

## 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.

**§ 77uuu. Special powers of the Commission****(a) Investigatory powers**

For the purpose of any investigation or any other proceeding which, in the opinion of the Commission, is necessary and proper for the enforcement of this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such books, papers, correspondence, memoranda, contracts, agreements, or other records may be required from any place in the United States or in any Territory at any designated place of investigation or hearing. In addition, the Commission shall have the powers with respect to investigations and hearings, and with respect to the enforcement of, and offenses and violations under, this subchapter and rules and regulations and orders prescribed under the authority thereof, provided in sections 77t and 77v(b), (c) of this title.

**(b) Availability of reports from other offices; restrictions**

The Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, and the Federal Deposit Insurance Corporation are authorized, under such conditions as they may prescribe, to make available to the Commission such reports, records, or other information as they may have available with respect to trustees or prospective trustees under indentures qualified or to be qualified under this subchapter, and to make through their examiners or other employees for the use of the Commission, examinations of such trustees or prospective trustees. Every such trustee or prospective trustee shall, as a condition precedent to qualification of such indenture, consent that reports of examinations by Federal, State, Territorial, or District authorities may be furnished by such authorities to the Commission upon request therefor.

Notwithstanding any provision of this subchapter, no report, record, or other information made available to the Commission under this subsection, no report of an examination made under this subsection for the use of the Commission, no report of an examination made of any trustee or prospective trustee by any Federal, State, Territorial, or District authority having jurisdiction to examine or supervise such trustee, no report made by any such trustee or prospective trustee to any such authority, and no correspondence between any such authority and any such trustee or prospective trustee, shall be divulged or made known or available by the

Commission or any member, officer, agent, or employee thereof, to any person other than a member, officer, agent, or employee of the Commission: *Provided*, That the Commission may make available to the Attorney General of the United States, in confidence, any information obtained from such records, reports of examination, other reports, or correspondence, and deemed necessary by the Commission, or requested by him, for the purpose of enabling him to perform his duties under this subchapter.

**(c) Investigation of prospective trustees**

Any investigation of a prospective trustee, or any proceeding or requirement for the purpose of obtaining information regarding a prospective trustee, under any provision of this subchapter, shall be limited—

(1) to determining whether such prospective trustee is qualified to act as trustee under the provisions of subsection (b) of section 77jjj of this title;

(2) to requiring the inclusion in the registration statement or application of information with respect to the eligibility of such prospective trustee under paragraph (1) of subsection (a) of section 77jjj of this title; and

(3) to requiring the inclusion in the registration statement or application of the most recent published report of condition of such prospective trustee, as described in paragraph (2) of subsection (a) of section 77jjj of this title, or, if the indenture does not contain the provision with respect to combined capital and surplus authorized by the last sentence of paragraph (2) of subsection (a) of section 77jjj of this title, to determining whether such prospective trustee is eligible to act as such under paragraph (2) of subsection (a) of section 77jjj of this title.

**(d) Appointment and compensation of employees; lease and allocation of real property**

The provisions section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(May 27, 1933, ch. 38, title III, § 321, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174; amended Pub. L. 101-550, title I, § 104(b), Nov. 15, 1990, 104 Stat. 2714.)

## AMENDMENTS

1990—Subsec. (d). Pub. L. 101-550 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this subchapter.”

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#### EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions of officers, agencies and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

### § 77vvv. Judicial review

#### (a) Review of orders

Orders of the Commission under this subchapter (including orders pursuant to the provisions of sections 77eee(b) and 77ggg(c) of this title) shall be subject to review in the same manner, upon the same conditions, and to the same extent, as provided in section 9 of the Securities Act of 1933 [15 U.S.C. 77i], with respect to orders of the Commission under such Act.

#### (b) Jurisdiction of offenses and suits

Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability or duty created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 22(a) of the Securities Act of 1933 [15 U.S.C. 77v(a)].

(May 27, 1933, ch. 38, title III, § 322, as added Aug. 3, 1939, ch. 411, 53 Stat. 1175; amended Pub. L. 101-550, title IV, § 418, Nov. 15, 1990, 104 Stat. 2732.)

#### REFERENCES IN TEXT

Such Act, referred to in subsec. (a), means the Securities Act of 1933, approved May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

#### AMENDMENTS

1990—Subsec. (b). Pub. L. 101-550 inserted “or duty” after “any liability”.

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### § 77www. Liability for misleading statements

(a) Any person who shall make or cause to be made any statement in any application, report, or document filed with the Commission pursuant to any provisions of this subchapter, or any rule, regulation, or order thereunder, which statement 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 who shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall be liable to any person (not knowing that such statement was false or misleading or of such omission) who, in reliance upon such statement or omission, shall have purchased or sold a security issued under the indenture to which

such application, report, or document relates, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading or of such omission. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit and assess reasonable costs, including reasonable attorneys' fees, against either party litigant, having due regard to the merits and good faith of the suit or defense. No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(b) The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this subchapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(May 27, 1933, ch. 38, title III, § 323, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Pub. L. 111-203, title IX, § 986(b)(5), July 21, 2010, 124 Stat. 1936.)

#### REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

#### AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203 substituted “Securities Act of 1933 or the Securities Exchange Act of 1934” for “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935”.

#### 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.

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### § 77xxx. Unlawful representations

It shall be unlawful for any person in offering, selling or issuing any security to represent or imply in any manner whatsoever that any action or failure to act by the Commission in the