

§ 78d. Securities and Exchange Commission**(a) Establishment; composition; limitations on commissioners; terms of office**

There is hereby established a Securities and Exchange Commission (hereinafter referred to as the “Commission”) to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934.

(b) Appointment and compensation of staff and leasing authority**(1) Appointment and compensation**

The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5.

(2) Reporting of information

In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1833b of title 12 and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

(3) Leasing authority

Notwithstanding¹ any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

¹ So in original. Probably should be “Notwithstanding”.

(c) Acceptance of travel support for Commission activities from non-Federal sources; regulations

Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Acceptance of relocation expenses from former employers by professional fellows program participants

Notwithstanding any other provision of law, former employers of participants in the Commission’s professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Fee payments

Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) Reimbursement of expenses for assisting foreign securities authorities

Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 78u(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Office of the Investor Advocate**(1) Office established**

There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the “Office”).

(2) Investor Advocate**(A) In general**

The head of the Office shall be the Investor Advocate, who shall—

- (i) report directly to the Chairman; and
- (ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) Compensation

The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) Limitation on service

An individual who serves as the Investor Advocate may not be employed by the Commission—

- (i) during the 2-year period ending on the date of appointment as Investor Advocate; or
- (ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) Staff of Office

The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) Functions of the Investor Advocate

The Investor Advocate shall—

- (A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;
- (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;
- (C) identify problems that investors have with financial service providers and investment products;
- (D) analyze the potential impact on investors of—
 - (i) proposed regulations of the Commission; and
 - (ii) proposed rules of self-regulatory organizations registered under this chapter; and
- (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) Access to documents

The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) Annual reports

(A) Report on objectives

(i) In general

Not later than June 30 of each year after 2010, the Investor Advocate shall submit to

the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) Contents

Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) Report on activities

(i) In general

Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) Contents

Each report required under clause (i) shall include—

- (I) appropriate statistical information and full and substantive analysis;
- (II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;
- (III) a summary of the most serious problems encountered by investors during the reporting period;
- (IV) an inventory of the items described in subclause (III) that includes—
 - (aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;
 - (bb) the length of time that each item has remained on such inventory; and
 - (cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;
- (V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and
- (VI) any other information, as determined appropriate by the Investor Advocate.

(iii) Independence

Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) Confidentiality

No report required under clause (i) may contain confidential information.

(7) Regulations

The Commission shall, by regulation, establish procedures requiring a formal response to

all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) Ombudsman

(A) Appointment

Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i),² the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) Duties

The Ombudsman appointed under subparagraph (A) shall—

- (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;
- (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and
- (iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) Limitation

In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) Report

The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) Examiners

(1) Division of Trading and Markets

The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

- (A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and
- (B) report to the Director of that Division.

(2) Division of Investment Management

The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

- (A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) Securities and Exchange Commission Reserve Fund

(1) Reserve Fund established

There is established in the Treasury of the United States a separate fund, to be known as the “Securities and Exchange Commission Reserve Fund” (referred to in this subsection as the “Reserve Fund”).

(2) Reserve Fund amounts

(A) In general

Except as provided in subparagraph (B), any registration fees collected by the Commission under section 77f(b) of this title or section 80a-24(f) of this title shall be deposited into the Reserve Fund.

(B) Limitations

For any 1 fiscal year—

- (i) the amount deposited in the Fund may not exceed \$50,000,000; and
- (ii) the balance in the Fund may not exceed \$100,000,000.

(C) Excess fees

Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 77f(b) of this title or section 80a-24(f) of this title shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) Use of amounts in Reserve Fund

The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) Rule of construction

Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31 or under any other authority.

(June 6, 1934, ch. 404, title I, § 4, 48 Stat. 885; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Pub. L. 86-619, § 3, July 12, 1960, 74 Stat. 408; Pub. L. 86-771, Sept. 13, 1960, 74 Stat. 913; Pub. L. 88-426, title III, § 305(20), Aug. 14, 1964, 78 Stat. 425; Pub. L. 98-38, § 1, June 6, 1983, 97 Stat. 205; Pub. L. 100-181, title III, § 307, Dec. 4, 1987, 101 Stat. 1254; Pub. L. 101-550, title I, § 103, title II, § 207, Nov. 15, 1990, 104 Stat. 2713, 2721; Pub. L. 104-290, title IV, § 406, Oct. 11, 1996, 110 Stat. 3444; Pub. L. 105-353, title II, § 203, Nov. 3, 1998, 112 Stat. 3234; Pub. L. 107-123, § 8(d)(2), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 111-203, title IX, §§ 915, 919D, 965, 991(e)(1), July 21, 2010, 124 Stat. 1830, 1840, 1911, 1954.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (g)(4)(D)(ii), was in the original “this title”. See Ref-

² So in original. Probably should be “(2)(A)(ii),”.

erences in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111-203, §915, added subsec. (g).

Subsec. (g)(8). Pub. L. 111-203, §919D, added par. (8).

Subsec. (h). Pub. L. 111-203, §965, added subsec. (h).

Subsec. (i). Pub. L. 111-203, §991(e)(1), added subsec. (i).

2002—Subsec. (b)(1), (2). Pub. L. 107-123 added pars. (1) and (2) and struck out former pars. (1) and (2), which authorized the Commission to appoint and compensate officers, attorneys, examiners, and other experts as needed, and to select, appoint, and compensate professional economists.

1998—Subsec. (b)(2), (3). Pub. L. 105-353 added par. (2) and redesignated former par. (2) as (3).

1996—Subsec. (e). Pub. L. 104-290 inserted before period at end “and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission”.

1990—Subsec. (b). Pub. L. 101-550, §103, inserted heading, designated existing provision as par. (1) and inserted heading, and added par. (2).

Subsec. (f). Pub. L. 101-550, §207, added subsec. (f).

1987—Subsec. (e). Pub. L. 100-181 added subsec. (e).

1983—Subsecs. (c), (d). Pub. L. 98-38 added subsecs. (c) and (d).

1964—Subsec. (a). Pub. L. 88-426 repealed provisions which prescribed the compensation of the Chairman and the Commissioners.

1960—Subsec. (a). Pub. L. 86-771 authorized the chairman to receive an additional \$500 a year.

Pub. L. 86-619 increased the salary of each commissioner from \$15,000 to \$20,000 a year, and provided for continuation in office of a commissioner upon termination of his term until a successor is appointed and has qualified, not beyond expiration of next session of Congress subsequent to the expiration of said fixed term of office.

1949—Subsec. (b). Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 915, 919D, and 965 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.

Pub. L. 111-203, title IX, §991(e)(2), July 21, 2010, 124 Stat. 1955, provided that: “The amendment made by this subsection [amending this section] shall take effect on October 1, 2011.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-123 effective Oct. 1, 2001, see section 11 of Pub. L. 107-123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88-426, see section 501 of Pub. L. 88-426.

REPEALS

Act Oct. 28, 1949, ch. 782, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

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 below.

OUTREACH BY THE COMMISSION

Pub. L. 112-106, title VII, §701, Apr. 5, 2012, 126 Stat. 327, provided that: “The Securities and Exchange Com-

mission shall provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act [see Short Title of 2012 Amendment note set out under section 78a of this title].”

PAY AUTHORITY FOR EMPLOYMENT OF EXPERTS AND CONSULTANTS

Pub. L. 111-203, title IX, §929G(c), July 21, 2010, 124 Stat. 1856, provided that: “The [Securities and Exchange] Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.”

1950 REORGANIZATION PLAN NO. 10

15 F.R. 3175, 64 Stat. 1265

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

SECURITIES AND EXCHANGE COMMISSION

SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

(a) Subject to the provisions of subsection (b) of this section there are hereby transferred from the Securities and Exchange Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of section 1 of this reorganization plan.

SEC. 3. DESIGNATION OF CHAIRMAN

The functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 10 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Securities and Exchange Commission. My reasons for

transmitting this plan are stated in an accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 10 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

HARRY S. TRUMAN.

§ 78d-1. Delegation of functions by Commission

(a) Authorization; functions delegable; eligible persons; application of other laws

In addition to its existing authority, the Securities and Exchange Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Nothing in this section shall be deemed to supersede the provisions of section 556(b) of title 5, or to authorize the delegation of the function of rulemaking as defined in subchapter II of chapter 5 of title 5, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule pursuant to section 78s(c) of this title.

(b) Right of review; procedure

With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe. The vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review. A person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 77h(a) or section 77h(c) of this title or the first sentence of section 78l(d) of this title; (2) suspends trading in a security pursuant to section 78l(k) of this title; or (3) is pursuant to any provision of this chapter in a case of adjudication, as defined in section 551 of title 5, not required by this chapter to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of such title 5).

(c) Finality of delegated action

If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the

Commission, individual Commissioner, administrative law judge, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

(June 6, 1934, ch. 404, title I, § 4A, as added Pub. L. 100-181, title III, § 308(a), Dec. 4, 1987, 101 Stat. 1254.)

PRIOR PROVISIONS

A prior section 78d-1, Pub. L. 87-592, § 1, Aug. 20, 1962, 76 Stat. 394; Pub. L. 94-29, § 25, June 4, 1975, 89 Stat. 163; Pub. L. 95-251, § 2(a)(4), Mar. 27, 1978, 92 Stat. 183, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100-181.

§ 78d-2. Transfer of functions with respect to assignment of personnel to chairman

In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to the Commission personnel, including Commissioners, pursuant to section 78d-1 of this title.

(June 6, 1934, ch. 404, title I, § 4B, as added Pub. L. 100-181, title III, § 308(a), Dec. 4, 1987, 101 Stat. 1255.)

REFERENCES IN TEXT

Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), referred to in text, is set out as a note under section 78d of this title.

PRIOR PROVISIONS

A prior section 78d-2, Pub. L. 87-592, § 2, Aug. 20, 1962, 76 Stat. 395, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100-181.

§ 78d-3. Appearance and practice before the Commission

(a) Authority to censure

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

(1) not to possess the requisite qualifications to represent others;

(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

(b) Definition

With respect to any registered public accounting firm or associated person, for purposes of this section, the term “improper professional conduct” means—

(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and