

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.

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.

§ 78k-1. National market system for securities; securities information processors

(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities

(1) The Congress finds that—

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) economically efficient execution of securities transactions;

(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) the practicability of brokers executing investors' orders in the best market; and

(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated hereinafter¹ in this section referred to as "qualified securities".)

(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection—

(A) to create one or more advisory committees pursuant to the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section) and to employ one or more outside experts;

(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system.

(b) Securities information processors; registration; withdrawal of registration; access to services; censure; suspension or revocation of registration

(1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities 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, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system: *Provided, however,* That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

(2) A securities information processor may be registered by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with re-

¹ So in original. Probably should be "are hereinafter".

spect to quotations for and transactions in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this chapter and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the publication of such notice (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such 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 eighty days of the date of publication of notice 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 sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer periods as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this chapter and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

(4) A registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered securities information processor is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel the registration.

(5)(A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission. 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. Any prohibition or limita-

tion on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this chapter and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this chapter or the rules or regulations thereunder.

(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges

(1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any in-

formation with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to—

(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;

(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

(D) assure that all exchange members, brokers, dealers, securities information processors, and, subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system; and

(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

(3)(A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 78l(b) of this title otherwise than on a national securities exchange, if the Commission

finds, on the record after notice and opportunity for hearing, that—

(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such securities and such dealers who are not specialists in such securities, and

(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this chapter.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this chapter.

(4) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges.

(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

(d) National Market Advisory Board

(1) Not later than one hundred eighty days after June 4, 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the "Advisory Board") to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

(3)(A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a "National Market Regulatory Board" or "Regulatory Board") to administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

- (i) the point in time at which a Regulatory Board should be established;
- (ii) the composition of a Regulatory Board;
- (iii) the scope of the authority of a Regulatory Board;
- (iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and
- (v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study and its recommendations, including such recommendations for legislation as it deems appropriate.

(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

(e) National markets system for security futures products

(1) Consultation and cooperation required

With respect to security futures products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1) of this section. In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

(2) Application of rules by order of CFTC

No rule adopted pursuant to this section shall be applied to any person with respect to

the trading of security futures products on an exchange that is registered under section 78f(g) of this title unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.

(June 6, 1934, ch. 404, title I, § 11A, as added Pub. L. 94-29, § 7, June 4, 1975, 89 Stat. 111; amended Pub. L. 98-620, title IV, § 402(14), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 100-181, title III, §§ 313, 314, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 106-554, § 1(a)(5) [title II, § 206(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-430.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(3)(A), is Pub. L. 92-436, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-554 added subsec. (e).

1987—Subsec. (b)(2). Pub. L. 100-181, § 313(1), substituted "transactions" for "transaction".

Subsec. (c)(4). Pub. L. 100-181, § 313(2), struck out "On or before the ninetieth day following June 4, 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 78s(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement."

Subsec. (e). Pub. L. 100-181, § 314, struck out subsec. (e) which read as follows: "The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of 'broker' and 'dealer' maintain accounts on behalf of public customers for buying and selling securities registered under section 78l of this title and whether such exclusions are consistent with the protection of investors and the other purposes of this chapter. The Commission shall report to the Congress, on or before December 31, 1976, the results of its study together with such recommendations for legislation as it deems advisable."

1984—Subsec. (c)(4). Pub. L. 98-620 struck out designation "(A)" after "(4)", and struck out subpar. (B) which provided that review pursuant to section 78y(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to this paragraph would, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and had to be assigned for consideration at the earliest practicable date and expedited in every way.

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.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (b) which is 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.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the

President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 78l. Registration requirements for securities

(a) General requirement of registration

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) Procedure for registration; information

A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding \$20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(L) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) Additional or alternative information

If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) Effective date of registration; withdrawal of registration

If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 78m of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Exemption from provisions of section for period ending not later than July 1, 1935

Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appro-