

**(C) Counting of certain class members**

For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

**(D) Rule of construction**

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

**(3) Covered security**

The term “covered security” means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 77r(b) of this title at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under this subchapter pursuant to rules issued by the Commission under section 77d(2)<sup>1</sup> of this title.

(May 27, 1933, ch. 38, title I, § 16, 48 Stat. 84; Pub. L. 105-353, title I, § 101(a)(1), Nov. 3, 1998, 112 Stat. 3227.)

## REFERENCES IN TEXT

Section 77d(2) of this title, referred to in subsec. (f)(3), was redesignated section 77d(a)(2) of this title by Pub. L. 112-106, title II, § 201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

## AMENDMENTS

1998—Pub. L. 105-353 amended section catchline and text generally. Prior to amendment, text read as follows: “The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.”

## EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-353, title I, § 101(c), Nov. 3, 1998, 112 Stat. 3233, provided that: “The amendments made by this section [amending this section and sections 77v, 77z-1, 78u-4, and 78bb of this title] shall not affect or apply to any action commenced before and pending on the date of enactment of this Act [Nov. 3, 1998].”

**§ 77q. Fraudulent interstate transactions****(a) Use of interstate commerce for purpose of fraud or deceit**

It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78)<sup>1</sup> of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact nec-

essary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**(b) Use of interstate commerce for purpose of offering for sale**

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

**(c) Exemptions of section 77c not applicable to this section**

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

**(d) Authority with respect to security-based swap agreements**

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 78c(a)(78) of this title) shall be subject to the restrictions and limitations of section 77b-1(b) of this title.

(May 27, 1933, ch. 38, title I, § 17, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, § 10, 68 Stat. 686; Pub. L. 106-554, § 1(a)(5) [title III, § 302(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-452; Pub. L. 111-203, title VII, § 762(c)(2), July 21, 2010, 124 Stat. 1759.)

## REFERENCES IN TEXT

Section 78c(a)(78) of this title, referred to in subsec. (a), was in the original “section 3(a)(78) of the Securities Exchange Act”, and was translated as meaning section 3(a)(78) of act June 6, 1934, ch. 404, to reflect the probable intent of Congress.

## AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, § 762(c)(2)(A), in introductory provisions, inserted “(including security-based swaps)” after “securities” and substituted “(as defined in section 78c(a)(78) of this title)” for “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

Subsec. (d). Pub. L. 111-203, § 762(c)(2)(B), substituted “78c(a)(78) of this title” for “206B of the Gramm-Leach-Bliley Act”.

2000—Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title III, § 302(b)], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

“(1) to employ any device, scheme, or artifice to defraud, or

“(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

“(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”

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

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

Subsec. (d). Pub. L. 106-554, §1(a)(5) [title III, §302(c)], added subsec. (d).

1954—Subsec. (a). Act Aug. 10, 1954, inserted “offer or” before “sale” in introductory text.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

**§ 77r. Exemption from State regulation of securities offerings**

**(a) Scope of exemption**

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o-3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

**(b) Covered securities**

For purposes of this section, the following are covered securities:

**(1) Exclusive Federal registration of nationally traded securities**

A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

**(2) Exclusive Federal registration of investment companies**

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

**(3) Sales to qualified purchasers**

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

**(4) Exemption in connection with certain exempt offerings**

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

(A) paragraph (1) or (3) of section 77d<sup>1</sup> of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;

(B) section 77d(4)<sup>1</sup> of this title;

(C) section 77d(6)<sup>1</sup> of this title;

(D) a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 77d(2)<sup>1</sup> of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2)<sup>1</sup> of this title that are in effect on September 1, 1996; or

(G) section 77d(a)(7) of this title.

**(c) Preservation of authority**

**(1) Fraud authority**

Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in

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