

rial containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

**(c) Rule of construction**

The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

- (1) as overruling a decision by such issuer or board of directors;
- (2) to create or imply any change to the fiduciary duties of such issuer or board of directors;
- (3) to create or imply any additional fiduciary duties for such issuer or board of directors; or
- (4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

**(d) Disclosure of votes**

Every institutional investment manager subject to section 78m(f) of this title shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

**(e) Exemption**

**(1) In general**

The Commission may, by rule or order, exempt any other issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens<sup>1</sup> small issuers.

**(2) Treatment of emerging growth companies**

**(A) In general**

An emerging growth company shall be exempt from the requirements of subsections (a) and (b).

**(B) Compliance after termination of emerging growth company treatment**

An issuer that was an emerging growth company but is no longer an emerging growth company shall include the first separate resolution described under subsection (a)(1) not later than the end of—

- (i) in the case of an issuer that was an emerging growth company for less than 2 years after the date of first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the 3-year period beginning on such date; and
- (ii) in the case of any other issuer, the 1-year period beginning on the date the is-

ssuer is no longer an emerging growth company.

(June 6, 1934, ch. 404, title I, § 14A, as added Pub. L. 111-203, title IX, § 951, July 21, 2010, 124 Stat. 1899; amended Pub. L. 112-106, title I, § 102(a)(1), Apr. 5, 2012, 126 Stat. 308.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (e)(2)(B)(i), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112-106 designated existing provisions as par. (1), inserted heading, substituted “any other issuer” for “an issuer”, and added par. (2).

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

**§ 78n-2. Corporate governance**

Not later than 180 days after July 21, 2010, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

- (1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or
- (2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).

(June 6, 1934, ch. 404, title I, § 14B, as added Pub. L. 111-203, title IX, § 972, July 21, 2010, 124 Stat. 1915.)

CODIFICATION

July 21, 2010, referred to in text, was in the original “the date of enactment of this subsection”, and was translated as meaning the date of enactment of Pub. L. 111-203, which enacted this section, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

**§ 78o. Registration and regulation of brokers and dealers**

**(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions**

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers’ accept-

<sup>1</sup> So in original. Probably should be “burden”.

ances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

**(b) Manner of registration of brokers and dealers**

(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant 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 twenty days of the date 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 conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures

set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on June 4, 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this chapter.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this chapter and the rules and regulations thereunder: *Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this chapter (other than section 78e of this title and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which 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, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer municipal advisor,<sup>1</sup> government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18 or a violation of a substantially equivalent foreign statute.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor,<sup>1</sup> government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Com-

modity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker, dealer, security-based swap dealer, or a major security-based swap participant;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that 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, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing vio-

<sup>1</sup> So in original.

lations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer 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 broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4)

within 10 years of the commencement of the proceedings under this paragraph; or

(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;

(ii) for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or

(iii) for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

(C) For purposes of this paragraph, the term “person participating in an offering of penny stock” includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from such term.

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 78o-5(a)(1)(A) of this title shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission’s rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, account-

ing, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or<sup>2</sup> commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 78o-3 of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 78f(c)(2), 78o-3(g)(2), or 78q-1(b)(4)(A) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(11) **BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—**

(A) **NOTICE REGISTRATION.—**

(i) **CONTENTS OF NOTICE.—**Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 78f(g) of this title may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph un-

less that broker or dealer is a member of a national securities association registered under section 78o-3(k) of this title.

(ii) **IMMEDIATE EFFECTIVENESS.—**Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) **SUSPENSION.—**Such registration shall be suspended immediately if a national securities association registered pursuant to section 78o-3(k) of this title suspends the membership of that broker or dealer.

(iv) **TERMINATION.—**Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) **EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.—**A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this chapter and the rules thereunder with respect to transactions in security futures products:

(i) Section 78h of this title.

(ii) Section 78k of this title.

(iii) Subsections (c)(3) and (c)(5) of this section.

(iv) Section 78o-4 of this title.

(v) Section 78o-5 of this title.

(vi) Subsections (d), (e), (f), (g), (h), and (i)<sup>3</sup> of section 78q of this title.

(12) **EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.—**

(A) **REGISTRATION EXEMPTION.—**A natural person shall be exempt from the registration requirements of this section if such person—

(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 78f(g) of this title;

(ii) effects transactions only in securities on the exchange of which such person is a member; and

(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

(B) **OTHER EXEMPTIONS.—**A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this chapter and the rules thereunder:

(i) Section 78h of this title.

(ii) Section 78k of this title.

(iii) Subsections (c)(3), (c)(5), and (e) of this section.

(iv) Section 78o-4 of this title.

(v) Section 78o-5 of this title.

(vi) Subsections (d), (e), (f), (g), (h), and (i)<sup>3</sup> of section 78q of this title.

(c) **Use of manipulative or deceptive devices; contravention of rules and regulations**

(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of

<sup>2</sup> So in original. The word "or" probably should not appear.

<sup>3</sup> See References in Text note below.

interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), or any security-based swap agreement by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or to attempt to induce the purchase or sale of, any government security or any security-based swap agreement involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(2)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such broker, dealer, or municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C)

that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(3)(A) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(B) Consistent with this chapter, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to subsection (b) of this section (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 78h of this title, subsection (c)(3) of this section, and section 78q of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.] and rules and regulations thereunder involving security futures products.

(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(C)(i), 6d(a)(2)] and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 78mm of this title or pursuant to a rule or regulation, cash and securities may be

held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act [7 U.S.C. 6f(a)(1)], in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act [7 U.S.C. 6d] and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 78l, 78m, 78n of this title or subsection (d) of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of secu-

rities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 78g of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this chapter or under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

#### **(d) Supplementary and periodic information**

##### **(1) In general**

Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], shall file with the Commission, 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, such supplementary and periodic information, documents, and reports as may be required pursuant to section 78m of this title in respect of a security registered pursuant to section 78l of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 78l of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of bank<sup>4</sup> or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons persons.<sup>1</sup> For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of

<sup>4</sup>So in original. Probably should be preceded by "a".

record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

**(2) Asset-backed securities**

**(A) Suspension of duty to file**

The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

**(B) Classification of issuers**

The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

**(e) Notices to customers regarding securities lending**

Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer’s securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer’s securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.

**(f) Compliance with this chapter by members not required to be registered**

The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under this section and any person associated with any such member to comply with any provision of this chapter (other than subsection (a) of this section) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a “broker or dealer” or “registered broker or dealer” or a “person associated with a broker or dealer,” respectively.

**(g) Prevention of misuse of material, nonpublic information**

Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker’s or dealer’s business, to prevent the misuse in violation of this chapter, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors,

shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this chapter (or the rules or regulations thereunder) of material, nonpublic information.

**(h) Requirements for transactions in penny stocks**

**(1) In general**

No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

**(2) Risk disclosure with respect to penny stocks**

Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer a risk disclosure document that—

(A) contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;

(B) contains a description of the broker’s or dealer’s duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;

(C) contains a brief, clear, narrative description of a dealer market, including “bid” and “ask” prices for penny stocks and the significance of the spread between the bid and ask prices;

(D) contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 78o-3(i) of this title;

(E) defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and

(F) contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

**(3) Commission rules relating to disclosure**

The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules—

(A) shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors—

(i) the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

(ii) the number of shares to which such bid and ask prices apply, or other com-



parable information relating to the depth and liquidity of the market for such stock; and

(iii) the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;

(B) shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and

(C) may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

**(4) Exemptions**

The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

**(5) Regulations**

It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets—

(A) as necessary or appropriate to carry out this subsection; or

(B) as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

**(i) Limitations on State law**

**(1) Capital, margin, books and records, bonding, and reports**

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this chapter. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this chapter.

**(2) Funding portals**

**(A) Limitation on State laws**

Except as provided in subparagraph (B), no State or political subdivision thereof may

enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

**(B) Examination and enforcement authority**

Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

**(C) Definition**

For purposes of this paragraph, the term "State" includes the District of Columbia and the territories of the United States.

**(3) De minimis transactions by associated persons**

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) for a customer in such State if—

(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

(B) such associated person is registered with a registered securities association and at least one State; and

(C) the broker or dealer with which such person is associated is registered with such State.

**(4) Described transactions**

**(A) In general**

A transaction is described in this paragraph if—

(i) such transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) by an associated person of the broker or dealer—

(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or

(ii) the transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of—

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

**(B) Rules of construction**

For purposes of subparagraph (A)(i)(II)—

(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and

(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

**(j)<sup>5</sup> Rulemaking to extend requirements to new hybrid products**

**(1) Consultation**

Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

**(2) Limitation**

The Commission shall not—

(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A),

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

**(3) Criteria for rulemaking**

The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—

(A) the new hybrid product is a security; and

(B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

**(4) Considerations**

In making a determination under paragraph (3), the Commission shall consider—

(A) the nature of the new hybrid product; and

(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

**(5) Objection to Commission regulation**

**(A) Filing of petition for review**

The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

**(B) Transmittal of petition and record**

A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

**(C) Exclusive jurisdiction**

On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

**(D) Standard of review**

The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—

(i) the subject product is a new hybrid product, as defined in this subsection;

(ii) the subject product is a security; and

(iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

**(E) Judicial stay**

The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

**(F) Other authority to challenge**

Any aggrieved party may seek judicial review of the Commission's rulemaking under this subsection pursuant to section 78y of this title.

**(6) Definitions**

For purposes of this subsection:

<sup>5</sup> So in original. There are two subsecs. designated (j).

**(A) New hybrid product**

The term “new hybrid product” means a product that—

- (i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act [Nov. 12, 1999];
- (ii) is not an identified banking product as such term is defined in section 206 of such Act; and
- (iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

**(B) Board**

The term “Board” means the Board of Governors of the Federal Reserve System.

**(j)<sup>5</sup> Limitation on Commission authority**

The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

**(k)<sup>6</sup> Registration or succession to a United States broker or dealer**

In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

**(l)<sup>7</sup> Termination of a United States broker or dealer**

For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

**(k)<sup>8</sup> Standard of conduct****(1) In general**

Notwithstanding any other provision of this chapter or the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-11]. The receipt of compensation based on

commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

**(2) Disclosure of range of products offered**

Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

**(l)<sup>9</sup> Other matters**

The Commission shall—

- (1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and
- (2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

**(m) Harmonization of enforcement**

The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

- (1) the enforcement authority of the Commission with respect to such violations provided under this chapter; and
- (2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this chapter to<sup>10</sup> same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].

**(n) Disclosures to retail investors****(1) In general**

Notwithstanding any other provision of the securities laws, the Commission may issue

<sup>6</sup> Another subsec. (k) is set out after the first subsec. (l).

<sup>7</sup> Another subsec. (l) is set out after the second subsec. (k).

<sup>8</sup> Another subsec. (k) is set out after the second subsec. (j).

<sup>9</sup> Another subsec. (l) is set out after the first subsec. (k).

<sup>10</sup> So in original. Probably should be followed by “the”.

rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

**(2) Considerations**

In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

**(3) Form and contents of documents and information**

Any documents or information designated under a rule promulgated under paragraph (1) shall—

(A) be in a summary format; and

(B) contain clear and concise information about—

(i) investment objectives, strategies, costs, and risks; and

(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.

**(o) Authority to restrict mandatory pre-dispute arbitration**

The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

(June 6, 1934, ch. 404, title I, §15, 48 Stat. 895; May 27, 1936, ch. 462, §3, 49 Stat. 1377; June 25, 1938, ch. 677, §2, 52 Stat. 1075; Pub. L. 88-467, §6, Aug. 20, 1964, 78 Stat. 570; Pub. L. 91-598, §11(d), formerly §7(d), Dec. 30, 1970, 84 Stat. 1653, renumbered §11(d), Pub. L. 95-283, §9, May 21, 1978, 92 Stat. 260; Pub. L. 94-29, §11, June 4, 1975, 89 Stat. 121; Pub. L. 95-213, title II, §204, Dec. 19, 1977, 91 Stat. 1500; Pub. L. 98-38, §3(a), June 6, 1983, 97 Stat. 206; Pub. L. 98-376, §§4, 6(b), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 99-571, title I, §102(e), (f), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 100-181, title III, §317, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 100-704, §3(b)(1), Nov. 19, 1988, 102 Stat. 4679; Pub. L. 101-429, title V, §§504(a), 505, Oct. 15, 1990, 104 Stat. 952, 953; Pub. L. 101-550, title II, §203(a), (c)(1), Nov. 15, 1990, 104 Stat. 2715, 2718; Pub. L. 103-202, title I, §§105, 106(b)(2)(B), 109(b)(2), 110, Dec. 17, 1993, 107 Stat. 2348, 2350, 2353; Pub. L. 104-67, title I, §103(a), Dec. 22, 1995, 109 Stat. 756; Pub. L. 104-290, title I, §103(a), Oct. 11, 1996, 110 Stat. 3420; Pub. L. 105-353, title III, §301(b)(8), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-102, title II, §205, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106-554, §1(a)(5) [title II, §§203(a)(1), (b), 206(h), title III, §303(e), (f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-421, 2763A-422, 2763A-432, 2763A-454, 2763A-455; Pub. L. 107-204, title VI, §604(a), (c)(1)(B)(ii), July 30, 2002, 116 Stat. 795, 796; Pub. L. 109-291, §4(b)(1)(A), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111-203, title I, §173(c), title VII, §§713(a), 762(d)(4), 766(d), title IX, §§913(g)(1),

(h)(1), 919, 921(a), 925(a)(1), 929L(3), 929X(c), 942(a), 975(g), 985(b)(5)(A), July 21, 2010, 124 Stat. 1440, 1646, 1761, 1799, 1828, 1829, 1837, 1841, 1850, 1861, 1870, 1896, 1923, 1933; Pub. L. 112-106, title III, §305(d)(1), title VI, §601(b), Apr. 5, 2012, 126 Stat. 323, 326.)

AMENDMENT OF SECTION

*Unless otherwise provided, amendments by subtitle A (§§711-754) and 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 either subtitle A or B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A or B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2)(B), (C), (3), (4)(A), (D), (E), (11)(B), (12)(B), (c)(3)(B), (8), (f), (g), and (i)(1), was in the original “this title”, and this chapter, referred to in subsecs. (k)(1) and (m), was in the original “this Act”. See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsecs. (b)(4)(B)(ii), (C) to (E) and (c)(3)(B), 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 Securities Act of 1933, referred to in subsecs. (b)(4)(D), (E), (c)(8), and (d)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter 1 (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsecs. (b)(4)(D), (E), (k)(1), and (m), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (b)(4)(D), (E), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter 1 (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

Subsection (i) of section 78q of this title, referred to in subsec. (b)(11)(B)(vi), (12)(B)(vi), was struck out and subsec. (j) was redesignated (i) by Pub. L. 111-203, title VI, §617(a), July 21, 2010, 124 Stat. 1616.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (j)(6)(A)(ii), (iii), is section 206 of Pub. L. 106-102, which is set out as a note under section 78c of this title.

AMENDMENTS

2012—Subsec. (d)(1). Pub. L. 112-106, §601(b), substituted “300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 1841 of title 12, 1,200 persons” for “three hundred”.

Subsec. (i)(2) to (4). Pub. L. 112-106, §305(d)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2010—Subsec. (b)(1). Pub. L. 111-203, §985(b)(5)(A)(ii), in concluding provisions, inserted “The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.” after “are satisfied.”

Subsec. (b)(1)(B). Pub. L. 111-203, §985(b)(5)(A)(i), struck out “The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.” after “grant or deny such registration.”

Subsec. (b)(4). Pub. L. 111-203, §975(g)(1), inserted “municipal advisor,” after “municipal securities dealer” in subpars. (B)(ii) and (C).

Subsec. (b)(4)(C). Pub. L. 111-203, §766(d)(1), inserted “security-based swap dealer, major security-based swap participant,” after “government securities dealer.”

Subsec. (b)(4)(F). Pub. L. 111-203, §766(d)(2), substituted “broker, dealer, security-based swap dealer, or a major security-based swap participant” for “broker or dealer”.

Subsec. (b)(6)(A). Pub. L. 111-203, §925(a)(1), substituted “, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,” for “, or bar such person from being associated with a broker or dealer,” in introductory provisions.

Subsec. (c). Pub. L. 111-203, §975(g)(2), inserted “broker, dealer, or” before “municipal securities dealer” in par. (1)(B) and in two places in par. (2)(B).

Subsec. (c)(1)(A). Pub. L. 111-203, §929L(3), struck out “otherwise than on a national securities exchange of which it is a member” after “commercial bills”.

Pub. L. 111-203, §762(d)(4)(A), struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act),” after “security-based swap agreement”.

Subsec. (c)(1)(B), (C). Pub. L. 111-203, §762(d)(4)(B), struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act)” after “security-based swap agreement”.

Subsec. (c)(3)(C). Pub. L. 111-203, §713(a), added subpar. (C).

Subsec. (d). Pub. L. 111-203, §942(a), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, inserted “, other than any class of asset-backed securities,” after “securities of each class”, and added par. (2).

Subsecs. (e) to (h). Pub. L. 111-203, §929X(c), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i) relating to limitations on State law.

Subsec. (i). Pub. L. 111-203, §929X(c)(1), redesignated subsec. (h) as (i). Former subsec. (i), relating to rulemaking to extend requirements to new hybrid products, redesignated (j).

Subsec. (j). Pub. L. 111-203, §929X(c)(1), redesignated subsec. (i), relating to rulemaking to extend requirements to new hybrid products, as (j).

Pub. L. 111-203, §762(d)(4)(C), (D), redesignated subsec. (i), relating to limitation on Commission authority, as (j) and struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act)” after “security-based swap agreements”.

Subsecs. (k), (l). Pub. L. 111-203, §913(g)(1), added subsec. (k) relating to standard of conduct and subsec. (l) relating to other matters.

Pub. L. 111-203, §173(c), added subsec. (k) relating to registration or succession to a United States broker or dealer and subsec. (l) relating to termination of a United States broker or dealer.

Subsec. (m). Pub. L. 111-203, §913(h)(1), added subsec. (m).

Subsec. (n). Pub. L. 111-203, §919, added subsec. (n).

Subsec. (o). Pub. L. 111-203, §921(a), added subsec. (o). 2006—Subsec. (b)(4)(B)(ii), (C). Pub. L. 109-291 inserted “nationally recognized statistical rating organization,” after “transfer agent.”

2002—Subsec. (b)(4)(F). Pub. L. 107-204, §604(a)(1), added subpar. (F) and struck out former subpar. (F) which read as follows: “is subject to an order of the

Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer.”

Subsec. (b)(4)(H). Pub. L. 107-204, §604(a)(2), added subpar. (H).

Subsec. (b)(6)(A)(i). Pub. L. 107-204, §604(c)(1)(B)(ii), substituted “, or is subject to an order or finding,” for “or omission”.

2000—Subsec. (b)(11). Pub. L. 106-554, §1(a)(5) [title II, §203(a)(1)], added par. (11).

Subsec. (b)(12). Pub. L. 106-554, §1(a)(5) [title II, §203(b)], added par. (12).

Subsec. (c)(1). Pub. L. 106-554, §1(a)(5) [title III, §303(e)], amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) to (E) prohibiting use of mails or instrumentality of interstate commerce for transactions in securities by manipulative, deceptive, or other fraudulent device, requiring the Commission, by regulation, to define such devices as manipulative, deceptive or fraudulent, and providing for consultation with the Secretary of the Treasury and other agencies prior to adoption of regulations.

Subsec. (c)(3). Pub. L. 106-554, §1(a)(5) [title II, §206(h)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title III, §303(f)], added subsec. (i) relating to limitation on Commission authority.

1999—Subsec. (i). Pub. L. 106-102 added subsec. (i) relating to rulemaking to extend requirements to new hybrid products.

1998—Subsec. (c)(8). Pub. L. 105-353, §301(b)(8)(A), realigned margins.

Subsec. (h)(2). Pub. L. 105-353, §301(b)(8)(B), substituted “effecting” for “affecting” in introductory provisions.

Subsec. (h)(3)(A)(i)(II)(bb). Pub. L. 105-353, §301(b)(8)(C), inserted “or” after semicolon at end.

Subsec. (h)(3)(A)(ii)(I). Pub. L. 105-353, §301(b)(8)(D), substituted “maintained” for “maintains”.

Subsec. (h)(3)(B)(ii). Pub. L. 105-353, §301(b)(8)(E), substituted “associated” for “association”.

1996—Subsec. (h). Pub. L. 104-290 added subsec. (h).

1995—Subsec. (c)(8). Pub. L. 104-67 added par. (8).

1993—Subsec. (b)(1)(B). Pub. L. 103-202, §109(b)(2), inserted “The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.” before “The Commission may extend”.

Subsec. (b)(7). Pub. L. 103-202, §106(b)(2)(B), inserted “or government securities broker or government securities dealer registered (or required to register) under section 78o-5(a)(1)(A) of this title” after “No registered broker or dealer” in introductory provisions.

Subsec. (c)(1). Pub. L. 103-202, §105(b), inserted subpar. designation “(A)” after “(1)”, substituted “contrivance.” along with subpar. designation “(B)” and “No municipal securities dealer” for “contrivance, and no municipal securities dealer”, substituted “contrivance.” along with subpar. (C), subpar. designation “(D)” and “The Commission shall” for “contrivance. The Commission shall”, and added subpar. (E).

Subsec. (c)(2). Pub. L. 103-202, §105(a), inserted subpar. designation “(A)” after “(2)”, substituted “fictitious quotation.” along with subpar. designation “(B)” and “No municipal securities dealer” for “fictitious quotation, and no municipal securities dealer”, substituted “fictitious quotation.” along with subpar. (C), subpar. designation “(D)” and “The Commission shall” for “fictitious quotation. The Commission shall”, and added subpar. (E).

Subsec. (c)(7). Pub. L. 103-202, §110, added par. (7).

1990—Subsec. (b)(4)(B). Pub. L. 101-550, §203(a)(1), inserted “or of a substantially equivalent crime by a foreign court of competent jurisdiction” after “misdemeanor”.

Subsec. (b)(4)(B)(i). Pub. L. 101-550, §203(a)(2), inserted “any substantially equivalent activity however denominated by the laws of the relevant foreign government,” after “burglary.”

Subsec. (b)(4)(B)(ii). Pub. L. 101-550, §203(a)(3), inserted “foreign person performing a function substantially equivalent to any of the above,” after “transfer agent,” and “or any substantially equivalent foreign statute or regulation” before semicolon at end.

Subsec. (b)(4)(B)(iii). Pub. L. 101-550, §203(a)(4), inserted “, or substantially equivalent activity however denominated by the laws of the relevant foreign government” after “securities”.

Subsec. (b)(4)(B)(iv). Pub. L. 101-550, §203(a)(5), inserted “or a violation of a substantially equivalent foreign statute” after “title 18”.

Subsec. (b)(4)(C). Pub. L. 101-550, §203(a)(6), inserted “foreign person performing a function substantially equivalent to any of the above,” after “transfer agent,” “or any substantially equivalent foreign statute or regulation” after “Commodity Exchange Act” wherever appearing, and “foreign entity substantially equivalent to any of the above,” after “insurance company.”

Subsec. (b)(4)(G). Pub. L. 101-550, §203(a)(7), added subpar. (G).

Subsec. (b)(6). Pub. L. 101-429, §504(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), (E), or (G) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.”

Pub. L. 101-550, §203(c)(1), substituted “(A), (D), (E), or (G)” for “(A), (D), or (E)”.

Subsec. (g). Pub. L. 101-429, §505, added subsec. (g).

1988—Subsec. (f). Pub. L. 100-704 added subsec. (f).

1987—Subsec. (b)(4)(B)(ii). Pub. L. 100-181, §317(1), substituted “fiduciary, transfer agent, or” for “fiduciary, or any”.

Subsec. (b)(4)(C). Pub. L. 100-181, §317(2), added subpar. (C) and struck out former subpar. (C) which read as follows: “is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, entity or person required to be registered under the Commodity Exchange Act, municipal securities dealer, government securities broker, or government securities dealer, or as an affiliated person or employee of any investment company, bank, entity or person required to be registered under such Act, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.”

Subsec. (b)(6). Pub. L. 100-181, §317(3), substituted “seeking to become associated, or, at the time of the

alleged misconduct, associated or seeking to become associated” for “or seeking to become associated,” in first sentence.

Subsec. (b)(10). Pub. L. 100-181, §317(4), substituted “78q-1(b)(4)(A)” for “78q-1(b)(4)(B)”.

1986—Subsec. (b)(4)(A). Pub. L. 99-571, §102(e)(1), inserted “or with any other appropriate regulatory agency”.

Subsec. (b)(4)(B)(ii). Pub. L. 99-571, §102(e)(2), inserted “government securities broker, government securities dealer,”.

Subsec. (b)(4)(C). Pub. L. 99-571, §102(e)(3), substituted “municipal securities dealer, government securities broker, or government securities dealer,” for “or municipal securities dealer.”.

Subsec. (b)(8). Pub. L. 99-571, §102(e)(4), substituted “any registered broker or dealer” for “any broker or dealer required to register pursuant to this chapter” and struck out “an exempted security” after “other than”.

Subsec. (c)(3). Pub. L. 99-571, §102(f), inserted “(other than a government securities broker or government securities dealer, except a registered broker or dealer)” and “(except a government security)”.

1984—Subsec. (b)(4)(B)(ii). Pub. L. 98-376, §6(b)(1), substituted “fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)” for “or fiduciary”.

Subsec. (b)(4)(C). Pub. L. 98-376, §6(b)(2), inserted “entity or person required to be registered under the Commodity Exchange Act,” and “entity or person required to be registered under such Act”.

Subsec. (b)(4)(D), (E). Pub. L. 98-376, §6(b)(3), inserted “the Commodity Exchange Act,”.

Subsec. (c)(4). Pub. L. 98-376, §4, inserted reference to section 78n of this title and “and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply,”.

1983—Subsec. (b)(8). Pub. L. 98-38, §3(a)(1), added par. (8) and struck out former par. (8), which had directed that, in addition to the fees and charges authorized by par. (7) of this subsection, each registered broker or dealer not a member of a registered securities association pay to the Commission such reasonable fees and charges as necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effected transactions in securities otherwise than on a national securities exchange of which it was a member and was not a member of a registered securities association, and that the Commission, by rule, establish such fees and charges.

Subsec. (b)(9). Pub. L. 98-38, §3(a)(2), added par. (9) and struck out former par. (9), which had provided that no broker or dealer subject to par. (8) of this subsection could effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it was a member) in contravention of such rules and regulations as the Commission might prescribe designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

1977—Subsec. (d). Pub. L. 95-213 authorized the Commission to define, for purposes of this subsection, term “held of record”.

1975—Pub. L. 94-29, §11(1), amended section catchline.

Subsec. (a). Pub. L. 94-29, §11(2), required registration with the Commission of all persons utilizing an exchange’s facilities to effect transactions.

Subsec. (b). Pub. L. 94-29, §11(2), expanded coverage to include municipal securities dealers, permitted nonbank municipal securities dealers and brokers to register company departments or divisions conducting municipal securities activities rather than the company of which the department or division is a part, subjected municipal securities and associated persons thereof to the Commission’s enforcement and discipli-

nary powers, updated the list of statutory offenses which bar a person from becoming a broker-dealer or an associated person of a broker-dealer, expanded Commission regulatory control to include all brokers and dealers executing transactions on exchanges of which such brokers and dealers are not members, required any registered broker-dealer who is not a member of a registered securities association to pay the Commission fees imposed by it to defray the costs of the additional regulatory duties to be performed by the Commission, and clarified the power of national securities exchanges, registered securities associations, and registered clearing agencies to make determinations as to whether a person is subject to statutory disqualification.

Subsec. (c)(1). Pub. L. 94-29, §11(3), expanded the Commission's authority to define devices, contrivances, acts, and practices deemed manipulative, deceptive, and otherwise fraudulent for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(2). Pub. L. 94-29, §11(3), expanded the Commission's authority to define quotations deemed to be fictitious for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(3). Pub. L. 94-29, §11(3), inserted requirement that rules and regulations be promulgated no later than Sept. 1, 1975, establishing minimum financial responsibility requirements for all brokers and dealers.

Subsec. (c)(5). Pub. L. 94-29, §11(4), substituted provisions authorizing the Commission to regulate trading activities of market makers other than specialists registered on a national securities exchange for provisions authorizing the Commission summarily to suspend trading, otherwise than on a national securities exchange, in any security other than an exempted security for a period not exceeding 10 days if the public interest and the protection of investors so requires.

Subsec. (c)(6). Pub. L. 94-29, §11(5), added par. (6).

Subsec. (e). Pub. L. 94-29, §11(6), added subsec. (e).

1970—Subsec. (c)(3). Pub. L. 91-598 extended Commission's rulemaking power to both the exchange and the over-the-counter markets, striking out "otherwise than on a national securities exchange" before "in contravention of such rules and regulations" and substituting "shall prescribe" for "may prescribe" and provided for safeguards with respect to the related practices of brokers and dealers, including customers' securities and customers' deposits or credit balances, and maintenance of reserves with respect to such deposits or credit balances.

1964—Subsec. (a). Pub. L. 88-467, §6(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 88-467, §6(b), designated first par. as (1) and substituted "persons associated with such broker or dealer" for "person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such broker or dealer."

Subsec. (b)(2). Pub. L. 88-467, §6(b), designated second par. as (2) and substituted "associated with the applicant" for "directly or indirectly controlling or controlled by, or under direct or indirect common control with, the applicant".

Subsec. (b)(3). Pub. L. 88-467, §6(b), designated third par. as (3) and substituted "effective date of the registration" for "effective date thereof".

Subsec. (b)(4). Pub. L. 88-467, §6(b), added par. (4).

Subsec. (b)(5). Pub. L. 88-467, §6(b), designated first sentence of fourth par. as (5), provided for censure and for suspension for period not exceeding twelve months, substituted the language "that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated" for "that (1) such broker or dealer whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", sub-

stituted in clause (A) the provision respecting false or misleading statements in any report required to, be filed with the Commission for such statements in any document supplemental to application for registration and inserted in such clause (A) the material fact omission provision, designated existing provisions of clause (B) as items (i) and (ii), included in item (ii) the business of investment broker, and added items (iii) and (iv), provided in clause (C) for enjoyment from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, made clause (D) applicable to violations of the Investment Advisers Act of 1940 and the Investment Company Act of 1940, and added clauses (E) and (F).

Subsec. (b)(6). Pub. L. 88-467, §6(b), designated second through fifth sentences of fourth par. as (6) and, in provision constituting first sentence of par. (6) substituted "any registration under this subsection" for "any such registration" and inserted "(which may consist solely of affidavits and oral argument)" after "opportunity for hearing".

Subsec. (b)(7) to (10). Pub. L. 88-467, §6(b), added pars. (7) to (10).

Subsec. (c)(4), (5). Pub. L. 88-467, §6(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 88-467, §6(d), substituted provisions which require every issuer filing a registration statement under the Securities Act of 1933 to file for the fiscal year in which the registration statement becomes effective such reports as may be required by the Commission under section 78m of this title and provide for suspension of duty to file reports for any later fiscal years if at the beginning of such fiscal year the securities to which the registration statement relates are held of record by less than three hundred persons for former provisions which required the registration statement filed under the Securities Act to contain an undertaking if the value of the securities offered plus the value of other outstanding securities of the same class amounted to \$2,000,000 or more and suspended the duty to file if the value of securities outstanding was reduced to less than \$1,000,000 or the issuer had become subject to an equivalent reporting requirement and deleted "or to any other security which the Commission may by rules and regulations exempt as not comprehended within the purposes of this subsection" after "political subdivision thereof".

1938—Subsec. (c)(2), (3). Act June 25, 1938, added pars. (2) and (3).

1936—Act May 27, 1936, amended section generally.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 173(c), 913(g)(1), (h)(1), 919, 921(a), 925(a)(1), 929L(3), 929X(c), 942(a), and 985(b)(5)(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 of Title 12, Banks and Banking.

Amendment by section 713(a) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) 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 A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of Title 7, Agriculture.

Amendment by sections 762(d)(4) and 766(d) 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.

Pub. L. 111-203, title IX, §975(i), July 21, 2010, 124 Stat. 1923, provided that: "This section [amending this section and sections 78o-3, 78o-4, and 78q of this title], and

the amendments made by this section, shall take effect on October 1, 2010.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106-102, set out as a note under section 1828 of Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as a note under section 77l of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 504(a) of Pub. L. 101-429 effective 12 months after Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(A) of Pub. L. 101-429, set out in a note under section 77g of this title.

Amendment by section 505 of Pub. L. 101-429 effective 18 months after Oct. 15, 1990, with provision to commence rulemaking proceedings to implement such amendment not later than 180 days after Oct. 15, 1990, and with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(B), (C) of Pub. L. 101-429, set out in a note under section 77g of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-704, §9, Nov. 19, 1988, 102 Stat. 4684, provided that: “The amendments made by this Act [enacting sections 78t-1, 78u-1, and 80b-4a of this title and amending this section and sections 78c, 78u, 78ff, and 78kk of this title], except for section 6 [amending sections 78c and 78u of this title], shall not apply to any actions occurring before the date of enactment of this Act [Nov. 19, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78o-5 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-38, §3(b), June 6, 1983, 97 Stat. 207, provided that: “The amendments made by subsection (a) [amending this section] shall become effective six months after the date of enactment of this Act [June 6, 1983].”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsec. (a) by Pub. L. 94-29 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.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 of subsec. (a) of this section effective July 1, 1964, and of subsecs. (b), (c)(4), (5), and (d) of this section effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

#### CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Commission, by rule or regulation, from re-

stricting or otherwise regulating private actions under this chapter, see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

#### CONSTRUCTION OF 1993 AMENDMENT

Amendment by sections 105, 106(b)(2)(B), and 109(b)(2) of Pub. L. 103-202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103-202, set out as a note under section 78o-5 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.

#### STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS

Pub. L. 111-203, title IX, §913(a)-(f), July 21, 2010, 124 Stat. 1824-1827, provided that:

“(a) DEFINITION.—For purposes of this section, the term ‘retail customer’ means a natural person, or the legal representative of such natural person, who—

“(1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and

“(2) uses such advice primarily for personal, family, or household purposes.

“(b) STUDY.—The Commission shall conduct a study to evaluate—

“(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards; and

“(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

“(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider—

“(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards;

“(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute;

“(3) whether retail customers understand that there are different standards of care applicable to



brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers in the provision of personalized investment advice about securities to retail customers;

“(4) whether the existence of different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers is a source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive;

“(5) the regulatory, examination, and enforcement resources devoted to, and activities of, the Commission, the States, and a national securities association to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

“(A) the effectiveness of the examinations of brokers, dealers, and investment advisers in determining compliance with regulations;

“(B) the frequency of the examinations; and

“(C) the length of time of the examinations;

“(6) the substantive differences in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers;

“(7) the specific instances related to the provision of personalized investment advice about securities in which—

“(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

“(B) the regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

“(8) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

“(9) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

“(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers, as interpreted by the Commission and the courts; and

“(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

“(10) the potential impact of eliminating the broker and dealer exclusion from the definition of ‘investment adviser’ under section 202(a)(11)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)(C)), in terms of—

“(A) the impact and potential benefits and harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and recommendations about securities to retail customers or the availability of such advice and recommendations;

“(B) the number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), and the additional requirements to which brokers, dealers, and persons associated with brokers and dealers would become subject, including—

“(i) any potential additional associated person licensing, registration, and examination requirements; and

“(ii) the additional costs, if any, to the additional entities and individuals; and

“(C) the impact on Commission and State resources to—

“(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

“(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

“(11) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the varying scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

“(12) the potential impact upon retail customers that could result from potential changes in the regulatory requirements or legal standards of care affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers regarding the provision of investment advice, including any potential impact on—

“(A) protection from fraud;

“(B) access to personalized investment advice, and recommendations about securities to retail customers; or

“(C) the availability of such advice and recommendations;

“(13) the potential additional costs and expenses to—

“(A) retail customers regarding and the potential impact on the profitability of their investment decisions; and

“(B) brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

“(14) any other consideration that the Commission considers necessary and appropriate in determining whether to conduct a rulemaking under subsection (f).

“(d) REPORT.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [July 21, 2010], the Commission shall submit a report on the study required under subsection (b) to—

“(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(B) the Committee on Financial Services of the House of Representatives.

“(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

“(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (b), to make such findings, conclusions, and policy recommendations; and

“(B) an analysis of whether [sic] any identified legal or regulatory gaps, shortcomings, or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers.

“(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

“(f) RULEMAKING.—The Commission may commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to such retail customers. The Commission shall consider the findings[,] conclusions, and recommendations of the study required under subsection (b).”

[For definitions of terms used in section 913(a)–(f) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

#### STUDY AND REPORT ON BROKER-DEALER UNIFORMITY

Pub. L. 104-290, title V, §510(d), Oct. 11, 1996, 110 Stat. 3451, provided that:

“(1) STUDY.—The Commission, after consultation with registered securities associations, national securities exchanges, and States, shall conduct a study of the impact of disparate State licensing requirements on associated persons of registered brokers or dealers and methods for States to attain uniform licensing requirements for such persons.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit to the Congress a report on the study conducted under paragraph (1). Such report shall include recommendations concerning appropriate methods described in paragraph (1)(B), including any necessary legislative changes to implement such recommendations.”

#### PENNY STOCK REFORM; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 101-429, title V, §502, Oct. 15, 1990, 104 Stat. 951, provided that: “The Congress finds the following:

“(1) The maintenance of an honest and healthy primary and secondary market for securities offerings is essential to enhancing long-term capital formation and economic growth and providing legitimate investment opportunities for individuals and institutions.

“(2) Protecting investors in new securities is a critical component in the maintenance of an honest and healthy market for such securities.

“(3) Protecting issuers of new securities and promoting the capital formation process on behalf of small companies are fundamental concerns in maintaining a strong economy and viable trading markets.

“(4) Unscrupulous market practices and market participants have pervaded the ‘penny stock’ market with an overwhelming amount of fraud and abuse.

“(5) Although the Securities and Exchange Commission, State securities regulators, and securities self-regulators have made efforts to curb these abusive and harmful practices, the penny stock market still lacks an adequate and sufficient regulatory structure, particularly in comparison to the structure for overseeing trading in National Market System securities.

“(6) Investors in the penny stock market suffer from a serious lack of adequate information concerning price and volume of penny stock transactions, the nature of this market, and the specific securities in which they are investing.

“(7) Current practices do not adequately regulate the role of ‘promoters’ and ‘consultants’ in the penny stock market, and many professionals who have been banned from the securities markets have ended up in promoter and consultant roles, contributing substantially to fraudulent and abusive schemes.

“(8) The present regulatory environment has permitted the ascendancy of the use of particular market practices, such as ‘reverse mergers’ with shell corporations and ‘blank check’ offerings, which are

used to facilitate manipulation schemes and harm investors.

“(9) In light of the substantial and continuing problems in the penny stock markets, additional legislative measures are necessary and appropriate.”

#### REVISION OF SANCTION AUTHORITY WITH RESPECT TO PENNY STOCKS; RECOMMENDATIONS TO CONGRESS

Pub. L. 101-429, title V, §504(b), Oct. 15, 1990, 104 Stat. 953, provided that: “Within 6 months after the date of enactment of this Act [Oct. 15, 1990], the Securities and Exchange Commission shall submit to each House of the Congress such recommendations as the Commission considers appropriate with respect to further revision of section 15(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)). In preparing such recommendations, the Commission shall consider the desirability and effect of expanding the applicability of such section to any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of or trading in, or inducing or attempting to induce the purchase or sale of, any security (and not just penny stock).”

#### § 780-1. Brokers deemed to be registered

All brokers and dealers for whom registration was in effect on May 27, 1936, in accordance with rules and regulations of the Commission prescribed pursuant to section 780 of this title shall be deemed to be registered pursuant to said section.

(May 27, 1936, ch. 462, §10, 49 Stat. 1380.)

#### CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

#### 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.

#### § 780-2. Liabilities arising prior to amendment unaffected

Nothing in this Act shall be deemed to extinguish any liability which may have arisen prior to the effective date of this Act by reason of any violation of section 780 of this title or of any rule or regulation thereunder.

(May 27, 1936, ch. 462, §11, 49 Stat. 1380.)

#### REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375, popularly known as the Unlisted Securities Trading Act, which enacted sections 78l-1, 78o-1, 78o-2, and 78hh-1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

Effective date of this Act, referred to in text, is July 1, 1934. See section 78hh-1 of this title.

#### CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

#### § 780-3. Registered securities associations

##### (a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b) of this section, or as an affiliated securities association pursuant to subsection (d) of this section, under the terms