

REFERENCES IN TEXT

Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), referred to in text, is set out as a note under section 78d of this title.

PRIOR PROVISIONS

A prior section 78d-2, Pub. L. 87-592, § 2, Aug. 20, 1962, 76 Stat. 395, provided for subject matter similar to the provisions comprising this section, prior to repeal by section 308(b) of Pub. L. 100-181.

§ 78d-3. Appearance and practice before the Commission

(a) Authority to censure

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

- (1) not to possess the requisite qualifications to represent others;
- (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or
- (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

(b) Definition

With respect to any registered public accounting firm or associated person, for purposes of this section, the term “improper professional conduct” means—

- (1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and
- (2) negligent conduct in the form of—
 - (A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or
 - (B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

(June 6, 1934, ch. 404, title I, § 4C, as added Pub. L. 107-204, title VI, § 602, July 30, 2002, 116 Stat. 794.)

§ 78d-4. Additional duties of Inspector General

(a) Suggestion submissions by Commission employees

(1) Hotline established

The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

- (A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and
- (B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.

(2) Confidentiality

The Inspector General shall maintain as confidential—

- (A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and
- (B) at the request of any such individual, any specific information provided by the individual.

(b) Consideration of reports

The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.

(c) Recognition

The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

- (1) increase the work efficiency, effectiveness, or productivity of the Commission; or
- (2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

(d) Report

The Inspector General of the Commission shall submit to Congress an annual report containing a description of—

- (1) the nature, number, and potential benefits of any suggestions received under subsection (a);
- (2) the nature, number, and seriousness of any allegations received under subsection (a);
- (3) any recommendations made or actions taken by the Inspector General in response to substantiated allegations received under subsection (a); and
- (4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

(e) Funding

The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 78u-6 of this title.

(June 6, 1934, ch. 404, title I, § 4D, as added Pub. L. 111-203, title IX, § 966, July 21, 2010, 124 Stat. 1912.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

§ 78d-5. Deadline for completing enforcement investigations and compliance examinations and inspections

(a) Enforcement investigations

(1) In general

Not later than 180 days after the date on which Commission staff provide¹ a written Wells notification to any person, the Commission staff shall either file an action against

¹ So in original. Probably should be “provides”.

such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

(2) Exceptions for certain complex actions

Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

(b) Compliance examinations and inspections

(1) In general

Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded, has concluded without findings, or that the staff requests the entity undertake corrective action.

(2) Exception for certain complex actions

Notwithstanding paragraph (1), if the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection, or regarding the staff requests the entity undertake corrective action, cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.

(June 6, 1934, ch. 404, title I, §4E, as added Pub. L. 111-203, title IX, §929U, July 21, 2010, 124 Stat. 1867.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set

out as a note under section 5301 of Title 12, Banks and Banking.

§ 78d-6. Report and certification of internal supervisory controls

(a) Annual reports and certification

Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) Contents of reports

Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).¹

(c) Certification

(1) Signature

The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) Content of certification

Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

(d) New Director or Acting Director

Notwithstanding subsection (a), if the Director of the Division of Enforcement, the Director

¹ So in original. Probably should be "(e)."