

change by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.”

Subsec. (b)(1). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(1)(A)], inserted “(A)” after “acquires” and substituted “; or (B) any security futures product on the security; or” for “; or”.

Subsec. (b)(2). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(1)(B)], inserted “(A)” after “interest in any” and substituted “; or (B) such security futures product; or” for “; or”.

Subsec. (b)(3). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(1)(C)], inserted “(A)” after “interest in any” and “; or (B) such security futures product” after “privilege”.

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title II, §205(a)(2)], designated existing provisions as par. (1), inserted “other than a security futures product” after “future delivery”, and added par. (2).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title III, §303(c)], added subsec. (i).

1990—Subsec. (h). Pub. L. 101-432 added subsec. (h).

1982—Subsec. (f). Pub. L. 97-303, §3(1), substituted “The provisions of subsection (a) of this section shall not apply” for “The provisions of this section shall not apply”.

Subsec. (g). Pub. L. 97-303, §3(2), added subsec. (g).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929L(1) and 929X(b) 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 Title 12, Banks and Banking.

Amendment by sections 762(d)(2) and 763(f), (g) 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.

#### 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.

### § 78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Paragraph (1) of this subsection shall not apply to security futures products.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement<sup>1</sup> any manipulative or deceptive de-

vice or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 1813(q) of title 12), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

Rules promulgated under subsection (b) of this section that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) of this section and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 77q(a) of this title and sections 78i, 78o, 78p, 78t, and 78u-1 of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

(June 6, 1934, ch. 404, title I, §10, 48 Stat. 891; Pub. L. 106-554, §1(a)(5) [title II, §206(g), title III, §303(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-432, 2763A-454; Pub. L. 111-203, title VII, §762(d)(3), title IX, §§929L(2), 984(a), July 21, 2010, 124 Stat. 1761, 1861, 1932.)

#### AMENDMENT OF SECTION

*Unless otherwise provided, amendment by subtitle B (§§ 761-774) of title VII 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 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

#### AMENDMENTS

2010—Pub. L. 111-203, §762(d)(3)(B), which directed amendment of the matter following subsection (b) “by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act), in each place that such terms appear’”, was executed by striking out “(as defined in section 206B of the Gramm-Leach-Bliley Act)” after “security-based swap agreements” in two places in concluding provisions following subsec. (c) to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 111-203, §929L(2), substituted “other than a government security” for “registered on a national securities exchange”.

<sup>1</sup> So in original. Probably should be followed by a comma.

Subsec. (b). Pub. L. 111-203, §762(d)(3)(A), struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act),” after “securities-based swap agreement”.

Subsec. (c). Pub. L. 111-203, §984(a), which directed amendment of this section by adding subsec. (c) at the end, was executed by adding subsec. (c) after subsec. (b) to reflect the probable intent of Congress.

2000—Pub. L. 106-554, §1(a)(5) [title III, §303(d)(2)], inserted concluding provisions at end.

Subsec. (a). Pub. L. 106-554, §1(a)(5) [title II, §206(g)], designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 106-554, §1(a)(5) [title III, §303(d)(1)], inserted “or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),” before “any manipulative or deceptive device”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929L(2) and 984(a) 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 Title 12, Banks and Banking.

Amendment by section 762(d)(3) 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.

#### REGULATIONS

Pub. L. 111-203, title IX, §984(b), July 21, 2010, 124 Stat. 1933, provided that: “Not later than 2 years after the date of enactment of this Act [July 21, 2010], the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.”

[For definitions of terms used in section 984(b) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

#### 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.

#### PROHIBITION OF INSIDER TRADING

Pub. L. 112-105, §4(a), Apr. 4, 2012, 126 Stat. 292, provided that: “Members of Congress and employees of Congress are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder.”

#### APPLICATION OF INSIDER TRADING LAWS

Pub. L. 112-105, §9(b)(1), Apr. 4, 2012, 126 Stat. 297, provided that: “Executive branch employees, judicial officers, and judicial employees are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder.”

### § 78j-1. Audit requirements

#### (a) In general

Each audit required pursuant to this chapter of the financial statements of an issuer by a registered public accounting firm shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

(1) procedures designed to provide reasonable assurance of detecting illegal acts that would

have a direct and material effect on the determination of financial statement amounts;

(2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

(3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

#### (b) Required response to audit discoveries

##### (1) Investigation and report to management

If, in the course of conducting an audit pursuant to this chapter to which subsection (a) of this section applies, the registered public accounting firm detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the firm shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

(A)(i) determine whether it is likely that an illegal act has occurred; and

(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

(B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such firm in the course of the audit, unless the illegal act is clearly inconsequential.

##### (2) Response to failure to take remedial action

If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the firm in the course of the audit of such firm, the registered public accounting firm concludes that—

(A) the illegal act has a material effect on the financial statements of the issuer;

(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

(C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement;

the registered public accounting firm shall, as soon as practicable, directly report its conclusions to the board of directors.

##### (3) Notice to Commission; response to failure to notify

An issuer whose board of directors receives a report under paragraph (2) shall inform the