

“(C) the availability of such advice and recommendations;

“(13) the potential additional costs and expenses to—

“(A) retail customers regarding and the potential impact on the profitability of their investment decisions; and

“(B) brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

“(14) any other consideration that the Commission considers necessary and appropriate in determining whether to conduct a rulemaking under subsection (f).

“(d) REPORT.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [July 21, 2010], the Commission shall submit a report on the study required under subsection (b) to—

“(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(B) the Committee on Financial Services of the House of Representatives.

“(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

“(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (b), to make such findings, conclusions, and policy recommendations; and

“(B) an analysis of whether [sic] any identified legal or regulatory gaps, shortcomings, or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers.

“(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

“(f) RULEMAKING.—The Commission may commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to such retail customers. The Commission shall consider the findings[,] conclusions, and recommendations of the study required under subsection (b).”

[For definitions of terms used in section 913(a)-(f) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

#### STUDY AND REPORT ON BROKER-DEALER UNIFORMITY

Pub. L. 104-290, title V, §510(d), Oct. 11, 1996, 110 Stat. 3451, provided that:

“(1) STUDY.—The Commission, after consultation with registered securities associations, national securities exchanges, and States, shall conduct a study of the impact of disparate State licensing requirements on associated persons of registered brokers or dealers and methods for States to attain uniform licensing requirements for such persons.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit to the Congress a report on the study conducted under paragraph (1). Such report shall include

recommendations concerning appropriate methods described in paragraph (1)(B), including any necessary legislative changes to implement such recommendations.”

#### PENNY STOCK REFORM; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 101-429, title V, §502, Oct. 15, 1990, 104 Stat. 951, provided that: “The Congress finds the following:

“(1) The maintenance of an honest and healthy primary and secondary market for securities offerings is essential to enhancing long-term capital formation and economic growth and providing legitimate investment opportunities for individuals and institutions.

“(2) Protecting investors in new securities is a critical component in the maintenance of an honest and healthy market for such securities.

“(3) Protecting issuers of new securities and promoting the capital formation process on behalf of small companies are fundamental concerns in maintaining a strong economy and viable trading markets.

“(4) Unscrupulous market practices and market participants have pervaded the ‘penny stock’ market with an overwhelming amount of fraud and abuse.

“(5) Although the Securities and Exchange Commission, State securities regulators, and securities self-regulators have made efforts to curb these abusive and harmful practices, the penny stock market still lacks an adequate and sufficient regulatory structure, particularly in comparison to the structure for overseeing trading in National Market System securities.

“(6) Investors in the penny stock market suffer from a serious lack of adequate information concerning price and volume of penny stock transactions, the nature of this market, and the specific securities in which they are investing.

“(7) Current practices do not adequately regulate the role of ‘promoters’ and ‘consultants’ in the penny stock market, and many professionals who have been banned from the securities markets have ended up in promoter and consultant roles, contributing substantially to fraudulent and abusive schemes.

“(8) The present regulatory environment has permitted the ascendancy of the use of particular market practices, such as ‘reverse mergers’ with shell corporations and ‘blank check’ offerings, which are used to facilitate manipulation schemes and harm investors.

“(9) In light of the substantial and continuing problems in the penny stock markets, additional legislative measures are necessary and appropriate.”

#### REVISION OF SANCTION AUTHORITY WITH RESPECT TO PENNY STOCKS; RECOMMENDATIONS TO CONGRESS

Pub. L. 101-429, title V, §504(b), Oct. 15, 1990, 104 Stat. 953, provided that within 6 months after Oct. 15, 1990, the Securities and Exchange Commission was to submit to each House of Congress any recommendations the Commission considered appropriate with respect to further revision of subsection (b)(6) of this section.

#### Executive Documents

##### 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.

#### § 780-1. Brokers deemed to be registered

All brokers and dealers for whom registration was in effect on May 27, 1936, in accordance with rules and regulations of the Commission prescribed pursuant to section 780 of this title shall

be deemed to be registered pursuant to said section.

(May 27, 1936, ch. 462, § 10, 49 Stat. 1380.)

#### Editorial Notes

##### CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

#### Executive Documents

##### 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.

#### § 780-2. Liabilities arising prior to amendment unaffected

Nothing in this Act shall be deemed to extinguish any liability which may have arisen prior to the effective date of this Act by reason of any violation of section 78o of this title or of any rule or regulation thereunder.

(May 27, 1936, ch. 462, § 11, 49 Stat. 1380.)

#### Editorial Notes

##### REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375, popularly known as the Unlisted Securities Trading Act, which enacted sections 78l-1, 78o-1, 78o-2, and 78hh-1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

Effective date of this Act, referred to in text, is July 1, 1934. See section 78hh-1 of this title.

##### CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

#### § 780-3. Registered securities associations

##### (a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b), or as an affiliated securities association pursuant to subsection (d), under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

##### (b) Determinations by Commission requisite to registration of applicant as national securities association

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking member-