

(2) Censure of the Board; limitations

The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) Censure of Board members; removal from office

The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any person who is, or at the time of the alleged misconduct was, a member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

(Pub. L. 107–204, title I, §107, July 30, 2002, 116 Stat. 765; Pub. L. 111–203, title IX, §929F(i), July 21, 2010, 124 Stat. 1855.)

REFERENCES IN TEXT

This Act and the Sarbanes-Oxley Act of 2002, referred to in text, are Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Title I of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Tables.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 107 of Pub. L. 107–204, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, *Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States*.

AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111–203 substituted “any person who is, or at the time of the alleged misconduct was, a member” for “any member” in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5801 of Title 12, Banks and Banking.

§ 7218. Accounting standards**(a) Omitted****(b) Commission authority**

The Commission shall promulgate such rules and regulations to carry out section 77s(b) of this title as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) No effect on Commission powers

Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) Study and report on adopting principles-based accounting**(1) Study****(A) In general**

The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) Study topics

The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) Report

Not later than 1 year after July 30, 2002, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(Pub. L. 107–204, title I, §108, July 30, 2002, 116 Stat. 768.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 108 of Pub. L. 107–204. Subsec. (a) of section 108 of Pub. L. 107–204 amended section 77s of this title.

§ 7219. Funding**(a) In general**

The Board, and the standard setting body designated pursuant to section 77s(b) of this title, shall be funded as provided in this section.

(b) Annual budgets

The Board and the standard setting body referred to in subsection (a) shall each establish a

budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 7211(d) of this title.

(c) Sources and uses of funds

(1) Recoverable budget expenses

The budget of the Board (reduced by any registration or annual fees received under section 7212(e) of this title for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) Funds generated from the collection of monetary penalties

Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (j), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) Annual accounting support fee for the Board

(1) Establishment of fee

The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) Assessments

The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate.

(3) Brokers and dealers

The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with

the payment of support fees to fund the first full fiscal year beginning after July 21, 2010.

(e) Annual accounting support fee for standard setting body

The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) Limitation on fee

The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) Allocation of accounting support fees among issuers

Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) Allocation of accounting support fees among brokers and dealers

(1) Obligation to pay

Each broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section.

(2) Allocation

Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

(3) Proportionality

The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board.

(i) Omitted**(j) Rule of construction**

Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(k) Start-up expenses of the Board

From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

(Pub. L. 107–204, title I, §109, July 30, 2002, 116 Stat. 769; Pub. L. 111–203, title IX, §982(h), July 21, 2010, 124 Stat. 1930.)

CODIFICATION

Section is comprised of section 109 of Pub. L. 107–204. Subsec. (i) of section 109 of Pub. L. 107–204 amended section 78m of this title.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–203, §982(h)(1), substituted “subsection (j)” for “subsection (i)”.

Subsec. (d)(2). Pub. L. 111–203, §982(h)(2)(A), substituted “and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate” for “allowing for differentiation among classes of issuers, as appropriate”.

Subsec. (d)(3). Pub. L. 111–203, §982(h)(2)(B), added par. (3).

Subsecs. (h) to (k). Pub. L. 111–203, §982(h)(3), (4), added subsec. (h) and redesignated former subsecs. (h) to (j) as (i) to (k), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§ 7220. Definitions

For the purposes of this subchapter, the following definitions shall apply:

(1) Audit

The term “audit” means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

(2) Audit report

The term “audit report” means a document, report, notice, or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

(ii) asserts that no such opinion can be expressed.

(3) Broker

The term “broker” means a broker (as such term is defined in section 78c(a)(4) of this title) that is required to file a balance sheet, income statement, or other financial statement under section 78q(e)(1)(A) of this title, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(4) Dealer

The term “dealer” means a dealer (as such term is defined in section 78c(a)(5) of this title) that is required to file a balance sheet, income statement, or other financial statement under section 78q(e)(1)(A) of this title, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(5) Professional standards

The term “professional standards” means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 77s(b) of this title, as amended by this Act, or prescribed by the Commission under section 77s(a) of this title or section 78m(b) of this title; and

(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

(ii) are established or adopted by the Board under section 7213(a) of this title, or are promulgated as rules of the Commission.

(6) Self-regulatory organization

The term “self-regulatory organization” has the same meaning as in section 78c(a) of this title.

(Pub. L. 107–204, title I, §110, as added Pub. L. 111–203, title IX, §982(a)(1), July 21, 2010, 124 Stat. 1927.)

REFERENCES IN TEXT

Section 77s(b) of this title, as amended by this Act, referred to in par. (5)(A)(i), means section 77s(b) of this title, as amended by Pub. L. 107–204.

Title II, referred to in par. (5)(B), means title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sec-