

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a-9 and 80a-48 of this title, section 78o of this title, or section 80b-3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

**(c) Corporate or other trustees performing functions of investment advisers**

For the purposes of subsections (a) and (b) of this section, the term “investment adviser” includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, §36, 54 Stat. 841; Pub. L. 91-547, §20, Dec. 14, 1970, 84 Stat. 1428; Pub. L. 94-29, §28(7), June 4, 1975, 89 Stat. 166; Pub. L. 100-181, title VI, §622, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 111-203, title IX, §929F(f), July 21, 2010, 124 Stat. 1854.)

**Editorial Notes**

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, in introductory provisions, substituted “a person who is, or at the time of the alleged misconduct was, serving or acting” for “a person serving or acting” and “for which such person so serves or acts, or at the time of the alleged misconduct, so served or acted” for “for which such person so serves or acts”.

1987—Subsec. (b)(4). Pub. L. 100-181, §622(1), substituted “loads” for “loans”.

Subsecs. (c), (d). Pub. L. 100-181, §622(2), (3), redesignated as subsec. (c) provisions which were added and designated as subsec. (d) by Pub. L. 94-29, and substituted “subsections (a) and (b)” for “subsections (a) through (c)”.

1975—Subsec. (d). Pub. L. 94-29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-547 designated existing provisions as subsec. (a) and substituted in first sentence “has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct” for “has been guilty, after August 22, 1940, and within five years of the commencement of the action, of gross misconduct or gross abuse of trust” and second sentence reading “If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a-1(b) of this title” for prior provision reading “If the Commission’s allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities either permanently or for such period of time as it in its discretion shall deem appropriate.”

Subsec. (b). Pub. L. 91-547 added subsec. (b).

**Statutory Notes and Related Subsidiaries**

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 OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, except that subsec. (b) of this section effective on expiration of eighteen months after Dec. 14, 1970, see section 30 (introductory text and par. (4)) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

**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.

**§ 80a-36. Larceny and embezzlement**

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section 80a-48 of this title. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

(Aug. 22, 1940, ch. 686, title I, §37, 54 Stat. 841.)

**§ 80a-37. Rules, regulations, and orders**

**(a) Powers of Commission**

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

**(b) Filing of information and documents**

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under this subchapter, subchapter II of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this subchapter or any of such Acts.

**(c) Good faith conformance with rules, regulations, and orders**

No provision of this subchapter imposing any liability shall apply to any act done or omitted

in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Aug. 22, 1940, ch. 686, title I, § 38, 54 Stat. 841; Pub. L. 111-203, title IX, § 986(c)(3), July 21, 2010, 124 Stat. 1936.)

#### Editorial Notes

##### 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 chapter 2A of this title. 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.

The Trust Indenture Act of 1939, referred to in subsec. (b), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

##### AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203 struck out “the Public Utility Holding Company Act of 1935,” after “the Securities Exchange Act of 1934,”.

#### Statutory Notes and Related Subsidiaries

##### 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.

#### 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.

#### § 80a-38. Procedure for issuance of rules and regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(Aug. 22, 1940, ch. 686, title I, § 39, 54 Stat. 842.)

#### Editorial Notes

##### CODIFICATION

“Chapter 15 of title 44” substituted in text for “the Federal Register Act” on authority of Pub. L. 90-620, § 2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents.

#### 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.

#### § 80a-39. Procedure for issuance of orders

##### (a) Notice and hearing

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

##### (b) Application verified under oath admissible as evidence

The Commission may provide, by appropriate rules or regulations, that an application verified under oath may be admissible in evidence in a proceeding before the Commission and that the record in such a proceeding may consist, in whole or in part, of such application.

##### (c) Parties

In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State or State agency, and may admit as a party any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title I, § 40, 54 Stat. 842; Pub. L. 86-507, § 1(15), June 11, 1960, 74 Stat. 201.)

#### Editorial Notes

##### AMENDMENTS

1960—Subsec. (a). Pub. L. 86-507 inserted “or certified mail” after “registered mail”.

#### 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.

#### § 80a-40. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(Aug. 22, 1940, ch. 686, title I, § 41, 54 Stat. 842.)

#### Executive Documents

##### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of