

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. 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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 provi-

sion 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), 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) a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

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

(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 77d¹ 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)¹ of this title;

(C) section 77d(6)¹ of this title;

(D) 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;

(E) 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;

(F) Commission rules or regulations issued under section 77d(2)¹ 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)¹ of this title that are in effect on September 1, 1996; or

(G) section 77d(a)(7) of this title.

(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 transactions²

(A) with respect to—

(i) fraud or deceit; or

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

(B) in connection to³ a transaction described under section 77d(6)¹ 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).

(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), or will be such a covered security upon completion of the transaction, or is a security of the

¹ See References in Text note below.

² So in original. The comma after “enforcement actions” probably should be a hyphen and the words “in connection with securities or securities transactions” probably should be part of subparagraph (A).

³ So in original. Probably should be “with”.

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).

(F)⁴ Fees not permitted on crowd-funded 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)(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; Pub. L. 114-94, div. G, title LXXVI, § 76001(b),

Dec. 4, 2015, 129 Stat. 1789; Pub. L. 115-174, title V, § 501, May 24, 2018, 132 Stat. 1361.)

Editorial Notes

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, 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 subsecs. (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

2018—Subsec. (b)(1)(A). Pub. L. 115-174, § 501(1), (4), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “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);”.

Subsec. (b)(1)(B). Pub. L. 115-174, § 501(4), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 115-174, § 501(2), inserted “a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is” before “listed” and struck out “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)” after “(or tier or segment thereof)”.

Subsec. (b)(1)(C). Pub. L. 115-174, § 501(4), redesignated subpar. (C) as (B).

Pub. L. 115-174, § 501(3), struck out “or (B)” after “described in subparagraph (A)”.

2015—Subsec. (b)(4)(E). Pub. L. 114-94, § 76001(b)(1), which directed amendment of subsec. (b)(4) by redesignating “the second subparagraph (D)” as (E), was executed by making the redesignation for the subpar. (D) relating to section 77c(a) of this title to reflect the probable intent of Congress. Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 114-94, § 76001(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(4)(G). Pub. L. 114-94, § 76001(b)(2)-(4), added subpar. (G).

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”.

⁴ So in original. No subpar. (E) has been enacted.

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.”

Statutory Notes and Related Subsidiaries

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.

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.”

Executive Documents

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.

§ 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 en-

tity 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)¹ 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)¹ 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) 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). 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)¹ 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 securi-

¹ See References in Text note below.