

78u(d) of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(f) Limitation on Commission authority

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

(June 6, 1934, ch. 404, title I, § 20, 48 Stat. 899; May 27, 1936, ch. 462, § 6, 49 Stat. 1379; Pub. L. 88-467, § 9, Aug. 20, 1964, 78 Stat. 579; Pub. L. 98-376, § 5, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 104-67, title I, § 104, Dec. 22, 1995, 109 Stat. 757; Pub. L. 105-353, title III, § 301(b)(12), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-554, § 1(a)(5) [title II, § 205(a)(3), title III, § 303(i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A-426, 2763A-456; Pub. L. 111-203, title VII, § 762(d)(6), title IX, §§ 929O, 929P(c), July 21, 2010, 124 Stat. 1761, 1862, 1865.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”. See References in Text note set out under section 78a of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, § 929P(c), inserted “(including to the Commission in any action brought under paragraph (1) or (3) of section 78u(d) of this title)” after “controlled person is liable”.

Subsec. (d). Pub. L. 111-203, § 762(d)(6)(A), struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act)” after “security-based swap agreement”.

Subsec. (e). Pub. L. 111-203, § 929O, inserted “or recklessly” after “knowingly”.

Subsec. (f). Pub. L. 111-203, § 762(d)(6)(B), struck out “(as defined in section 206B of the Gramm-Leach-Bliley Act)” after “security-based swap agreements”.

2000—Subsec. (d). Pub. L. 106-554, § 1(a)(5) [title III, § 303(i)], amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege, or security futures product with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.”

Pub. L. 106-554, § 1(a)(5) [title II, § 205(a)(3)], substituted “, privilege, or security futures product” for “or privilege”.

Subsec. (f). Pub. L. 106-554, § 1(a)(5) [title III, § 303(j)], added subsec. (f).

1998—Subsecs. (e), (f). Pub. L. 105-353 redesignated subsec. (f) as (e).

1995—Pub. L. 104-67, § 104(1), substituted “liability of controlling persons and persons who aid and abet violations” for “Liabilities of controlling persons” in section catchline.

Subsec. (f). Pub. L. 104-67, § 104(2), added subsec. (f).

1984—Subsec. (d). Pub. L. 98-376 added subsec. (d).

1964—Subsec. (c). Pub. L. 88-467 extended application of provisions of subsec. (c) by substituting the prohibition against any officer or director of, or an owner of securities issued by, a company from hindering, delaying, or obstructing the preparation or filing of any re-

port, document, or information required to be filed under this chapter for existing provisions applicable only to filings by companies with securities registered on a national securities exchange or subject to the provisions of section 78o(d) of this title.

1936—Subsec. (c). Act May 27, 1936, inserted “or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929O and 929P(c) of 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.

Amendment by section 762(d)(6) of 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 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under this chapter or title I of the Securities Act of 1933 (15 U.S.C. 77a 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 771 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c 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 this chapter, see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of this title.

§ 78t-1. Liability to contemporaneous traders for insider trading

(a) Private rights of action based on contemporaneous trading

Any person who violates any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

(b) Limitations on liability

(1) Contemporaneous trading actions limited to profit gained or loss avoided

The total amount of damages imposed under subsection (a) shall not exceed the profit gained or loss avoided in the transaction or transactions that are the subject of the violation.

(2) Offsetting disgorgements against liability

The total amount of damages imposed against any person under subsection (a) shall be diminished by the amounts, if any, that such person may be required to disgorge, pursuant to a court order obtained at the instance of the Commission, in a proceeding brought under section 78u(d) of this title relating to the same transaction or transactions.

(3) Controlling person liability

No person shall be liable under this section solely by reason of employing another person who is liable under this section, but the liability of a controlling person under this section shall be subject to section 78t(a) of this title.

(4) Statute of limitations

No action may be brought under this section more than 5 years after the date of the last transaction that is the subject of the violation.

(c) Joint and several liability for communicating

Any person who violates any provision of this chapter or the rules or regulations thereunder by communicating material, nonpublic information shall be jointly and severally liable under subsection (a) with, and to the same extent as, any person or persons liable under subsection (a) to whom the communication was directed.

(d) Authority not to restrict other express or implied rights of action

Nothing in this section shall be construed to limit or condition the right of any person to bring an action to enforce a requirement of this chapter or the availability of any cause of action implied from a provision of this chapter.

(e) Provisions not to affect public prosecutions

This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties.

(June 6, 1934, ch. 404, title I, § 20A, as added Pub. L. 100-704, § 5, Nov. 19, 1988, 102 Stat. 4680.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), (d), and (e), was in the original "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

§ 78u. Investigations and actions**(a) Authority and discretion of Commission to investigate violations**

(1) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of

which such person is a member or a person associated, or, as to any act or practice, or omission to act, while associated with a member, formerly associated with a member, the rules of a registered clearing agency in which such person is a participant, or, as to any act or practice, or omission to act, while a participant, was a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this chapter, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(2) On request from a foreign securities authority, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.

(b) Attendance of witnesses; production of records

For the purpose of any such investigation, or any other proceeding under this chapter, any member of the Commission or any officer 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, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.