

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”.