

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 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

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

AFFIRMATION OF DUTY OF GOVERNMENT OFFICERS AND EMPLOYEES

Pub. L. 112-105, §4(b)(1), Apr. 4, 2012, 126 Stat. 292, provided that: "The purpose of the amendment made by this subsection [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each Member of Congress and each employee of Congress."

Pub. L. 112-105, §9(b)(2)(A), Apr. 4, 2012, 126 Stat. 297, provided that: "The purpose of the amendment made by this paragraph [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each executive branch employee, judicial officer, and judicial employee."

CONGRESSIONAL FINDINGS

Pub. L. 100-704, §2, Nov. 19, 1988, 102 Stat. 4677, provided that: "The Congress finds that—

"(1) the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing trading while in possession of material, nonpublic information are, as required by such Act, necessary and appropriate in the public interest and for the protection of investors;

"(2) the Commission has, within the limits of accepted administrative and judicial construction of such rules and regulations, enforced such rules and regulations vigorously, effectively, and fairly; and

"(3) nonetheless, additional methods are appropriate to deter and prosecute violations of such rules and regulations."

COMMISSION RECOMMENDATIONS FOR ADDITIONAL CIVIL PENALTY AUTHORITY REQUIRED

Pub. L. 100-704, §3(c), Nov. 19, 1988, 102 Stat. 4680, provided that the Securities and Exchange Commission should, within 60 days after Nov. 19, 1988, submit to Congress any recommendations the Commission considers appropriate with respect to the extension of the Commission's authority to seek civil penalties or impose administrative fines for violations other than those described in this section.

**§ 78u-2. Civil remedies in administrative proceedings**

**(a) Commission authority to assess money penalties**

**(1) In general**

In any proceeding instituted pursuant to sections 78o(b)(4), 78o(b)(6), 78o-6, 78o-4, 78o-5, 78o-7, or 78q-1 of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(A) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et

seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or this chapter, or the rules or regulations thereunder, or the rules of the Municipal Securities Rulemaking Board;

(B) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(C) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or

(D) has failed reasonably to supervise, within the meaning of section 78o(b)(4)(E) of this title, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision;<sup>1</sup>

**(2) Cease-and-desist proceedings**

In any proceeding instituted under section 78u-3 of this title against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

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

(B) is or was a cause of the violation of any provision of this chapter, or any rule or regulation issued under this chapter.

**(b) Maximum amount of penalty**

**(1) First tier**

The maximum amount of penalty for each act or omission described in subsection (a) shall be \$5,000 for a natural person or \$50,000 for any other person.

**(2) Second tier**

Notwithstanding paragraph (1), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

**(3) Third tier**

Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

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

<sup>1</sup> So in original. The semicolon probably should be a period.

(B) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

**(c) Determination of public interest**

In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider—

(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(2) the harm to other persons resulting either directly or indirectly from such act or omission;

(3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title;

(5) the need to deter such person and other persons from committing such acts or omissions; and

(6) such other matters as justice may require.

**(d) Evidence concerning ability to pay**

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission or the appropriate regulatory agency 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 such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

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

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency 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) Security-based swaps**

**(1) Clearing agency**

Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c-3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c-3 of this title.

**(2) Security-based swap dealer or major security-based swap participant**

Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c-3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c-3 of this title.

(June 6, 1934, ch. 404, title I, § 21B, as added Pub. L. 101-429, title II, § 202(a), Oct. 15, 1990, 104 Stat. 937; amended Pub. L. 107-204, title V, § 501(b), July 30, 2002, 116 Stat. 793; Pub. L. 109-291, § 4(b)(1)(B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111-203, title VII, § 773, title IX, § 929P(a)(2), July 21, 2010, 124 Stat. 1802, 1863.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1)(A), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, 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 Investment Advisers Act of 1940, referred to in subsec. (a)(1)(A), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

This chapter, referred to in subsec. (a)(1)(A), (C), (2), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, § 929P(a)(2), designated existing provisions as par. (1) and inserted heading, inserted "that such penalty is in the public interest and" before "that such person—" in introductory provisions, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1) and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added par. (2).

Subsec. (f). Pub. L. 111-203, § 773, added subsec. (f).

2006—Subsec. (a). Pub. L. 109-291 inserted "78o-7," after "78o-5," in introductory provisions.

2002—Subsec. (a). Pub. L. 107-204 inserted "78o-6," before "78o-4," in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 929P(a)(2) of 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.

Amendment by section 773 of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the ex-

tent 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

Section 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 an Effective Date of 1990 Amendment note under section 77g of this title.

### § 78u-3. 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 chapter, 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) 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), 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 conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such

proceedings. 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

Paragraph (1) 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, registered public accounting firm (as defined in section 7201 of this title), 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.

#### (3) Temporary freeze

##### (A) In general

##### (i) Issuance of temporary order

Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

##### (ii) Standard

A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

##### (iii) Effective period

A temporary order issued under clause (i) shall—

- (I) become effective immediately;
- (II) be served upon the parties subject to it; and
- (III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

##### (iv) Extensions authorized

The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.