Loss causation**

In an action described in subsection (a)(2) of this section, if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) of this section represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.

(May 27, 1933, ch. 38, title I, §12, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, §9, 68 Stat. 686; Pub. L. 104-67, title I, §105, Dec. 22, 1995, 109 Stat. 757; Pub. L. 106-554, §1(a)(5) [title II, §208(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106-554 substituted “paragraphs (2) and (14)” for “paragraph (2)”.

1995—Pub. L. 104-67 designated existing provisions as subsec. (a), inserted heading, inserted “, subject to subsection (b) of this section,” after “shall be liable” in concluding provisions, and added subsec. (b).

1954—Act Aug. 10, 1954, inserted “offers or” before “sells” in pars. (1) and (2).

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-67, title I, §108, Dec. 22, 1995, 109 Stat. 758, provided that: “The amendments made by this title [enacting sections 77z-1, 77z-2, 78u-4, and 78u-5 of this title and amending this section and sections 77t, 78o, 78t, and 78u of this title and section 1964 of Title 18, Crimes and Criminal Procedure] shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or title I of the Securities Act of 1933 [15 U.S.C. 77a et seq.], commenced before and pending on the date of enactment of this Act [Dec. 22, 1995].”

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from re-

stricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

**§ 77m. Limitation of actions**

No action shall be maintained to enforce any liability created under section 77k or 77l(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77l(a)(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 77k or 77l(a)(1) of this title more than three years after the security was bona fide offered to the public, or under section 77l(a)(2) of this title more than three years after the sale.

(May 27, 1933, ch. 38, title I, §13, 48 Stat. 84; June 6, 1934, ch. 404, title II, §207, 48 Stat. 908; Pub. L. 105-353, title III, §301(a)(3), Nov. 3, 1998, 112 Stat. 3235.)

AMENDMENTS

1998—Pub. L. 105-353 substituted “77l(a)(2)” for “77l(2)” in two places and “77l(a)(1)” for “77l(1)” in two places.

1934—Act June 6, 1934, substituted “one year” for “two years”, “three years” for “ten years”, and inserted “or under section 77l(2) of this title more than three years after the sale”.

**§ 77n. Contrary stipulations void**

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this subchapter or of the rules and regulations of the Commission shall be void.

(May 27, 1933, ch. 38, title I, §14, 48 Stat. 84.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

**§ 77o. Liability of controlling persons**

**(a) Controlling persons**

Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77l of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

**(b) Prosecution of persons who aid and abet violations**

For purposes of any action brought by the Commission under subparagraph (b) or (d) of sec-

tion 77t of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(May 27, 1933, ch. 38, title I, §15, 48 Stat. 84; June 6, 1934, ch. 404, title II, §208, 48 Stat. 908; Pub. L. 111-203, title IX, §929M(a), July 21, 2010, 124 Stat. 1861.)

#### AMENDMENTS

2010—Pub. L. 111-203 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1934—Act June 6, 1934, exempted from liability controlling persons having no knowledge or reasonable grounds for belief.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

### § 77p. Additional remedies; limitation on remedies

#### (a) Remedies additional

Except as provided in subsection (b) of this section, the rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

#### (b) Class action limitations

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

- (1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or
- (2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

#### (c) Removal of covered class actions

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

#### (d) Preservation of certain actions

##### (1) Actions under State law of State of incorporation

###### (A) Actions preserved

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

###### (B) Permissible actions

A covered class action is described in this subparagraph if it involves—

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

(ii) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

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

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

#### (2) State actions

##### (A) In general

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

##### (B) "State pension plan" defined

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

#### (3) Actions under contractual agreements between issuers and indenture trustees

Notwithstanding subsection (b) or (c) of this section, a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

#### (4) Remand of removed actions

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

#### (e) Preservation of State jurisdiction

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

#### (f) Definitions

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

##### (1) Affiliate of the issuer

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

##### (2) Covered class action

###### (A) In general

The term "covered class action" means—

(i) any single lawsuit in which—

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

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

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

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

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

**(B) Exception for derivative actions**

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

**(C) Counting of certain class members**

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

**(D) Rule of construction**

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

**(3) Covered security**

The term “covered security” means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 77r(b) of this title at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under this subchapter pursuant to rules issued by the Commission under section 77d(2)<sup>1</sup> of this title.

(May 27, 1933, ch. 38, title I, § 16, 48 Stat. 84; Pub. L. 105-353, title I, § 101(a)(1), Nov. 3, 1998, 112 Stat. 3227.)

REFERENCES IN TEXT

Section 77d(2) of this title, referred to in subsec. (f)(3), was redesignated section 77d(a)(2) of this title by

<sup>1</sup> See References in Text note below.

Pub. L. 112-106, title II, § 201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

AMENDMENTS

1998—Pub. L. 105-353 amended section catchline and text generally. Prior to amendment, text read as follows: “The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-353, title I, § 101(c), Nov. 3, 1998, 112 Stat. 3233, provided that: “The amendments made by this section [amending this section and sections 77v, 77z-1, 78u-4, and 78bb of this title] shall not affect or apply to any action commenced before and pending on the date of enactment of this Act [Nov. 3, 1998].”

**§ 77q. Fraudulent interstate transactions**

**(a) Use of interstate commerce for purpose of fraud or deceit**

It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78)<sup>1</sup> of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**(b) Use of interstate commerce for purpose of offering for sale**

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

**(c) Exemptions of section 77c not applicable to this section**

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

**(d) Authority with respect to security-based swap agreements**

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 78c(a)(78) of this title) shall be subject to the restrictions and limitations of section 77b-1(b) of this title.

(May 27, 1933, ch. 38, title I, § 17, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, § 10, 68 Stat. 686; Pub. L.

<sup>1</sup> See References in Text note below.

106-554, §1(a)(5) [title III, §302(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-452; Pub. L. 111-203, title VII, §762(c)(2), July 21, 2010, 124 Stat. 1759.)

#### AMENDMENT OF SECTION

*Unless otherwise provided, amendment by subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

#### REFERENCES IN TEXT

Section 78c(a)(78) of this title, referred to in subsec. (a), was in the original “section 3(a)(78) of the Securities Exchange Act”, and was translated as meaning section 3(a)(78) of act June 6, 1934, ch. 404, to reflect the probable intent of Congress.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §762(c)(2)(A), in introductory provisions, inserted “(including security-based swaps)” after “securities” and substituted “(as defined in section 78c(a)(78) of this title)” for “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

Subsec. (d). Pub. L. 111-203, §762(c)(2)(B), substituted “78c(a)(78) of this title” for “206B of the Gramm-Leach-Bliley Act”.

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title III, §302(b)], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

“(1) to employ any device, scheme, or artifice to defraud, or

“(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

“(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”

Subsec. (d). Pub. L. 106-554, §1(a)(5) [title III, §302(c)], added subsec. (d).

1954—Subsec. (a). Act Aug. 10, 1954, inserted “offer or” before “sale” in introductory text.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

### § 77r. Exemption from State regulation of securities offerings

#### (a) Scope of exemption

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b) of this section, any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o-3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

#### (b) Covered securities

For purposes of this section, the following are covered securities:

##### (1) Exclusive Federal registration of nationally traded securities

A security is a covered security if such security is—

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

##### (2) Exclusive Federal registration of investment companies

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

##### (3) Sales to qualified purchasers

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission

may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

**(4) Exemption in connection with certain exempt offerings**

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

(A) paragraph (1) or (3) of section 77d<sup>1</sup> of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;

(B) section 77d(4)<sup>1</sup> of this title;

(C) section 77d(6)<sup>1</sup> of this title;

(D)<sup>2</sup> a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(D)<sup>2</sup> section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

(E) Commission rules or regulations issued under section 77d(2)<sup>1</sup> of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2)<sup>1</sup> of this title that are in effect on September 1, 1996.

**(c) Preservation of authority**

**(1) Fraud authority**

Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions<sup>3</sup>

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to<sup>4</sup> a transaction described under section 77d(6)<sup>1</sup> of this title, with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

**(2) Preservation of filing requirements**

**(A) Notice filings permitted**

Nothing in this section prohibits the securities commission (or any agency or office

performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

**(B) Preservation of fees**

**(i) In general**

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

**(ii) Schedule**

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a) of this section.

**(C) Availability of preemption contingent on payment of fees**

**(i) In general**

During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

**(ii) Delays**

For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

**(D) Fees not permitted on listed securities**

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1) of this section, or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1) of this section.

**(F)<sup>5</sup> Fees not permitted on crowdfunded securities**

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered se-

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. There are two subpars. (D).

<sup>3</sup> So in original. The words “in connection with securities or securities transactions” probably should be part of subpar. (A).

<sup>4</sup> So in original. Probably should be “with”.

<sup>5</sup> So in original. No subpar. (E) has been enacted.



curity pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term “State” includes the District of Columbia and the territories of the United States.

### (3) Enforcement of requirements

Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

### (d) Definitions

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

#### (1) Offering document

The term “offering document”—

(A) has the meaning given the term “prospectus” in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

#### (2) Prepared by or on behalf of the issuer

Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term “prepared by or on behalf of the issuer” for purposes of this section.

#### (3) State

The term “State” has the same meaning as in section 78c of this title.

#### (4) Senior security

The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

(May 27, 1933, ch. 38, title I, § 18, 48 Stat. 85; Pub. L. 104-290, title I, § 102(a), Oct. 11, 1996, 110 Stat. 3417; Pub. L. 105-353, title III, §§ 301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub. L. 111-203, title IX, § 985(a)(2), July 21, 2010, 124 Stat. 1933; Pub. L. 112-106, title III, § 305(a), (b)(2), (c), (d)(2), title IV, § 401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325.)

#### REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

Section 77d(1), (2), (3), (4), and (6) of this title, referred to in subssecs. (b)(4)(A) to (C), (E) and (c)(1)(B), were redesignated section 77d(a)(1), (2), (3), (4), and (6), respectively, of this title by Pub. L. 112-106, title II, § 201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

#### AMENDMENTS

2012—Subsec. (b)(4)(C). Pub. L. 112-106, § 305(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(4)(D). Pub. L. 112-106, § 401(b), added subpar. (D) relating to section 77c(b)(2) of this title.

Pub. L. 112-106, § 305(a)(1), redesignated subpar. (C), relating to section 77c(a) of this title, as (D). Former subpar (D) redesignated (E).

Subsec. (b)(4)(E). Pub. L. 112-106, § 305(a)(1), redesignated subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 112-106, § 305(b)(2), substituted “, in connection with securities or securities transactions” for “with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.” and added subpars. (A) and (B).

Subsec. (c)(1)(A)(ii). Pub. L. 112-106, § 305(d)(2), which directed amendment of subsec. (c)(1) by substituting “, dealer, or funding portal” for “or dealer”, was executed by making the substitution in subpar. (A)(ii) as added by Pub. L. 112-106, § 305(b)(2).

Subsec. (c)(2)(F). Pub. L. 112-106, § 305(c), added subpar. (F).

2010—Subsec. (b)(1)(C). Pub. L. 111-203, § 985(a)(2)(A), substituted “(C) a security” for “(C) is a security”.

Subsec. (c)(2)(B)(i). Pub. L. 111-203, § 985(a)(2)(B), substituted “State or” for “State, or”.

1998—Subsec. (b)(1)(A). Pub. L. 105-353, § 301(a)(4)(A), inserted “, or authorized for listing,” after “Exchange, or listed”.

Subsec. (b)(4)(C). Pub. L. 105-353, § 302, substituted “paragraph (4), (10), or (11)” for “paragraph (4) or (11)”.

Subsec. (c)(2)(B)(i), (C)(i). Pub. L. 105-353, § 301(a)(4)(B), (C), made technical amendments to references in original act which appear in text as references to October 11, 1996.

Subsec. (d)(1)(A). Pub. L. 105-353, § 301(a)(4)(D), substituted “section 77b(a)(10)” for “section 77b(10)” and “subparagraphs (a) and (b)” for “subparagraphs (A) and (B)”.

Subsec. (d)(2). Pub. L. 105-353, § 301(a)(4)(E), made technical amendment to reference in original act which appears in text as reference to October 11, 1996.

Subsec. (d)(4). Pub. L. 105-353, § 301(a)(4)(F), substituted “The term” for “For purposes of this paragraph, the term”.

1996—Pub. L. 104-290 substituted “Exemption from State regulation of securities offerings” for “State control of securities” as section catchline and amended text generally. Prior to amendment, text read as follows: “Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### 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.

#### CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY

Pub. L. 112-106, title III, § 305(b)(1), Apr. 5, 2012, 126 Stat. 322, provided that: The amendments made by subsection (a) [amending this section] relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of [the] Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding

portal, or any other person or entity using the exemption from registration provided by section 4(6) [probably means “section 4(a)(6)”] of that Act [15 U.S.C. 77d(a)(6)].”

STUDY AND REPORT ON UNIFORMITY OF STATE  
REGULATORY REQUIREMENTS

Pub. L. 104-290, title I, §102(b), Oct. 11, 1996, 110 Stat. 3420, provided that: “The Commission shall conduct a study, after consultation with States, issuers, brokers, and dealers, on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933 [15 U.S.C. 77r], as amended by paragraph (1) of this subsection). Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of such study.”

**§ 77r-1. Preemption of State law**

**(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States**

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

(A) offered and sold pursuant to section 77d(5)<sup>1</sup> of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 77d(5)<sup>1</sup> of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

**(b) Exception; validity of contracts under prior law**

The provisions of subsection (a) of this section shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of

seven years after October 3, 1984, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a) of this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

**(c) Registration and qualification requirements; exemption; subsequent enactment by State**

Any securities that are offered and sold pursuant to section 77d(5)<sup>1</sup> of this title, that are mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or that are small business related securities (as defined in section 78c(a)(53) of this title) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after October 3, 1984, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

**(d) Implementation**

**(1) Limitation**

The provisions of subsections (a) and (b) of this section concerning small business related securities shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of 7 years after September 23, 1994, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

**(2) State registration or qualification requirements**

Any State may, not later than 7 years after September 23, 1994, enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.

<sup>1</sup> See References in Text note below.

(Pub. L. 98-440, title I, §106, Oct. 3, 1984, 98 Stat. 1691; Pub. L. 103-325, title II, §207, Sept. 23, 1994, 108 Stat. 2199.)

#### REFERENCES IN TEXT

Section 77d(5) of this title, referred to in subsecs. (a)(1)(A), (2)(A) and (c), was redesignated section 77d(a)(5) of this title by Pub. L. 112-106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

#### CODIFICATION

Section was enacted as part of the Secondary Mortgage Market Enhancement Act of 1984, and not as part of the Securities Act of 1933, which comprises this subchapter.

#### AMENDMENTS

1994—Subsec. (a)(1)(B) to (D), Pub. L. 103-325, §207(a), struck out “or” at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (a)(2)(B) to (D), Pub. L. 103-325, §207(b), struck out “or” at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c), Pub. L. 103-325, §207(c), in first sentence substituted “, that” for “or that” before “are mortgage related securities” and inserted “, or that are small business related securities (as defined in section 78c(a)(53) of this title)” before “shall be exempt”.

Subsec. (d), Pub. L. 103-325, §207(d), added subsec. (d).

### § 77s. Special powers of Commission

#### (a) Rules and regulations

The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

#### (b) Recognition of accounting standards

##### (1) In general

In carrying out its authority under subsection (a) of this section and under section

13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], the Commission may recognize, as “generally accepted” for purposes of the securities laws, any accounting principles established by a standard setting body—

(A) that—

(i) is organized as a private entity;

(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

(iii) is funded as provided in section 7219 of this title;

(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) of this section and section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

#### (2) Annual report

A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.

#### (c) Production of evidence

For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this subchapter, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

#### (d) Federal and State cooperation

(1) The Commission is authorized to cooperate with any association composed of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission,

could assist in effectuating greater uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an association for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

(2) It is the declared policy of this subsection that there should be greater Federal and State cooperation in securities matters, including—

(A) maximum effectiveness of regulation,

(B) maximum uniformity in Federal and State regulatory standards,

(C) minimum interference with the business of capital formation, and

(D) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital (particularly by small business) and to diminish the costs of the administration of the Government programs involved.

(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas:

(A) the sharing of information regarding the registration or exemption of securities issues applied for in the various States;

(B) the development and maintenance of uniform securities forms and procedures; and

(C) the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government. The Commission shall have the authority to adopt such an exemption as agreed upon for Federal purposes. Nothing in this chapter shall be construed as authorizing preemption of State law.

(4) In order to carry out these policies and purposes, the Commission shall conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate.

(5) For fiscal year 1982, and for each of the three succeeding fiscal years, there are authorized to be appropriated such amounts as may be necessary and appropriate to carry out the policies, provisions, and purposes of this subsection. Any sums so appropriated shall remain available until expended.

(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or by chapter 5 of title 5, in connection with cooperation, coordination, or consultation with—

(A) any association referred to in paragraph (1) or (3) or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

(B) any forum, agency, or organization, or group referred to in section 80c-1 of this title,

while such forum, agency, organization, or group is carrying out activities in furtherance of the provisions of such section 80c-1.

As used in this paragraph, the terms “association”, “conference”, “meeting”, “forum”, “agency”, “organization”, and “group” include any committee, subgroup, or representative of such entities.

**(e) Evaluation of rules or programs**

For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

(1) gather information from and communicate with investors or other members of the public;

(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

(3) consult with academics and consultants, as necessary to carry out this subsection.

**(f) Rule of construction**

For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.

**(g) Funding for the GASB**

**(1) In general**

The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4), require a national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] to establish—

(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the “GASB”); and

(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

**(2) Annual budget**

For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

**(3) Use of funds**

Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable

to State and local governments of the United States.

**(4) Limitation on fee**

The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

**(5) Rules of construction**

**(A) Fees not public monies**

Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

**(B) Limitation on authority of the Commission**

Nothing in this subsection shall be construed to—

(i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or

(ii) affect the setting of generally accepted accounting principles by the GASB.

**(C) Noninterference with States**

Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.

(May 27, 1933, ch. 38, title I, §19, 48 Stat. 85; June 6, 1934, ch. 404, title II, §209, 48 Stat. 908; Pub. L. 94-210, title III, §308(a)(2), Feb. 5, 1976, 90 Stat. 57; Pub. L. 96-477, title V, §505, Oct. 21, 1980, 94 Stat. 2292; Pub. L. 100-181, title II, §207, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 107-204, title I, §108(a), July 30, 2002, 116 Stat. 768; Pub. L. 111-203, title IX, §§912, 978(a), 985(a)(3), July 21, 2010, 124 Stat. 1824, 1924, 1933.)

REFERENCES IN TEXT

The Paperwork Reduction Act, referred to in subsec. (f), probably means chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents. See Short Title note set out under section 3501 of Title 44.

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

AMENDMENTS

2010—Subsec. (d)(6)(A). Pub. L. 111-203, §985(a)(3), which directed substitution of “in paragraph (1) or (3)” for “in paragraph (1) of (3)”, could not be executed because the phrase “in paragraph (1) of (3)” did not appear.

Subsecs. (e), (f). Pub. L. 111-203, §912, added subsecs. (e) and (f).

Subsec. (g). Pub. L. 111-203, §978(a), added subsec. (g).

2002—Subsecs. (b) to (d). Pub. L. 107-204 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1987—Subsec. (c)(6). Pub. L. 100-181 added par. (6).

1980—Subsec. (c). Pub. L. 96-477 added subsec. (c).

1976—Subsec. (a). Pub. L. 94-210 struck out provisions relating to rules and regulations applicable to any common carrier subject to the provisions of section 20 of title 49.

1934—Subsec. (a). Act June 6, 1934, inserted “technical” in first sentence and inserted last sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-477 effective Jan. 1, 1981, see section 507 of Pub. L. 96-477, set out as an Effective Date note under section 80c of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-210 effective on 60th day after Feb. 5, 1976, but not applicable to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day, see section 308(d)(1) of Pub. L. 94-210, set out as a note under section 77c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

**§ 77t. Injunctions and prosecution of offenses**

**(a) Investigation of violations**

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

**(b) Action for injunction or criminal prosecution in district court**

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

**(c) Writ of mandamus**

Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

**(d) Money penalties in civil actions****(1) Authority of Commission**

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 77h-1 of this title, other than by committing a violation subject to a penalty pursuant to section 78u-1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

**(2) Amount of penalty****(A) First tier**

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

**(B) Second tier**

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

**(C) Third tier**

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

**(3) Procedures for collection****(A) Payment of penalty to Treasury**

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

**(B) Collection of penalties**

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

**(C) Remedy not exclusive**

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

**(D) Jurisdiction and venue**

For purposes of section 77v of this title, actions under this section shall be actions to enforce a liability or a duty created by this subchapter.

**(4) Special provisions relating to a violation of a cease-and-desist order**

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 77h-1 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.

**(e) Authority of court to prohibit persons from serving as officers and directors**

In any proceeding under subsection (b) of this section, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 77q(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

**(f) Prohibition of attorneys' fees paid from Commission disgorgement funds**

Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

**(g) Authority of a court to prohibit persons from participating in an offering of penny stock****(1) In general**

In any proceeding under subsection (a) of this section against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

**(2) Definition**

For purposes of this subsection, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include

other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(May 27, 1933, ch. 38, title I, § 20, 48 Stat. 86; Pub. L. 100-181, title II, § 208, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 101-429, title I, § 101, Oct. 15, 1990, 104 Stat. 932; Pub. L. 104-67, title I, § 103(b)(1), Dec. 22, 1995, 109 Stat. 756; Pub. L. 107-204, title III, §§ 305(a)(2), 308(d)(3), title VI, § 603(b), July 30, 2002, 116 Stat. 779, 785, 795; Pub. L. 111-203, title IX, § 923(a)(1), July 21, 2010, 124 Stat. 1849.)

#### AMENDMENTS

2010—Subsec. (d)(3)(A). Pub. L. 111-203 inserted “and section 78u-6 of this title” after “section 7246 of this title”.

2002—Subsec. (d)(3)(A). Pub. L. 107-204, § 308(d)(3), inserted “, except as otherwise provided in section 7246 of this title” before period at end.

Subsec. (e). Pub. L. 107-204, § 305(a)(2), substituted “unfitness” for “substantial unfitness”.

Subsec. (g). Pub. L. 107-204, § 603(b), added subsec. (g). 1995—Subsec. (f). Pub. L. 104-67 added subsec. (f).

1990—Subsecs. (d), (e). Pub. L. 101-429 added subsecs. (d) and (e).

1987—Subsec. (b). Pub. L. 100-181, § 208(a), inserted first sentence and struck out former first sentence containing similar provisions.

Subsec. (c). Pub. L. 100-181, § 208(b), amended subsec. (c) generally.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as a note under section 77f of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

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

#### CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 77u. Hearings by Commission

All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title I, § 21, 48 Stat. 86.)

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 77v. Jurisdiction of offenses and suits

#### (a) Federal and State courts; venue; service of process; review; removal; costs

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. Except as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

#### (b) Contumacy or refusal to obey subpoena; contempt

In case of contumacy or refusal to obey a subpoena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

#### (c) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the

United States alleging a violation of section 77q(a) of this title involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(May 27, 1933, ch. 38, title I, § 22, 48 Stat. 86; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 10, 1954, ch. 667, title I, § 11, 68 Stat. 686; Pub. L. 91-452, title II, § 213, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title II, § 209, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 105-353, title I, § 101(a)(3), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 111-203, title IX, §§ 929E(a), 929P(b)(1), July 21, 2010, 124 Stat. 1853, 1864.)

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

#### CODIFICATION

As originally enacted subsec. (a) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted “the district court of the United States for the District of Columbia” for “the Supreme Court of the District of Columbia”, and act June 25, 1948, as amended by act May 24, 1949, substituted “United States District Court for the District of Columbia” for “district court of the United States for the District of Columbia”. Pub. L. 100-181 struck out reference to the United States District Court for the District of Columbia. Previously, such reference had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that “There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district”, and section 88 of Title 28 which provides that “the District of Columbia constitutes one judicial district”.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, § 929E(a), inserted after second sentence “In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.”

Subsec. (c). Pub. L. 111-203, § 929P(b)(1), added subsec. (c).

1998—Subsec. (a). Pub. L. 105-353 inserted “except as provided in section 77p of this title with respect to covered class actions,” after “Territorial courts,” in first sentence and substituted “Except as provided in section 77p(c) of this title, no case” for “No case” in penultimate sentence.

1987—Subsec. (a). Pub. L. 100-181 substituted “United States and” for “United States, the”, struck out “, and the United States District Court for the District of Columbia” after “Territory”, and substituted “sections 1254, 1291, 1292, and 1294 of title 28” for “sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)”. See Codification note above.

1970—Subsec. (c). Pub. L. 91-452 struck out subsec. (c) which related to immunity from prosecution of any individual compelled to testify or produce evidence, docu-

mentary or otherwise, after claiming his privilege against self-incrimination.

1954—Subsec. (a). Act Aug. 10, 1954, inserted “offer or” before “sale” in second sentence.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 1998 AMENDMENT

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

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

#### SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 77w. Unlawful representations

Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made to any prospective purchaser any representation contrary to the foregoing provisions of this section.

(May 27, 1933, ch. 38, title I, § 23, 48 Stat. 87.)

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 77x. Penalties

Any person who willfully violates any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission under authority thereof, or any person who will-



fully, in a registration statement filed under this subchapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title I, § 24, 48 Stat. 87; Pub. L. 94-29, § 27(a), June 4, 1975, 89 Stat. 163.)

#### AMENDMENTS

1975—Pub. L. 94-29 substituted “\$10,000” for “\$5,000”.

#### 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.

### § 77y. Jurisdiction of other Government agencies over securities

Nothing in this subchapter shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that may be required by any provision of law.

(May 27, 1933, ch. 38, title I, § 25, 48 Stat. 87.)

### § 77z. Separability

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

(May 27, 1933, ch. 38, title I, § 26, 48 Stat. 88.)

### § 77z-1. Private securities litigation

#### (a) Private class actions

##### (1) In general

The provisions of this subsection shall apply to each private action arising under this subchapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

##### (2) Certification filed with complaint

###### (A) In general

Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

(i) states that the plaintiff has reviewed the complaint and authorized its filing;

(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this subchapter;

(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

(v) identifies any other action under this subchapter, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve, or served, as a representative party on behalf of a class; and

(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

#### (B) Nonwaiver of attorney-client privilege

The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

### (3) Appointment of lead plaintiff

#### (A) Early notice to class members

##### (i) In general

Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

##### (ii) Multiple actions

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

##### (iii) Additional notices may be required under Federal rules

Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

#### (B) Appointment of lead plaintiff

##### (i) In general

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as

lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the “most adequate plaintiff”) in accordance with this subparagraph.

**(ii) Consolidated actions**

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this subparagraph.

**(iii) Rebuttable presumption**

**(I) In general**

Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this subchapter is the person or group of persons that—

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

**(II) Rebuttal evidence**

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

**(iv) Discovery**

For purposes of this subparagraph, discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

**(v) Selection of lead counsel**

The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.

**(vi) Restrictions on professional plaintiffs**

Except as the court may otherwise permit, consistent with the purposes of this

section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

**(4) Recovery by plaintiffs**

The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

**(5) Restrictions on settlements under seal**

The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

**(6) Restrictions on payment of attorneys’ fees and expenses**

Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

**(7) Disclosure of settlement terms to class members**

Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

**(A) Statement of plaintiff recovery**

The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

**(B) Statement of potential outcome of case**

**(i) Agreement on amount of damages**

If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement concerning the average amount of such potential damages per share.

**(ii) Disagreement on amount of damages**

If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement from each settling party concerning the issue or issues on which the parties disagree.

**(iii) Inadmissibility for certain purposes**

A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

**(C) Statement of attorneys' fees or costs sought**

If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

**(D) Identification of lawyers' representatives**

The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

**(E) Reasons for settlement**

A brief statement explaining the reasons why the parties are proposing the settlement.

**(F) Other information**

Such other information as may be required by the court.

**(8) Attorney conflict of interest**

If a plaintiff class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the plaintiff class.

**(b) Stay of discovery; preservation of evidence****(1) In general**

In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

**(2) Preservation of evidence**

During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from

an opposing party under the Federal Rules of Civil Procedure.

**(3) Sanction for willful violation**

A party aggrieved by the willful failure of an opposing party to comply with paragraph (2) may apply to the court for an order awarding appropriate sanctions.

**(4) Circumvention of stay of discovery**

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.

**(c) Sanctions for abusive litigation****(1) Mandatory review by court**

In any private action arising under this subchapter, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

**(2) Mandatory sanctions**

If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Prior to making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.

**(3) Presumption in favor of attorneys' fees and costs****(A) In general**

Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction—

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action.

**(B) Rebuttal evidence**

The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

(i) the award of attorneys' fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust, and the failure to make such an

award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

**(C) Sanctions**

If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.

**(d) Defendant's right to written interrogatories**

In any private action arising under this subchapter in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

(May 27, 1933, ch. 38, title I, § 27, as added Pub. L. 104-67, title I, § 101(a), Dec. 22, 1995, 109 Stat. 737; amended Pub. L. 105-353, title I, § 101(a)(2), title III, § 301(a)(5), Nov. 3, 1998, 112 Stat. 3230, 3235.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (a)(1), (3)(A)(iii), (B)(iii)(I)(cc), (vi), (b)(2), and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Pub. L. 105-353, § 301(a)(5), made technical correction relating to placement of section in subchapter.

Subsec. (b)(4). Pub. L. 105-353, § 101(a)(2), added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(a)(2) of Pub. L. 105-353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105-353, set out as a note under section 77p of this title.

EFFECTIVE DATE

Section not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a note under section 78j-1 of this title.

**§ 77z-2. Application of safe harbor for forward-looking statements**

**(a) Applicability**

This section shall apply only to a forward-looking statement made by—

(1) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title;

(2) a person acting on behalf of such issuer;

(3) an outside reviewer retained by such issuer making a statement on behalf of such issuer; or

(4) an underwriter, with respect to information provided by such issuer or information derived from information provided by the issuer.

**(b) Exclusions**

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, this section shall not apply to a forward-looking statement—

(1) that is made with respect to the business or operations of the issuer, if the issuer—

(A) during the 3-year period preceding the date on which the statement was first made—

(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 78o(b)(4)(B) of this title; or

(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

(I) prohibits future violations of the antifraud provisions of the securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or

(III) determines that the issuer violated the antifraud provisions of the securities laws;

(B) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(C) issues penny stock;

(D) makes the forward-looking statement in connection with a rollup transaction; or

(E) makes the forward-looking statement in connection with a going private transaction; or

(2) that is—

(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

(B) contained in a registration statement of, or otherwise issued by, an investment company;

(C) made in connection with a tender offer;

(D) made in connection with an initial public offering;

(E) made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program; or

(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 78m(d) of this title.

**(c) Safe harbor**

**(1) In general**

Except as provided in subsection (b) of this section, in any private action arising under this subchapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) of this section shall not be lia-

ble with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) the forward-looking statement is—

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity, was—

(I) made by or with the approval of an executive officer of that entity, and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

### (2) Oral forward-looking statements

In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—

(A) if the oral forward-looking statement is accompanied by a cautionary statement—

(i) that the particular oral statement is a forward-looking statement; and

(ii) that the actual results could differ materially from those projected in the forward-looking statement; and

(B) if—

(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document, or portion thereof;

(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and

(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

### (3) Availability

Any document filed with the Commission or generally disseminated shall be deemed to be readily available for purposes of paragraph (2).

### (4) Effect on other safe harbors

The exemption provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (g) of this section.

### (d) Duty to update

Nothing in this section shall impose upon any person a duty to update a forward-looking statement.

### (e) Dispositive motion

On any motion to dismiss based upon subsection (c)(1) of this section, the court shall consider any statement cited in the complaint and cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

### (f) Stay pending decision on motion

In any private action arising under this subchapter, the court shall stay discovery (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) during the pendency of any motion by a defendant for summary judgment that is based on the grounds that—

(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(2) the exemption provided for in this section precludes a claim for relief.

### (g) Exemption authority

In addition to the exemptions provided for in this section, the Commission may, by rule or regulation, provide exemptions from or under any provision of this subchapter, including with respect to liability that is based on a statement or that is based on projections or other forward-looking information, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.

### (h) Effect on other authority of Commission

Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.

### (i) Definitions

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

#### (1) Forward-looking statement

The term “forward-looking statement” means—

(A) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

(D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);

(E) any report issued by an outside reviewer retained by an issuer, to the extent

that the report assesses a forward-looking statement made by the issuer; or

(F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

**(2) Investment company**

The term “investment company” has the same meaning as in section 80a-3(a) of this title.

**(3) Penny stock**

The term “penny stock” has the same meaning as in section 78c(a)(51) of this title, and the rules and regulations, or orders issued pursuant to that section.

**(4) Going private transaction**

The term “going private transaction” has the meaning given that term under the rules or regulations of the Commission issued pursuant to section 78m(e) of this title.

**(5) Securities laws**

The term “securities laws” has the same meaning as in section 78c of this title.

**(6) Person acting on behalf of an issuer**

The term “person acting on behalf of an issuer” means an officer, director, or employee of the issuer.

**(7) Other terms**

The terms “blank check company”, “rollup transaction”, “partnership”, “limited liability company”, “executive officer of an entity” and “direct participation investment program”, have the meanings given those terms by rule or regulation of the Commission.

(May 27, 1933, ch. 38, title I, §27A, as added Pub. L. 104-67, title I, §102(a), Dec. 22, 1995, 109 Stat. 749; amended Pub. L. 105-353, title III, §301(a)(5), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 111-203, title IX, §985(a)(4), July 21, 2010, 124 Stat. 1933.)

AMENDMENTS

2010—Subsec. (c)(1)(B)(ii). Pub. L. 111-203 substituted comma for semicolon after “entity” in introductory provisions.

1998—Pub. L. 105-353 made technical correction relating to placement of section in subchapter.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as an Effective Date of 1995 Amendment note under section 77l of this title.

CONSTRUCTION

Nothing in section deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a note under section 78j-1 of this title.

**§ 77z-2a. Conflicts of interest relating to certain securitizations**

**(a) In general**

An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 78c of this title, which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

**(b) Rulemaking**

Not later than 270 days after July 21, 2010, the Commission shall issue rules for the purpose of implementing subsection (a).

**(c) Exception**

The prohibitions of subsection (a) shall not apply to—

(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or

(2) purchases or sales of asset-backed securities made pursuant to and consistent with—

(A) commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

(B) bona fide market-making in the asset backed security.

**(d) Rule of construction**

This subsection<sup>1</sup> shall not otherwise limit the application of section 78o-11 of this title.

(May 27, 1933, ch. 38, title I, §27B, as added Pub. L. 111-203, title VI, §621(a), July 21, 2010, 124 Stat. 1631.)

EFFECTIVE DATE

Pub. L. 111-203, title VI, §621(b), July 21, 2010, 124 Stat. 1632, provided that: “Section 27B of the Securities Act of 1933 [15 U.S.C. 77z-2a], as added by this section, shall take effect on the effective date of final rules issued by the [Securities and Exchange] Commission under subsection (b) of such section 27B, except that subsections (b) and (d) of such section 27B shall take effect on the date of enactment of this Act [July 21, 2010].”

**§ 77z-3. General exemptive authority**

The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this sub-

<sup>1</sup> So in original. Probably should be “section”.

chapter or of any rule or regulation issued under this subchapter, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(May 27, 1933, ch. 38, title I, § 28, as added Pub. L. 104-290, title I, § 105(a), Oct. 11, 1996, 110 Stat. 3424; amended Pub. L. 105-353, title III, § 301(a)(5), Nov. 3, 1998, 112 Stat. 3235.)

#### AMENDMENTS

1998—Pub. L. 105-353 made technical correction relating to placement of section in subchapter.

### § 77aa. Schedule of information required in registration statement

#### SCHEDULE A

(1) The name under which the issuer is doing or intends to do business;

(2) the name of the State or other sovereign power under which the issuer is organized;

(3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;

(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in

connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded \$25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preced-

ing the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of \$2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of \$20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a

similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or, if identical agreements are used, the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this subchapter, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and



of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

#### SCHEDULE B

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

(May 27, 1933, ch. 38, title I, schedules A, B, 48 Stat. 88, 91; Pub. L. 105-353, title III, §301(a)(6), Nov. 3, 1998, 112 Stat. 3235.)

#### AMENDMENTS

1998—Schedule A, par. (28). Pub. L. 105-353 substituted “identical” for “identic”.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

#### SUBCHAPTER II—FOREIGN SECURITIES

##### § 77bb. “Corporation of Foreign Security Holders”; creation; principal office; branch offices

For the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default, there is hereby created a body corporate with the name “Corporation of Foreign Security Holders” (herein called the “Corporation”). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

(May 27, 1933, ch. 38, title II, §201, 48 Stat. 92.)