

by a State securities commission of an alleged violation of State securities laws.

“(b) REPORT.—Not later than 24 months after the date of enactment of this Act [Nov. 3, 1998], the Securities and Exchange Commission (hereafter in this section referred to as the ‘Commission’) shall submit a report to the Congress—

“(1) identifying the States that have adopted laws described in subsection (a);

“(2) describing the actions undertaken by the Commission and State securities commissions to promote the adoption of such laws; and

“(3) identifying any further actions that the Commission recommends for such purposes.”

### § 78u-1. Civil penalties for insider trading

#### (a) Authority to impose civil penalties

##### (1) Judicial actions by Commission authorized

Whenever it shall appear to the Commission that any person has violated any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security or security-based swap agreement while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options or security futures products, the Commission—

(A) may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by the person who committed such violation; and

(B) may, subject to subsection (b)(1), bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by a person who, at the time of the violation, directly or indirectly controlled the person who committed such violation.

##### (2) Amount of penalty for person who committed violation

The amount of the penalty which may be imposed on the person who committed such violation shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication.

##### (3) Amount of penalty for controlling person

The amount of the penalty which may be imposed on any person who, at the time of the violation, directly or indirectly controlled the person who committed such violation, shall be determined by the court in light of the facts and circumstances, but shall not exceed the greater of \$1,000,000, or three times the amount of the profit gained or loss avoided as a result of such controlled person's violation. If such controlled person's violation was a violation by communication, the profit gained or loss avoided as a result of the violation shall, for purposes of this paragraph only, be deemed to be limited to the profit gained or loss avoided by the person or persons to whom the controlled person directed such communication.

#### (b) Limitations on liability

##### (1) Liability of controlling persons

No controlling person shall be subject to a penalty under subsection (a)(1)(B) unless the Commission establishes that—

(A) such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 78o(f)<sup>1</sup> of this title or section 80b-4a of this title and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

##### (2) Additional restrictions on liability

No person shall be subject to a penalty under subsection (a) solely by reason of employing another person who is subject to a penalty under such subsection, unless such employing person is liable as a controlling person under paragraph (1) of this subsection. Section 78t(a) of this title shall not apply to actions under subsection (a) of this section.

#### (c) Authority of Commission

The Commission, by such rules, regulations, and orders as it considers necessary or appropriate in the public interest or for the protection of investors, may exempt, in whole or in part, either unconditionally or upon specific terms and conditions, any person or transaction or class of persons or transactions from this section.

#### (d) Procedures for collection

##### (1) Payment of penalty to Treasury

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

##### (2) Collection of penalties

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

##### (3) Remedy not exclusive

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

##### (4) Jurisdiction and venue

For purposes of section 78aa of this title, actions under this section shall be actions to enforce a liability or a duty created by this chapter.

##### (5) Statute of limitations

No action may be brought under this section more than 5 years after the date of the pur-

<sup>1</sup> See References in Text note below.

chase or sale. This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within 5 years of such transaction.

**(e) Definition**

For purposes of this section, “profit gained” or “loss avoided” is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

**(f) 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.

**(g) Duty of Members and employees of Congress**

**(1) In general**

Subject to the rule of construction under section 10 of the STOCK Act and solely for purposes of the insider trading prohibitions arising under this chapter, including section 78j(b) of this title and Rule 10b-5 thereunder, each Member of Congress or employee of Congress owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities.

**(2) Definitions**

In this subsection—

(A) the term “Member of Congress” means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico; and

(B) the term “employee of Congress” means—

(i) any individual (other than a Member of Congress), whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives; and

(ii) any other officer or employee of the legislative branch (as defined in section 109(11) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(11))).

**(3) Rule of construction**

Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.

**(h) Duty of other Federal officials**

**(1) In general**

Subject to the rule of construction under section 10 of the STOCK Act and solely for

purposes of the insider trading prohibitions arising under this chapter, including section 78j(b) of this title, and Rule 10b-5 thereunder, each executive branch employee, each judicial officer, and each judicial employee owes a duty arising from a relationship of trust and confidence to the United States Government and the citizens of the United States with respect to material, nonpublic information derived from such person’s position as an executive branch employee, judicial officer, or judicial employee or gained from the performance of such person’s official responsibilities.

**(2) Definitions**

In this subsection—

(A) the term “executive branch employee”—

(i) has the meaning given the term “employee” under section 2105 of title 5;

(ii) includes—

(I) the President;

(II) the Vice President; and

(III) an employee of the United States Postal Service or the Postal Regulatory Commission;

(B) the term “judicial employee” has the meaning given that term in section 109(8) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(8)); and

(C) the term “judicial officer” has the meaning given that term under section 109(10) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(10)).

**(3) Rule of construction**

Nothing in this subsection shall be construed to impair or limit the construction of the existing antifraud provisions of the securities laws or the authority of the Commission under those provisions.

**(i) Participation in initial public offerings**

An individual described in section 101(f) of the Ethics in Government Act of 1978 may not purchase securities that are the subject of an initial public offering (within the meaning given such term in section 78(f)(1)(G)(i) of this title) in any manner other than is available to members of the public generally.

(June 6, 1934, ch. 404, title I, § 21A, as added Pub. L. 100-704, § 3(a)(2), Nov. 19, 1988, 102 Stat. 4677; amended Pub. L. 101-429, title II, § 202(b), Oct. 15, 1990, 104 Stat. 938; Pub. L. 106-554, § 1(a)(5) [title II, § 205(a)(4), title III, § 303(k), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A-426, 2763A-456, 2763A-457; Pub. L. 107-204, title III, § 308(d)(2), July 30, 2002, 116 Stat. 785; Pub. L. 111-203, title VII, § 762(d)(7), title IX, § 923(b)(2), July 21, 2010, 124 Stat. 1761, 1850; Pub. L. 112-105, §§ 4(b)(2), 9(b)(2)(B), 12, Apr. 4, 2012, 126 Stat. 292, 297, 300.)

AMENDMENT OF SECTION

*Unless otherwise provided, amendment by subtitle B (§§ 761-774) of title VII of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.*

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(4), (5), was in the original “this title”, and this chapter, referred to in subsecs. (g)(1) and (h)(1), was in the original “this Act”. See References in Text note set out under section 78a of this title.

Subsec. (f) of section 78o of this title, referred to in subsec. (b)(1)(B), was redesignated (g) by Pub. L. 111-203, title IX, §929X(c)(1), July 21, 2010, 124 Stat. 1870.

Section 10 of the STOCK Act, referred to in subsecs. (g)(1) and (h)(1), is section 10 of Pub. L. 112-105, which is set out as a note under section 101 of the Ethics in Government Act of 1978, Pub. L. 95-521, set out in the Appendix to Title 5, Government Organization and Employees.

Section 109 of the Ethics in Government Act of 1978, referred to in subsecs. (g)(2)(B)(ii) and (h)(2)(B), (C), is section 109 of Pub. L. 95-521, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 101(f) of the Ethics in Government Act of 1978, referred to in subsec. (i), is section 101(f) of Pub. L. 95-521, which is set out in the Appendix to Title 5, Government Organization and Employees.

## AMENDMENTS

2012—Subsec. (g). Pub. L. 112-105, §4(b)(2), added subsec. (g).

Subsec. (h). Pub. L. 112-105, §9(b)(2)(B), added subsec. (h).

Subsec. (i). Pub. L. 112-105, §12, added subsec. (i).

2010—Subsec. (a)(1). Pub. L. 111-203, §762(d)(7)(A), struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act)” after “security-based swap agreement” in introductory provisions.

Subsec. (d)(1). Pub. L. 111-203, §923(b)(2)(A), struck out “(subject to subsection (e) of this section)” after “shall” and inserted “and section 78u-6 of this title” after “section 7246 of this title”.

Subsec. (e). Pub. L. 111-203, §923(b)(2)(B), (C), redesignated subsec. (f) as (e) and struck out former subsec. (e). Prior to amendment, text of subsec. (e) read as follows: “Notwithstanding the provisions of subsection (d)(1) of this section, there shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review.”

Subsec. (f). Pub. L. 111-203, §923(b)(2)(C), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 111-203, §762(d)(7)(B), which directed amendment of subsec. (g) by striking out “(as defined in section 206B of the Gramm-Leach-Bliley Act)”, was executed by making the strike out after “security-based swap agreements” in subsec. (f), to reflect the probable intent of Congress and the redesignation of subsec. (g) as (f) by Pub. L. 111-203, §923(b)(2)(C). See above and Effective Date of 2010 Amendment note below.

Subsec. (g). Pub. L. 111-203, §923(b)(2)(C), redesignated subsec. (g) as (f).

2002—Subsec. (d)(1). Pub. L. 107-204 inserted “, except as otherwise provided in section 7246 of this title” before period at end.

2000—Subsec. (a)(1). Pub. L. 106-554, §1(a)(5) [title III, §303(k)], inserted “or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” after “purchasing or selling a security” in introductory provisions.

Pub. L. 106-554, §1(a)(5) [title II, §205(a)(4)], substituted “standardized options or security futures prod-

ucts, the Commission—” for “standardized options, the Commission—” in introductory provisions.

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

1990—Pub. L. 101-429 inserted “for insider trading” in section catchline.

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 923(b)(2) 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 762(d)(7) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

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

## EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

## AFFIRMATION OF DUTY OF GOVERNMENT OFFICERS AND EMPLOYEES

Pub. L. 112-105, §4(b)(1), Apr. 4, 2012, 126 Stat. 292, provided that: “The purpose of the amendment made by this subsection [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each Member of Congress and each employee of Congress.”

Pub. L. 112-105, §9(b)(2)(A), Apr. 4, 2012, 126 Stat. 297, provided that: “The purpose of the amendment made by this paragraph [amending this section] is to affirm a duty arising from a relationship of trust and confidence owed by each executive branch employee, judicial officer, and judicial employee.”

## CONGRESSIONAL FINDINGS

Pub. L. 100-704, §2, Nov. 19, 1988, 102 Stat. 4677, provided that: “The Congress finds that—

“(1) the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing trading while in possession of material, nonpublic information are, as required by such Act, necessary and appropriate in the public interest and for the protection of investors;

“(2) the Commission has, within the limits of accepted administrative and judicial construction of such rules and regulations, enforced such rules and regulations vigorously, effectively, and fairly; and

“(3) nonetheless, additional methods are appropriate to deter and prosecute violations of such rules and regulations.”

## COMMISSION RECOMMENDATIONS FOR ADDITIONAL CIVIL PENALTY AUTHORITY REQUIRED

Pub. L. 100-704, §3(c), Nov. 19, 1988, 102 Stat. 4680, provided that: “The Securities and Exchange Commission shall, within 60 days after the date of enactment of this Act [Nov. 19, 1988], submit to each House of the Congress any recommendations the Commission considers appropriate with respect to the extension of the Commission’s authority to seek civil penalties or impose administrative fines for violations other than those described in section 21A of the Securities Exchange Act of 1934 [15 U.S.C. 78u-1] (as added by this section).”

**§ 78u-2. Civil remedies in administrative proceedings**

**(a) Commission authority to assess money penalties**

**(1) In general**

In any proceeding instituted pursuant to sections 78o(b)(4), 78o(b)(6), 78o-6, 78o-4, 78o-5, 78o-7, or 78q-1 of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(A) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or this chapter, or the rules or regulations thereunder, or the rules of the Municipal Securities Rulemaking Board;

(B) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(C) 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; or

(D) has failed reasonably to supervise, within the meaning of section 78o(b)(4)(E) of this title, 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;<sup>1</sup>

**(2) Cease-and-desist proceedings**

In any proceeding instituted under section 78u-3 of this title against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

(A) is violating or has violated any provision of this chapter, or any rule or regulation issued under this chapter; or

(B) is or was a cause of the violation of any provision of this chapter, or any rule or regulation issued under this chapter.

**(b) Maximum amount of penalty**

**(1) First tier**

The maximum amount of penalty for each act or omission described in subsection (a) shall be \$5,000 for a natural person or \$50,000 for any other person.

**(2) Second tier**

Notwithstanding paragraph (1), the maximum amount of penalty for each such act or

omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

**(3) Third tier**

Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

(A) the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(B) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

**(c) Determination of public interest**

In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider—

(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(2) the harm to other persons resulting either directly or indirectly from such act or omission;

(3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title;

(5) the need to deter such person and other persons from committing such acts or omissions; and

(6) such other matters as justice may require.

**(d) Evidence concerning ability to pay**

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission or the appropriate regulatory agency may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

<sup>1</sup> So in original. The semicolon probably should be a period.