

STUDY ON MODERNIZATION AND SIMPLIFICATION OF
REGULATION S-K

Pub. L. 114-94, div. G, title LXXII, §72003, Dec. 4, 2015, 129 Stat. 1785, provided that:

“(a) **STUDY.**—The Securities and Exchange Commission shall carry out a study of the requirements contained in regulation S-K (17 CFR 229.10 et seq.). Such study shall—

“(1) determine how best to modernize and simplify such requirements in a manner that reduces the costs and burdens on issuers while still providing all material information;

“(2) emphasize a company by company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across registrants; and

“(3) evaluate methods of information delivery and presentation and explore methods for discouraging repetition and the disclosure of immaterial information.

“(b) **CONSULTATION.**—In conducting the study required under subsection (a), the Commission shall consult with the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies.

“(c) **REPORT.**—Not later than the end of the 360-day period beginning on the date of enactment of this Act [Dec. 4, 2015], the Commission shall issue a report to the Congress containing—

“(1) all findings and determinations made in carrying out the study required under subsection (a);

“(2) specific and detailed recommendations on modernizing and simplifying the requirements in regulation S-K in a manner that reduces the costs and burdens on companies while still providing all material information; and

“(3) specific and detailed recommendations on ways to improve the readability and navigability of disclosure documents and to discourage repetition and the disclosure of immaterial information.

“(d) **RULEMAKING.**—Not later than the end of the 360-day period beginning on the date that the report is issued to the Congress under subsection (c), the Commission shall issue a proposed rule to implement the recommendations of the report issued under subsection (c).

“(e) **RULE OF CONSTRUCTION.**—Revisions made to regulation S-K by the Commission under section 202 [probably means section 72002 of Pub. L. 114-94, set out as a note under section 77g of this title] shall not be construed as satisfying the rulemaking requirements under this section.”

§ 77t. Injunctions and prosecution of offenses

(a) Investigation of violations

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Action for injunction or criminal prosecution in district court

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission

may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Writ of mandamus

Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

(d) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 77h-1 of this title, other than by committing a violation subject to a penalty pursuant to section 78u-1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) 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.

(B) 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.

(C) Remedy not exclusive

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

(D) Jurisdiction and venue

For purposes of section 77v of this title, actions under this section shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 77h-1 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.

(e) Authority of court to prohibit persons from serving as officers and directors

In any proceeding under subsection (b), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 77q(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(f) Prohibition of attorneys' fees paid from Commission disgorgement funds

Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by

private parties seeking distribution of the disgorged funds.

(g) Authority of a court to prohibit persons from participating in an offering of penny stock

(1) In general

In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(2) Definition

For purposes of this subsection, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, 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 inclusion in such term.

(May 27, 1933, ch. 38, title I, § 20, 48 Stat. 86; Pub. L. 100-181, title II, § 208, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 101-429, title I, § 101, Oct. 15, 1990, 104 Stat. 932; Pub. L. 104-67, title I, § 103(b)(1), Dec. 22, 1995, 109 Stat. 756; Pub. L. 107-204, title III, §§ 305(a)(2), 308(d)(3), title VI, § 603(b), July 30, 2002, 116 Stat. 779, 785, 795; Pub. L. 111-203, title IX, § 923(a)(1), July 21, 2010, 124 Stat. 1849.)

AMENDMENTS

2010—Subsec. (d)(3)(A). Pub. L. 111-203 inserted "and section 78u-6 of this title" after "section 7246 of this title".

2002—Subsec. (d)(3)(A). Pub. L. 107-204, § 308(d)(3), inserted " , except as otherwise provided in section 7246 of this title" before period at end.

Subsec. (e). Pub. L. 107-204, § 305(a)(2), substituted "unfitness" for "substantial unfitness".

Subsec. (g). Pub. L. 107-204, § 603(b), added subsec. (g).
1995—Subsec. (f). Pub. L. 104-67 added subsec. (f).
1990—Subsecs. (d), (e). Pub. L. 101-429 added subsecs. (d) and (e).

1987—Subsec. (b). Pub. L. 100-181, § 208(a), inserted first sentence and struck out former first sentence containing similar provisions.

Subsec. (c). Pub. L. 100-181, § 208(b), amended subsec. (c) generally.

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.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under this subchapter or title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a 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 Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and account-

ing and disgorgement, see section 1(c)(1) and (2) of Pub. L. 101-429, set out in a note under section 77g 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 restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 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.

§ 77u. Hearings by Commission

All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title I, § 21, 48 Stat. 86.)

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.

§ 77v. Jurisdiction of offenses and suits

(a) Federal and State courts; venue; service of process; review; removal; costs

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. Except as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be

assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

(b) Contumacy or refusal to obey subpoena; contempt

In case of contumacy or refusal to obey a subpoena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) Extraterritorial jurisdiction

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 77q(a) of this title involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(May 27, 1933, ch. 38, title I, § 22, 48 Stat. 86; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 10, 1954, ch. 667, title I, § 11, 68 Stat. 686; Pub. L. 91-452, title II, § 213, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title II, § 209, Dec. 4, 1987, 101 Stat. 1253; Pub. L. 105-353, title I, § 101(a)(3), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 111-203, title IX, §§ 929E(a), 929P(b)(1), July 21, 2010, 124 Stat. 1853, 1864.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

As originally enacted subsec. (a) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted “the district court of the United States for the District of Columbia” for “the Supreme Court of the District of Columbia”, and act June 25, 1948, as amended by act May 24, 1949, substituted “United States District Court for the District of Columbia” for “district court of the United States for the District of Columbia”. Pub. L. 100-181 struck out reference to the United States District Court for the District of Columbia. Previously, such reference had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that “There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district”, and section 88 of Title 28 which provides that “the District of Columbia constitutes one judicial district”.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, § 929E(a), inserted after second sentence “In any action or proceeding in-