

registration application state that the person is, or is about to become engaged primarily in rendering investment advisory services.

Subsec. (d). Pub. L. 86-750, §11(b), added subsec. (d).

#### 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.

### § 80b-9. Enforcement of subchapter

#### (a) Investigation

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person, it may in its discretion require, and in any event shall permit, such person to file with it a statement in writing, under oath or otherwise, as to all the facts and circumstances relevant to such violation, and may otherwise investigate all such facts and circumstances.

#### (b) Administration of oaths and affirmations, subpoena of witnesses, etc.

For the purposes of any investigation or any proceeding under this subchapter, any member of the Commission or any officer thereof designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

#### (c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a mis-

demeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

#### (d) Action for injunction

Whenever it shall appear to the Commission that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged, is engaged, or is about to engage in any such act or practice, or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

#### (e) Money penalties in civil actions

##### (1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80b-3(k) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

##### (2) Amount of penalty

###### (A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

###### (B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

**(C) Third tier**

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

**(3) Procedures for collection****(A) Payment of penalty to Treasury**

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

**(B) Collection of penalties**

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

**(C) Remedy not exclusive**

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

**(D) Jurisdiction and venue**

For purposes of section 80b-14 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

**(4) Special provisions relating to violation of cease-and-desist order**

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80b-3(k) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

**(f) Aiding and abetting**

For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.

(Aug. 22, 1940, ch. 686, title II, §209, 54 Stat. 853; Pub. L. 86-750, §12, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91-452, title II, §216, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title VII, §704, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 101-429, title IV, §402, Oct.

15, 1990, 104 Stat. 949; Pub. L. 107-204, title III, §308(d)(5), July 30, 2002, 116 Stat. 785; Pub. L. 111-203, title IX, §§923(a)(3), 929N, July 21, 2010, 124 Stat. 1849, 1862.)

## AMENDMENTS

2010—Subsec. (e)(3)(A). Pub. L. 111-203, §923(a)(3), inserted “and section 78u-6 of this title” after “section 7246 of this title”.

Subsec. (f). Pub. L. 111-203, §929N, added subsec. (f).

2002—Subsec. (e)(3)(A). Pub. L. 107-204 inserted “, except as otherwise provided in section 7246 of this title” before period at end.

1990—Subsec. (e). Pub. L. 101-429 added subsec. (e).

1987—Subsecs. (d), (e). Pub. L. 100-181 redesignated subsec. (e) as (d).

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1960—Subsec. (e). Pub. L. 86-750 inserted “, is engaged,” after “has engaged” wherever appearing, and inserted provisions relating to aiders and abettors.

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

## 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 OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

## SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

## 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.

**§ 80b-10. Disclosure of information by Commission****(a) Information available to public**

The information contained in any registration application or report or amendment thereto filed with the Commission pursuant to any provision of this subchapter shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and