

**§ 78hhh. Examining authority functions**

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 78ddd of this title. The examining authority or collection agent shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91-598, § 12, formerly § 8, Dec. 30, 1970, 84 Stat. 1653; renumbered § 12 and amended Pub. L. 95-283, §§ 9, 11, May 21, 1978, 92 Stat. 260, 268.)

**PRIOR PROVISIONS**

A prior section 12 of Pub. L. 91-598 was renumbered section 16 and is classified to section 78iii of this title.

**AMENDMENTS**

1978—Pub. L. 95-283 inserted provisions relating to applicability to a collection agent.

**§ 78iii. Functions of self-regulatory organizations****(a) Collection agent**

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, unless SIPC designates a self-regulatory organization other than the examining authority to act as collection agent for any member of SIPC who is a member of or participant in more than one self-regulatory organization. If the only self-regulatory organization of which a member of SIPC is a member or in which it is a participant is a registered clearing agency that is not the examining authority for the member, SIPC may, nevertheless, designate such registered clearing agency as collection agent for the member or may require that payments be made directly to SIPC. The collection agent shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessment are received by such collection agent. Members of SIPC who are not members of or participants in a self-regulatory organization shall make payments directly to SIPC.

**(b) Immunity**

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) and section 78eee(a)(2) of this title.

**(c) Inspections**

The self-regulatory organization of which a member of SIPC is a member or in which it is a

participant shall inspect or examine such member for compliance with applicable financial responsibility rules, except that—

(1) if the self-regulatory organization is a registered clearing agency, the Commission may designate itself as responsible for the examination of such member for compliance with applicable financial responsibility rules; and

(2) if a member of SIPC is a member of or participant in more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations or itself as responsible for the examination of such member for compliance with applicable financial responsibility rules.

**(d) Reports**

There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

**(e) Consultation**

SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

**(f) Financial condition of members**

The Commission may, by such rules as it determines necessary or appropriate in the public interest and to carry out the purposes of this chapter, require any self-regulatory organization to furnish SIPC with reports and records (or copies thereof) relating to the financial condition of members of or participants in such self-regulatory organization.

(Pub. L. 91-598, § 13, formerly § 9, Dec. 30, 1970, 84 Stat. 1654; amended Pub. L. 94-29, § 26, June 4, 1975, 89 Stat. 163; renumbered § 13 and amended Pub. L. 95-283, §§ 9, 12, May 21, 1978, 92 Stat. 260, 269.)

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (f), was in the original "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

**AMENDMENTS**

1978—Subsec. (a). Pub. L. 95-283, § 12(a), in heading substituted "Collection" for "Collecting", and in text inserted provisions relating to designation of a self-reg-

ulatory organization other than the examining authority to act as collection agent and provisions relating to designation of a registered clearing agency as collection agent, and substituted provisions relating to remittances by the collection agent to SIPC, for provisions relating to remittances by an examining authority to SIPC.

Subsec. (b). Pub. L. 95-283, §12(b), inserted reference to section 78eee(a)(2) of this title.

Subsec. (c). Pub. L. 95-283, §12(c), revised existing format and provisions into introductory text and cl. (2) and, as so revised, in introductory text inserted provisions respecting participation by a member of SIPC in a self-regulatory organization and in cl. (2) inserted provisions respecting such participation and authorization for the Commission to designate itself as responsible for the statutory examination, and added cl. (1).

Subsec. (f). Pub. L. 95-283, §12(d), substituted provisions authorizing the Commission to set out rules requiring self-regulatory organizations to furnish SIPC with reports and records of members or participants in such self-regulatory organizations, for provisions authorizing the Commission to set out rules, and regulations requiring self-regulatory organizations to adopt rules, practices, and procedures respecting inspections and examinations of members and examiners, to furnish SIPC and the Commission with reports and records of members, and to inspect or examine members.

1975—Subsec. (c). Pub. L. 94-29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

### § 78jjj. Prohibited acts

#### (a) Failure to pay assessment, etc.

If a member of SIPC shall fail to file any report or information required pursuant to this chapter, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this chapter, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest and penalty thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that it owes all or any part of the amount specified in such notice, it may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount it denies owing.

#### (b) Engaging in business after appointment of trustee or initiation of direct payment procedure

It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee

has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

#### (c) Concealment of assets; false statements or claims

##### (1) Specific prohibited acts

Any person who, directly or indirectly, in connection with or in contemplation of any liquidation proceeding or direct payment procedure—

(A) employs any device, scheme, or artifice to defraud;

(B) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(C) fraudulently or with intent to defeat this chapter—

(i) conceals or transfers any property belonging to the estate of a debtor;

(ii) makes a false statement or account;

(iii) presents or uses any false claim for proof against the estate of a debtor;

(iv) receives any material amount of property from a debtor;

(v) gives, offers, receives, transfers, or obtains any money or property, remuneration, compensation, reward, advantage, other consideration, or promise thereof, for acting or forbearing to act;

(vi) conceals, destroys, mutilates, falsifies, makes a false entry in, or otherwise falsifies any document affecting or relating to the property or affairs of a debtor; or

(vii) withholds, from any person entitled to its possession, any document affecting or relating to the property or affairs of a debtor,

shall be fined not more than \$250,000 or imprisoned for not more than five years, or both.

##### (2) Fraudulent conversion

Any person who, directly or indirectly steals, embezzles, or fraudulently, or with intent to defeat this chapter, abstracts or converts to his own use or to the use of another any of the moneys, securities, or other assets of SIPC, or otherwise defrauds or attempts to defraud SIPC or a trustee by any means, shall be fined not more than \$250,000 or imprisoned not more than five years, or both.

#### (d) Misrepresentation of SIPC membership or protection

##### (1) In general

Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this chapter or by SIPC, shall be liable for any damages caused thereby and shall be fined not