

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.

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b)(3)(A), (F), (I), (8), (d)(1), (3)(B), (4), (5), (e), and (h) to (j), was in the original “this title”. See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsecs. (b)(8) and (l)(1), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

2010—Subsec. (c)(4)(C). Pub. L. 111-203, §925(a)(3), substituted “12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization,” for “twelve months or bar any such person from being associated with the transfer agent.”

Subsec. (g). Pub. L. 111-203, §929W, added subsec. (g) relating to due diligence for the delivery of dividends, interest, and other valuable property rights.

Pub. L. 111-203, §763(b), added subsec. (g) relating to registration requirement.

Subsecs. (h) to (m). Pub. L. 111-203, §763(b), added subsecs. (h) to (m).

2002—Subsec. (c)(3)(A), (4)(C). Pub. L. 107-204 inserted “, or is subject to an order or finding,” before “enumerated” and substituted “(H), or (G)” for “or (G)”.

2000—Subsec. (b)(3)(A). Pub. L. 106-554, §1(a)(5) [title II, §207(1)], inserted “and derivative agreements, contracts, and transactions” after “prompt and accurate clearance and settlement of securities transactions”.

Subsec. (b)(3)(F). Pub. L. 106-554, §1(a)(5) [title II, §207(2)], inserted “and, to the extent applicable, derivative agreements, contracts, and transactions” after “designed to promote the prompt and accurate clearance and settlement of securities transactions”.

Subsec. (b)(7). Pub. L. 106-554, §1(a)(5) [title II, §206(d)], added par. (7).

Subsec. (b)(8). Pub. L. 106-554, §1(a)(5) [title II, §207(3)], added par. (8).

1990—Subsec. (a)(2). Pub. L. 101-432, §5(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents.”

Subsec. (c)(3)(A), (4)(C). Pub. L. 101-550 substituted “(A), (D), (E), or (G)” for “(A), (D), or (E)”.

Subsec. (d)(5). Pub. L. 101-429 added par. (5).

Subsec. (f). Pub. L. 101-432, §5(b), added subsec. (f).

1987—Subsec. (c)(2). Pub. L. 100-181, §322(1), (2), inserted “and any persons associated with the transfer agent” in first sentence and substituted “45” for “thirty” in second sentence.

Subsec. (c)(3), (4). Pub. L. 100-181, §322(3)–(5), added par. (3), struck out former par. (3)(A) which read as follows: “The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure,

place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 78q of this title or the rules or regulations thereunder.”, redesignated subpars. (B) and (C) of former par. (3) as subpars. (A) and (B), respectively, of new par. (4), and added subpar. (C) to such par. (4).

Subsec. (d)(3)(B). Pub. L. 100-181, §322(6), substituted “clearing agency, transfer agent, or person associated with a transfer agent” for “clearing agency or transfer agent”.

Subsec. (d)(4). Pub. L. 100-181, §322(7), substituted “, transfer agent, or person associated with a transfer agent,” for “or transfer agent”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(a)(3) and 929W 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 763(b) 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 OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 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 a note under section 77g of this title.

#### EFFECTIVE DATE

Section effective June 4, 1975, except for subsecs. (b) and (c) which are 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.

#### CLEARANCE AND SETTLEMENT OF TRANSACTIONS; REPORT TO CONGRESS

Section 8(b) of Pub. L. 101-432 directed Securities and Exchange Commission, in consultation with Commodity Futures Trading Commission, Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, to examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and to submit to Congress, not later than 2 years from Oct. 16, 1990, a report detailing and evaluating such progress.

### § 78q-2. Automated quotation systems for penny stocks

#### (a) Findings

The Congress finds that—

(1) the market for penny stocks suffers from a lack of reliable and accurate quotation and last sale information available to investors and regulators;

(2) it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks; and

(3) a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market.

**(b) Mandate to facilitate establishment of automated quotation systems**

**(1) In general**

The Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks in accordance with the findings set forth in subsection (a) of this section, with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks.

**(2) Characteristics of systems**

Each such automated quotation system shall—

(A) be operated by a registered securities association or a national securities exchange in accordance with such rules as the Commission and these entities shall prescribe;

(B) collect and disseminate quotation and transaction information;

(C) except as provided in subsection (c) of this section, provide bid and ask quotations of participating brokers or dealers, or comparably accurate and reliable pricing information, which shall constitute firm bids or offers for at least such minimum numbers of shares or minimum dollar amounts as the Commission and the registered securities association or national securities exchange shall require; and

(D) provide for the reporting of the volume of penny stock transactions, including last sale reporting, when the volume reaches appropriate levels that the Commission shall specify by rule or order.

**(c) Exemptive authority**

The Commission may, by rule or order, grant such exemptions, in whole or in part, conditionally or unconditionally, to any penny stock or class of penny stocks from the requirements of subsection (b) of this section as the Commission determines to be consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

**(d) Commission reporting requirements**

The Commission shall, in each of the first 5 annual reports (under section 78w(b)(1) of this title) submitted more than 12 months after October 15, 1990, include a description of the status of the penny stock automated quotation system or systems required by subsection (b) of this section. Such description shall include—

(1) a review of the development, implementation, and progress of the project, including achievement of significant milestones and current project schedule; and

(2) a review of the activities of registered securities associations and national securities exchanges in the development of the system.

(June 6, 1934, ch. 404, title I, §17B, as added Pub. L. 101-429, title V, §506, Oct. 15, 1990, 104 Stat. 955.)

REFERENCES IN TEXT

Section 78w(b)(1) of this title, referred to in subsec. (d), was omitted from the Code. For further details related to reports referred to in subsec. (d), see Codification note set out under section 78w 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.

**§ 78r. Liability for misleading statements**

**(a) Persons liable; persons entitled to recover; defense of good faith; suit at law or in equity; costs, etc.**

Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

**(b) Contribution**

Every person who becomes liable to make payment under this section may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

**(c) Period of limitations**

No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(June 6, 1934, ch. 404, title I, §18, 48 Stat. 897; May 27, 1936, ch. 462, §5, 49 Stat. 1379.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".