

Editorial Notes

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 661 of this title.

The Investment Company Act of 1940, referred to in subsec. (b), 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.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106-554 substituted "1 year" for "five years".

1997—Subsec. (b). Pub. L. 105-135 inserted after first sentence "Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities."

1996—Subsec. (b). Pub. L. 104-208, §208(f)(1), inserted "which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations," after "Investment Division of the Administration," in first sentence.

Subsec. (c)(4). Pub. L. 104-208, §208(h)(1)(C), struck out "not less than four years in the case of section 301(d) licensees and in all other cases," after "small businesses for".

Subsec. (d). Pub. L. 104-208, §208(f)(2), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: *Provided*, That any company which does not have outstanding financial assistance under the provisions of this subchapter shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise."

1992—Subsec. (b). Pub. L. 102-366, §407(a), substituted "Investment Division of" for "Administration by examiners selected or approved by".

Subsec. (c)(5). Pub. L. 102-366, §408(b), inserted before semicolon at end "if such restriction is applicable".

Subsec. (d). Pub. L. 102-366, §406(b), added subsec. (d).

1988—Subsec. (b). Pub. L. 100-590 struck out second sentence, which read as follows: "Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership."

Subsec. (c). Pub. L. 100-590 added subsec. (c).

1967—Subsec. (b). Pub. L. 90-104 required at least annual examination of small business investment companies but provided for waiver of examination of a company whose operations have been suspended because the company is involved in litigation or is in receivership.

1966—Pub. L. 89-779 designated existing provisions as subsec. (a) and added subsec. (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

TRANSFER OF RESOURCES

Pub. L. 102-366, title IV, §407(b), Sept. 4, 1992, 106 Stat. 1016, provided that: "Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 [15 U.S.C. 687b] shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration."

§ 687c. Injunctions and other orders**(a) Grounds; jurisdiction of court**

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Equity jurisdiction of licensee and assets thereof

In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Trusteeship or receivership over licensee

The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85-699, title III, §311, as added Pub. L. 87-341, §9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89-779, §6, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 98-620, title IV, §402(15)(C), Nov. 8, 1984, 98 Stat. 3358.)

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AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision that the proceedings in such a case had to be made a preferred cause and had to be expedited in every way.

1966—Subsec. (c). Pub. L. 89-779 added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 687d. Conflicts of interest

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders, partners, or members of either, or to the purposes of this chapter, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, partner, or member of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure necessary to the purposes of this section.

(Pub. L. 85-699, title III, §312, as added Pub. L. 88-273, §6(a), Feb. 28, 1964, 78 Stat. 147; amended Pub. L. 94-305, title I, §106(f), June 4, 1976, 90 Stat. 666; Pub. L. 104-208, div. D, title II, §208(h)(1)(D), Sept. 30, 1996, 110 Stat. 3009-747; Pub. L. 107-100, §3, Dec. 21, 2001, 115 Stat. 966.)

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AMENDMENTS

2001—Pub. L. 107-100 struck out "(including disclosure in the locality most directly affected by the transaction)" after "public disclosure".

1996—Pub. L. 104-208, §208(h)(1)(D), substituted "shareholders, partners, or members" for "shareholders or partners" and substituted "shareholder, partner, or member" for "shareholder, or partner" in two places.

1976—Pub. L. 94-305, §106(f)(2), which directed the substitution of "shareholder, or partner" for "or shareholders" wherever appearing, was executed by making the substitution for "or shareholder" in two places to reflect the probable intent of Congress.

Pub. L. 94-305, §106(f)(1), inserted "or partners" after "to the shareholders".

§ 687e. Removal or suspension of management officials**(a) Definition of "management official"**

In this section, the term "management official" means an officer, director, general partner,

manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee.

(b) Removal of management officials**(1) Notice of removal**

The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator—

(A) such management official—

(i) has willfully and knowingly committed any substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter; or

(III) a cease-and-desist order which has become final; or

(ii) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of a fiduciary duty of that person as a management official; and

(B) the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(2) Contents of notice

A notice of intention to remove a management official, as provided in paragraph (1), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon.

(3) Hearings**(A) Timing**

A hearing described in paragraph (2) shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(i) the management official, and for good cause shown; or

(ii) the Attorney General of the United States.

(B) Consent

Unless the management official shall appear at a hearing described in this paragraph in person or by a duly authorized representative, that management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

(4) Issuance of order of removal**(A) In general**

In the event of consent under paragraph (3)(B), or if upon the record made at a hearing described in this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(B) Effectiveness

An order under subparagraph (A) shall—

(i) become effective at the expiration of 30 days after the date of service upon the