

(May 27, 1936, ch. 462, § 10, 49 Stat. 1380.)

CODIFICATION

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

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.

§ 780-2. Liabilities arising prior to amendment unaffected

Nothing in this Act shall be deemed to extinguish any liability which may have arisen prior to the effective date of this Act by reason of any violation of section 78o of this title or of any rule or regulation thereunder.

(May 27, 1936, ch. 462, § 11, 49 Stat. 1380.)

REFERENCES IN TEXT

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

Effective date of this Act, referred to in text, is July 1, 1934. See section 78hh-1 of this title.

CODIFICATION

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

§ 780-3. Registered securities associations

(a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b), or as an affiliated securities association pursuant to subsection (d), under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determinations by Commission requisite to registration of applicant as national securities association

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

(9) The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(10) The requirements of subsection (c), insofar as these may be applicable, are satisfied.

(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

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

- (i) an appraisal and compensation;
- (ii) retention of a security under substantially the same terms and conditions as the original issue;
- (iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;
- (iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;

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

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

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

As used in this paragraph, the term “dissenting limited partner” means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and

complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period in which the offer is outstanding.

(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

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

- (i) an appraisal and compensation;
- (ii) retention of a security under substantially the same terms and conditions as the original issue;
- (iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;
- (iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;

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

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

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

As used in this paragraph, the term “dissenting limited partner” means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period during which the offer is outstanding.

(14) The rules of the association include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof, which rules require—

(A) the broker or dealer performing brokerage services to clearly and conspicuously disclose to potential investors—

(i) that the securities offered are not being offered or provided by the broker or dealer on behalf of the Federal Government, and that its offer is not sanctioned, recommended, or encouraged by the Federal Government; and

(ii) the identity of the registered broker-dealer offering the securities;

(B) such broker or dealer to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation of a security to a member of the Armed Forces or a dependent thereof; and

(C) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless such person is an associated person of a registered broker or dealer and is qualified pursuant to the rules of a self-regulatory organization.

(15) The rules of the association provide that the association shall—

(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 78o-4(b)(2)(E) of this title, so that the Municipal Securities Rulemaking Board may—

(i) assist in such enforcement actions and examinations; and

(ii) evaluate the ongoing effectiveness of the rules of the Board.

(c) National association rules; provision for registration of affiliated securities association

The Commission may permit or require the rules of an association applying for registration pursuant to subsection (b), to provide for the admission of an association registered as an affiliated securities association pursuant to subsection (d), to participation in said applicant association as an affiliate thereof, under terms permitting such powers and responsibilities to such affiliate, and under such other appropriate terms and conditions, as may be provided by the rules of said applicant association, if such rules appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this section. The duties and powers of the Commission with respect to any national securities association or any affiliated securities association shall in no way be limited by reason of any such affiliation.

(d) Registration as affiliated association; prerequisites; association rules

An applicant association shall not be registered as an affiliated securities association unless it appears to the Commission that—

(1) such association, notwithstanding that it does not satisfy the requirements set forth in paragraph (1) of subsection (b), will, forthwith upon the registration thereof, be admitted to affiliation with an association registered as a national securities association pursuant to subsection (b), in the manner and under the terms and conditions provided by the rules of said national securities association in accordance with subsection (c); and

(2) such association and its rules satisfy the requirements set forth in paragraphs (2) to (10), inclusive, and paragraph (12),¹ of subsection (b); except that in the case of any such association any restrictions upon membership therein of the type authorized by paragraph (3) of subsection (b) shall not be less stringent than in the case of the national securities association with which such association is to be affiliated.

(e) Dealings with nonmember professionals

(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(2) For the purposes of this subsection, the term “nonmember professional” shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers’ acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer’s discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from granting to any member of any registered securities association or any such municipal securities dealer any dealer’s discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: *Provided, however,* That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of

¹ See References in Text note below.

the Municipal Securities Rulemaking Board adopted pursuant to section 780-4(b)(2)(K) of this title.

(f) Transactions in municipal securities

Nothing in subsection (b)(6) or (b)(11) of this section shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.

(g) Denial of membership

(1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(2) A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the association.

(B) A registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the

association in accordance with procedures so established.

(C) A registered securities association may bar any person from becoming associated with a member if such person does not agree (i) to supply the association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and (ii) to permit examination of its books and records to verify the accuracy of any information so supplied.

(D) Nothing in subparagraph (A), (B), or (C) of this paragraph shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in municipal securities.

(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

(h) Discipline of registered securities association members and persons associated with members; summary proceedings

(1) In any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection) the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the association to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reason therefor.

(2) In any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or

prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A registered securities association may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (C) limit or prohibit any person with respect to access to services offered by the association if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(i) Obligation to maintain registration, disciplinary, and other data

(1) Maintenance of system to respond to inquiries

A registered securities association shall—

(A) establish and maintain a system for collecting and retaining registration information;

(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding—

(i) registration information on its members and their associated persons; and

(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

(C) adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).

(2) Recovery of costs

A registered securities association may charge persons making inquiries described in

paragraph (1)(B), other than individual investors, reasonable fees for responses to such inquiries.

(3) Process for disputed information

Each registered securities association shall adopt rules establishing an administrative process for disputing the accuracy of information provided in response to inquiries under this subsection in consultation with any registered national securities exchange providing information pursuant to paragraph (1)(B)(ii).

(4) Limitation on liability

A registered securities association, or an exchange reporting information to such an association, shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(5) Definition

For purposes of this subsection, the term “registration information” means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.

(j) Registration for sales of private securities offerings

A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 77c(b), 77d(2),¹ or 77d(6)¹ of this title and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding November 12, 1999, engaged in effecting such sales.

(k) Limited purpose national securities association

(1) Regulation of members with respect to security futures products

A futures association registered under section 21 of title 7 shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to section 78o(b)(11) of this title.

(2) Requirements for registration

Such a securities association shall—

(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security futures products and to comply, and (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security futures products, the rules and regulations thereunder, and its rules;

(B) have rules that—

(i) are designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to subsection (a) that are applicable to security futures products; and

(ii) are not designed to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association;

(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security futures products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security futures products and are tested for their knowledge of securities and security futures products.

(3) Exemption from rule change submission

Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for, advertising of, or standards of training, experience, competence, or other qualifications for security futures products for persons who effect transactions in security futures products, or rules effectuating the association's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;

(B) the association shall file pursuant to sections 78s(b)(1) and 78s(b)(2) of this title proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(C) the association shall file pursuant to section 78s(b)(1) of this title proposed rule changes that have been abrogated by the Commission pursuant to section 78s(b)(7)(C) of this title.

(4) Other exemptions

Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security futures products, be required to comply, with the following pro-

visions of this chapter and the rules thereunder:

(A) Section 78h of this title.

(B) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

(C) Subsections (d), (f), and (k)¹ of section 78q of this title.

(D) Subsections (a), (f), and (h) of section 78s of this title.

(I) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 78o(b) of this title (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 6f(a) of title 7 (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities association of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered pursuant to section 78f(g) of this title involving security futures products.

(m) Procedures and rules for security future products

A national securities association registered pursuant to subsection (a) shall, not later than 8 months after December 21, 2000, implement the procedures specified in section 78f(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 78f(h)(5) of this title.

(June 6, 1934, ch. 404, title I, §15A, as added June 25, 1938, ch. 677, §1, 52 Stat. 1070; amended Pub. L. 88-467, §7, Aug. 20, 1964, 78 Stat. 574; Pub. L. 94-29, §12, June 4, 1975, 89 Stat. 127; Pub. L. 99-571, title I, §102(g), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 101-429, title V, §509, Oct. 15, 1990, 104 Stat. 957; Pub. L. 103-202, title I, §106(b)(1), title III, §303(a), (c), Dec. 17, 1993, 107 Stat. 2350, 2364, 2366; Pub. L. 106-102, title II, §203, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106-554, §1(a)(5) [title II, §§203(c), 206(j), (k)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-422, 2763A-433; Pub. L. 109-290, §§5, 6, Sept. 29, 2006, 120 Stat. 1319, 1320; Pub. L. 111-203, title IX, §975(f), July 21, 2010, 124 Stat. 1923.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (6), (7), (9), (h)(1)(B), (k)(2)(B)(ii), (4), and (I), was in the original "this title". See References in Text note set out under section 78a of this title.

Paragraph (12), of subsection (b) of this section, referred to in subsec. (d)(2), was omitted in the general amendment of subsec. (b) by Pub. L. 94-29, see par. (11) of subsec. (b). A new par. (12) was added by Pub. L. 103-302, §303(a).

Sections 77d(2) and 77d(6) of this title, referred to in subsec. (j), were redesignated sections 77d(a)(2) and 77d(a)(6), respectively, of this title by Pub. L. 112-106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

Subsection (k) of section 78q of this title, referred to in subsec. (k)(4)(C), was redesignated subsec. (j) by Pub. L. 111-203, title VI, § 617(a)(2), July 21, 2010, 124 Stat. 1616.

AMENDMENTS

- 2010—Subsec. (b)(15). Pub. L. 111-203 added par. (15).
- 2006—Subsec. (b)(14). Pub. L. 109-290, § 5, added par. (14).
- Subsec. (i). Pub. L. 109-290, § 6, inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: “A registered securities association shall, within one year from October 15, 1990, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. Such association may charge persons, other than individual investors, reasonable fees for written responses to such inquiries. Such an association shall not have any liability to any person for any actions taken or omitted in good faith under this paragraph.”
- 2000—Subsec. (k). Pub. L. 106-554, § 1(a)(5) [title II, § 203(c)], added subsec. (k).
- Subsec. (l). Pub. L. 106-554, § 1(a)(5) [title II, § 206(j)], added subsec. (l).
- Subsec. (m). Pub. L. 106-554, § 1(a)(5) [title II, § 206(k)(1)], added subsec. (m).
- 1999—Subsec. (j). Pub. L. 106-102 added subsec. (j).
- 1993—Subsec. (b)(12). Pub. L. 103-202, § 303(a), added par. (12).
- Subsec. (b)(13). Pub. L. 103-202, § 303(c), added par. (13).
- Subsec. (f). Pub. L. 103-202, § 106(b)(1)(A), redesignated par. (3) as entire subsec. (f) and struck out pars. (1) and (2) which read as follows:
- “(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.
- “(2) A registered securities association may adopt and implement rules applicable to members of such association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this chapter and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this chapter and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of registered brokers and dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising.”
- Subsec. (g)(3)(D). Pub. L. 103-202, § 106(b)(1)(B)(i), substituted “transactions in municipal securities” for “transactions in exempted securities”.
- Subsec. (g)(4), (5). Pub. L. 103-202, § 106(b)(1)(B)(ii), (iii), redesignated par. (5) as (4) and struck out former par. (4) which allowed a registered securities association to deny membership to, condition the membership of, or to otherwise bar association with, the association, under circumstances where a government securities broker or dealer or other person violated financial responsibility rules adopted under section 780-5(b)(1)(A) of this title, or where it appeared likely that such person or entity had or would engage in conduct which would subject such person or entity to sanctions under section 780-5(c) of this title.
- 1990—Subsec. (i). Pub. L. 101-429 added subsec. (i).
- 1986—Subsec. (f). Pub. L. 99-571, § 102(g)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security.”
- Subsec. (g)(3)(D). Pub. L. 99-571, § 102(g)(2)(A), added subpar. (D).
- Subsec. (g)(4), (5). Pub. L. 99-571, § 102(g)(2)(B), (C), added par. (4) and redesignated former par. (4) as (5).
- 1975—Subsec. (a). Pub. L. 94-29, § 12(2), struck out “with the Commission” after “registered”, inserted reference to section 78s(a) of this title, substituted provisions covering an application for registration in the form prescribed by Commission rule containing the rules of the association and such other information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors for provisions covering a statement in the form prescribed by the Commission setting forth specified information and accompanied by specified documents, and struck out provision that registration not be construed as a waiver of constitutional rights or as a waiver of the right to contest the validity of Commission rules or regulations.
- Subsec. (b). Pub. L. 94-29, § 12(2), amended subsec. (b) generally, to conform its provisions concerning the registration and regulation of national and affiliated securities associations to those covering the registration and regulation of national securities exchanges contained in section 78f of this title and inserted provisions necessary to accommodate the creation of the Municipal Securities Rulemaking Board and to implement its purposes.
- Subsec. (e). Pub. L. 94-29, § 12(3), redesignated subsec. (i) as (e) and in subsec. (e) as so redesignated substituted “nonmember professional” for “nonmember broker or dealer” in par. (1), substituted “term ‘nonmember professional’ shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers’ acceptances, and commercial bills” for “term ‘nonmember broker or dealer’ shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers’ acceptances, or commercial bills” and added cl. (B) in par. (2), and, in par. (3), designated existing provisions as cl. (A) and added cl. (B). Former subsec. (e), covering the grant and denial of registration and the revocation of affiliated association registration, was struck out. See section 78s of this title.
- Subsec. (f). Pub. L. 94-29, § 12(3), redesignated subsec. (m) as (f). Former subsec. (f), covering withdrawal from registration, was struck out. See section 78s of this title.
- Subsec. (g). Pub. L. 94-29, § 12(3), (4), added subsec. (g). Former subsec. (g), covering review by the Commission of adverse actions against association members and stays of such actions, was struck out. See section 78s of this title.
- Subsec. (h). Pub. L. 94-29, § 12(3), (4), added subsec. (h). Former subsec. (h), covering the Commission’s action upon findings, was struck out. See section 78s of this title.
- Subsec. (i). Pub. L. 94-29, § 12(3), redesignated subsec. (i) as (e) and amended subsec. (e) as so redesignated.
- Subsecs. (j) to (l). Pub. L. 94-29, § 12(3), struck out subsecs. (j) to (l) which covered the filing of changes or additions to association rules and current information, the abrogation and alteration of association rules and supplements to association rules, the suspension of an association or its members, the revocation of registration, the expulsion of members, and the removal of officers or directors. See section 78s of this title.
- Subsec. (m). Pub. L. 94-29, § 12(3), redesignated subsec. (m) as (f).
- Subsec. (n). Pub. L. 94-29, § 12(3), struck out subsec. (n) which directed that provisions of this section prevail in the event of any conflict between this section and any other law of the United States in force on June 25, 1938.
- 1964—Subsec. (b)(1), (2). Pub. L. 88-467, § 7(a)(1), substituted a period for the semicolon at end of pars. (1) and (2).

Subsec. (b)(3). Pub. L. 88-467, §7(a)(1), (2), substituted a period for the semicolon at end of par. (3), struck out "of" before "any means", substituted "paragraph (4) or (5) of this subsection, or a rule of the association permitted under this paragraph. The rules" for "paragraph (4) of this subsection: *Provided*, That the rules", and inserted provision authorizing a registered securities association to adopt rules under which it might exclude from membership persons who had been suspended or expelled from a national securities exchange or who were barred or suspended from being associated with all brokers or dealers who are members of such an exchange for violation of exchange rules.

Subsec. (b)(4). Pub. L. 88-467, §7(a)(1), (3), substituted a period for the semicolon at end of par. (4), deleted from text preceding cl. (A) the language "or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", inserted in cl. (A) "or has been and is barred or suspended from being associated with all brokers or dealers which are members of such exchange", inserted in cl. (B) provision for suspension for period not exceeding twelve months or barring or suspending the broker or dealer from being associated with a broker or dealer, inserted at the beginning of cl. (C) "whether prior or subsequent to becoming a broker or dealer," (derived from former cl. (1) of this paragraph) and added to cl. (C) provision conferring jurisdiction upon the Commission, an exchange, or a registered securities association to determine whether an individual is the cause of disciplinary action taken by them against a broker or a dealer, and added cl. (D).

Subsec. (b)(5). Pub. L. 88-467, §7(a)(4), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (8). Pub. L. 88-467, §7(a)(1), (4), substituted periods for semicolons at end of paragraphs, and redesignated former pars. (5) to (7) as (6) to (8), respectively. Former pars. (6) to (8) redesignated (7) to (9), respectively.

Subsec. (b)(9). Pub. L. 88-467, §7(a)(1), (4), (5), substituted a period for the semicolon at the end, redesignated former par. (8) as (9), and inserted "and persons associated with its members" and "or being suspended or barred from being associated with all members," respectively. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 88-467, §7(a)(4), (6), redesignated former par. (9) as (10), and inserted in paragraph preceding cl. (A) "and persons associated with members", "or the barring of any person from being associated with a member", "or other persons", and "or person", substituted a period for a comma at end of cls. (A) and (B) and a period for " , and" at end of cl. (C), inserted in cl. (A) "or other person" in two places and in concluding sentence "or whether any person shall be barred from being associated with a member", "or person", "or bar" in two places, and substituted a period for " ; and", respectively. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 88-467, §7(a)(4), redesignated former par. (10) as (11).

Subsec. (b)(12). Pub. L. 88-467, §7(a)(7), added par. (12).

Pub. L. 88-467, §7(a)(7), inserted effective date provisions for application of subsec. (b) prior to its amendment and since its amendment with July 1, 1964 as the guiding date.

Subsec. (d)(2). Pub. L. 88-467, §7(b), substituted "(10)" for "(9)" and inserted "and paragraph (12)," after " , inclusive,".

Subsec. (g). Pub. L. 88-467, §7(c), provided that disciplinary action taken by a registered securities association against a person associated with a member will be reviewable by the Commission, shortened the period for review by an aggrieved person from sixty days or within such longer period as the Commission may determine to thirty days or within such longer period as the Commission may determine, authorized the Commission, after notice and opportunity for hearing on

the question of stay to order no stay of action of a registered securities association pending the Commission's decision on review, and authorized the Commission to limit the hearing on the question of stay to affidavits and oral arguments.

Subsec. (h). Pub. L. 88-467, §7(d), made the procedures and the Commission's authority in reviewing disciplinary action by a registered securities association against members and in reviewing association action in denying membership also applicable to Commission review of disciplinary action against persons associated with members and to the barring by an association of any person from being associated with a member.

Subsec. (k)(2). Pub. L. 88-467, §7(e), inserted " , or with such modifications of such alteration or supplement as it deems necessary" after "in the manner theretofore requested", redesignated cls. (1) to (4) as (A) to (D), respectively, and inserted in cl. (A) "or the barring from being associated with a member" and "or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof".

Subsec. (l). Pub. L. 88-467, §7(f), substituted a period for a semicolon at end of par. (1) and inserted in par. (2) preceding cl. (A) " , or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111-203, set out as a note under section 780 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106-102, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 303(a), (c) of Pub. L. 103-202 effective 12 months after Dec. 17, 1993, with provisions for rulemaking authority and review of filings prior to effective date, see section 304(a) of Pub. L. 103-202, set out as a note under section 78f 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), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 780-5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective 180 days after 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.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 106(b)(1) of Pub. L. 103-202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103-202, set out as a note under section 780-5 of this title.

Amendment by section 303(a), (c) of Pub. L. 103-202 not to limit authority of Securities and Exchange Commission, a registered securities association or a national securities exchange under any provision of this chapter, or preclude the Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103-202, set out in an Effective Date of 1993 Amendment note under section 78f 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.

§ 78o-4. Municipal securities

(a) Registration of municipal securities dealers

(1)(A) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 78o of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.

(2) A municipal securities dealer or municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer or municipal advisor and any persons associated with such municipal securities dealer or municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer or municipal advisor if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not

make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or municipal advisor or any person acting on behalf of such municipal securities dealer or municipal advisor, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.

(b) Municipal Securities Rulemaking Board; rules and regulations

(1) The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),¹ which shall perform the duties set forth in this section. The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as “public representatives”); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as “broker-dealer representatives”), at least 1 individual who is

¹ So in original.