

out as a note under section 13101 of Title 5, Government Organization and Employees.]

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.”

[For definitions of “executive branch employee”, “judicial officer”, and “judicial employee”, see section 2 of Pub. L. 112-105, set out as a note under section 13101 of Title 5, Government Organization and Employees.]

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 cir-

cumstances 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;¹

(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

(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;

¹ So in original. The semicolon probably should be a period.

(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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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

EFFECTIVE DATE

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 vio-