

## PROHIBITION OF INSIDER TRADING

Pub. L. 112-105, §4(a), Apr. 4, 2012, 126 Stat. 292, provided that: “Members of Congress and employees of Congress are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder.”

## APPLICATION OF INSIDER TRADING LAWS

Pub. L. 112-105, §9(b)(1), Apr. 4, 2012, 126 Stat. 297, provided that: “Executive branch employees, judicial officers, and judicial employees are not exempt from the insider trading prohibitions arising under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder.”

**§ 78j-1. Audit requirements****(a) In general**

Each audit required pursuant to this chapter of the financial statements of an issuer by a registered public accounting firm shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

- (1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;
- (2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and
- (3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

**(b) Required response to audit discoveries****(1) Investigation and report to management**

If, in the course of conducting an audit pursuant to this chapter to which subsection (a) applies, the registered public accounting firm detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the firm shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

- (A)(i) determine whether it is likely that an illegal act has occurred; and
- (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

(B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such firm in the course of the audit, unless the illegal act is clearly inconsequential.

**(2) Response to failure to take remedial action**

If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the ab-

sence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the firm in the course of the audit of such firm, the registered public accounting firm concludes that—

- (A) the illegal act has a material effect on the financial statements of the issuer;
- (B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and
- (C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement;

the registered public accounting firm shall, as soon as practicable, directly report its conclusions to the board of directors.

**(3) Notice to Commission; response to failure to notify**

An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the registered public accounting firm making such report with a copy of the notice furnished to the Commission. If the registered public accounting firm fails to receive a copy of the notice before the expiration of the required 1-business-day period, the registered public accounting firm shall—

- (A) resign from the engagement; or
- (B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

**(4) Report after resignation**

If a registered public accounting firm resigns from an engagement under paragraph (3)(A), the firm shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the report of the firm (or the documentation of any oral report given).

**(c) Auditor liability limitation**

No registered public accounting firm shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto.

**(d) Civil penalties in cease-and-desist proceedings**

If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 78u-3 of this title, that a registered public accounting firm has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 78u-3 of this title, impose a civil penalty against the registered public accounting firm and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and

the amount of the penalty shall be governed by the standards set forth in section 78u-2 of this title.

**(e) Preservation of existing authority**

Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this chapter.

**(f) Definitions**

As used in this section, the term “illegal act” means an act or omission that violates any law, or any rule or regulation having the force of law. As used in this section, the term “issuer” means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

**(g) Prohibited activities**

Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this chapter or the rules of the Commission under this chapter or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 7211 of this title (in this section referred to as the “Board”), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

- (1) bookkeeping or other services related to the accounting records or financial statements of the audit client;
- (2) financial information systems design and implementation;
- (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (4) actuarial services;
- (5) internal audit outsourcing services;
- (6) management functions or human resources;
- (7) broker or dealer, investment adviser, or investment banking services;
- (8) legal services and expert services unrelated to the audit; and
- (9) any other service that the Board determines, by regulation, is impermissible.

**(h) Preapproval required for non-audit services**

A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).

**(i) Preapproval requirements**

**(1) In general**

**(A) Audit committee action**

All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits

required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

**(B) De minimis exception**

The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

- (i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the non-audit services are provided;
- (ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and
- (iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

**(2) Disclosure to investors**

Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 78m(a) of this title.

**(3) Delegation authority**

The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

**(4) Approval of audit services for other purposes**

In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.

**(j) Audit partner rotation**

It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.

**(k) Reports to audit committees**

Each registered public accounting firm that performs for any issuer any audit required by this chapter shall timely report to the audit committee of the issuer—

(1) all critical accounting policies and practices to be used;

(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.

**(l) Conflicts of interest**

It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this chapter, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.

**(m) Standards relating to audit committees**

**(1) Commission rules**

**(A) In general**

Effective not later than 270 days after July 30, 2002, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

**(B) Opportunity to cure defects**

The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

**(2) Responsibilities relating to registered public accounting firms**

The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

**(3) Independence**

**(A) In general**

Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

**(B) Criteria**

In order to be considered to be independent for purposes of this paragraph, a member of

an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

- (i) accept any consulting, advisory, or other compensatory fee from the issuer; or
- (ii) be an affiliated person of the issuer or any subsidiary thereof.

**(C) Exemption authority**

The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

**(4) Complaints**

Each audit committee shall establish procedures for—

(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

**(5) Authority to engage advisers**

Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

**(6) Funding**

Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

(B) to any advisers employed by the audit committee under paragraph (5).

(June 6, 1934, ch. 404, title I, §10A, as added Pub. L. 104-67, title III, §301(a), Dec. 22, 1995, 109 Stat. 762; amended Pub. L. 107-204, title II, §§201(a), 202-204, 205(b), (d), 206, title III, §301, July 30, 2002, 116 Stat. 771-775; Pub. L. 111-203, title IX, §985(b)(3), July 21, 2010, 124 Stat. 1933.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), (e), (g), (k), and (l), was in the original “this title”. See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (f), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, 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

2010—Subsec. (i)(1)(B). Pub. L. 111-203 substituted “minimis” for “minus” in heading and “the non-audit” for “the nonaudit” in cl. (i).

2002—Subsec. (a). Pub. L. 107-204, §205(b)(1), substituted “a registered public accounting firm” for “an independent public accountant” in introductory provisions.

Subsec. (b)(1). Pub. L. 107-204, §205(b)(2), (4)(A), in introductory provisions, substituted “the registered pub-

lic accounting firm” for “the independent public accountant” and “the firm” for “the accountant”.

Subsec. (b)(1)(B). Pub. L. 107-204, §205(b)(4)(B), substituted “such firm” for “such accountant”.

Subsec. (b)(2). Pub. L. 107-204, §205(b)(2), (4)(A), (B), in introductory provisions, substituted “the firm” for “the accountant”, “such firm” for “such accountant”, and “the registered public accounting firm” for “the independent public accountant” and, in concluding provisions, substituted “the registered public accounting firm” for “the independent public accountant”.

Subsec. (b)(3). Pub. L. 107-204, §205(b)(2), substituted “the registered public accounting firm” for “the independent public accountant” wherever appearing in introductory provisions.

Subsec. (b)(4). Pub. L. 107-204, §205(b)(1), (4)(A), (C), substituted “a registered public accounting firm” for “an independent public accountant”, “the firm” for “the accountant”, and “the report of the firm” for “the accountant’s report”.

Subsec. (c). Pub. L. 107-204, §205(b)(3), substituted “No registered public accounting firm” for “No independent public accountant”.

Subsec. (d). Pub. L. 107-204, §205(b)(1), (2), substituted “a registered public accounting firm” for “an independent public accountant” and “the registered public accounting firm” for “the independent public accountant”.

Subsec. (f). Pub. L. 107-204, §205(d), substituted “Definitions” for “Definition” in heading and inserted at end “As used in this section, the term ‘issuer’ means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports pursuant to section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.”

Subsecs. (g), (h). Pub. L. 107-204, §201(a), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 107-204, §202, added subsec. (i).

Subsec. (j). Pub. L. 107-204, §203, added subsec. (j).

Subsec. (k). Pub. L. 107-204, §204, added subsec. (k).

Subsec. (l). Pub. L. 107-204, §206, added subsec. (l).

Subsec. (m). Pub. L. 107-204, §301, added subsec. (m).

#### 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

Pub. L. 104-67, title III, §301(b), Dec. 22, 1995, 109 Stat. 764, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to each annual report—

“(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required to file selected quarterly financial data pursuant to the rules or regulations of the Securities and Exchange Commission; and

“(2) for any period beginning on or after January 1, 1997, with respect to any other registrant.”

#### CONSTRUCTION

Pub. L. 104-67, title II, §203, Dec. 22, 1995, 109 Stat. 762, provided that: “Nothing in this Act [see Short Title of 1995 Amendment note set out under section 78a of this title] or the amendments made by this Act shall be deemed to create or ratify any implied private right of action, or to prevent the Commission, by rule or regulation, from restricting or otherwise regulating private actions under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]”

## § 78j-2. Position limits and position accountability for security-based swaps and large trader reporting

### (a) Position limits

As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 78c(a) of this title, and any other instrument relating to such security or loan or group or index of securities or loans; or

(2) any security-based swap and—

(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 78c(a) of this title; and

(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).

### (b) Exemptions

The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.

### (c) SRO rules

#### (1) In general

As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, may direct a self-regulatory organization—

(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

(i) any member of such self-regulatory organization; or

(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under this subsection.

#### (2) Requirement to aggregate positions

In establishing the limits under paragraph (1), the self-regulatory organization may re-