

15 USC 77b: Definitions; promotion of efficiency, competition, and capital formation

Text contains those laws in effect on July 6, 2023

From Title 15-COMMERCE AND TRADE

CHAPTER 2A-SECURITIES AND TRUST INDENTURES

SUBCHAPTER I-DOMESTIC SECURITIES

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§77b. Definitions; promotion of efficiency, competition, and capital formation

(a) Definitions

When used in this subchapter, unless the context otherwise requires-

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of

interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 77f of this title, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 77j of this title) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 77j of this title at the time of ¹ such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 77j of this title may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term "accredited investor" shall mean-

(i) a bank as defined in section 77c(a)(2) of this title whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] or a business development company as defined in section 2(a)(48) of that Act [15 U.S.C. 80a-2(a)(48)]; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act [29 U.S.C. 1002(21)], which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under

rules and regulations which the Commission shall prescribe.

(16) The terms "security future", "narrow-based security index", and "security futures product" have the same meanings as provided in section 78c(a)(55) of this title.

(17) The terms "swap" and "security-based swap" have the same meanings as in section 1a of title 7.

(18) The terms "purchase" or "sale" of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term "emerging growth company" means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of-

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this subchapter;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b-2 of title 17, Code of Federal Regulations, or any successor thereto.

(b) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(May 27, 1933, ch. 38, title I, §2, 48 Stat. 74 ; June 6, 1934, ch. 404, title II, §201, 48 Stat. 905 ; Aug. 10, 1954, ch. 667, title I, §§1-4, 68 Stat. 683 , 684; Pub. L. 86-70, §12(a), June 25, 1959, 73 Stat. 143 ; Pub. L. 86-624, §7(a), July 12, 1960, 74 Stat. 412 ; Pub. L. 91-547, §27(a), Dec. 14, 1970, 84 Stat. 1433 ; Pub. L. 96-477, title VI, §603, Oct. 21, 1980, 94 Stat. 2294 ; Pub. L. 97-303, §1, Oct. 13, 1982, 96 Stat. 1409 ; Pub. L. 100-181, title II, §§201, 202, Dec. 4, 1987, 101 Stat. 1252 ; Pub. L. 104-290, title I, §106(a), Oct. 11, 1996, 110 Stat. 3424 ; Pub. L. 105-353, title III, §301(a)(1), Nov. 3, 1998, 112 Stat. 3235 ; Pub. L. 106-554, §1(a)(5) [title II, §208(a)(1)], Dec. 21, 2000, 114 Stat. 2763 , 2763A-434; Pub. L. 111-203, title VII, §768(a), July 21, 2010, 124 Stat. 1800 ; Pub. L. 112-106, title I, §§101(a), 105(a), Apr. 5, 2012, 126 Stat. 307 , 310.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(15)(i), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789 , which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(15)(i), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829 , which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "Territory" under authority of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2012-Subsec. (a)(3). Pub. L. 112-106, §105(a), inserted at end "The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the

registered offering of the securities of the issuer. As used in this paragraph, the term 'research report' means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision."

Subsec. (a)(19). Pub. L. 112-106, §101(a), added par. (19).

2010-Subsec. (a)(1). Pub. L. 111-203, §768(a)(1), inserted "security-based swap," after "security future,".

Subsec. (a)(3). Pub. L. 111-203, §768(a)(2), inserted at end "Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities."

Subsec. (a)(17), (18). Pub. L. 111-203, §768(a)(3), added pars. (17) and (18).

2000-Subsec. (a)(1). Pub. L. 106-554, §1(a)(5) [title II, §208(a)(1)(A)], inserted "security future," after "treasury stock,".

Subsec. (a)(3). Pub. L. 106-554, §1(a)(5) [title II, §208(a)(1)(B)], inserted at end "Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities."

Subsec. (a)(16). Pub. L. 106-554, §1(a)(5) [title II, §208(a)(1)(C)], added par. (16).

1998-Subsec. (a)(15)(i). Pub. L. 105-353 made technical amendment to reference in original act which appears in text as reference to section 77c(a)(2) of this title and inserted "of this subsection" after "paragraph (13)".

1996-Pub. L. 104-290 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987-Par. (5). Pub. L. 100-181, §201, substituted "Securities and Exchange Commission" for "Federal Trade Commission".

Par. (6). Pub. L. 100-181, §202, struck out reference to Canal Zone.

1982-Par. (1). Pub. L. 97-303 inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "mineral rights,".

1980-Par. (15). Pub. L. 96-477 added par. (15).

1970-Pars. (13), (14). Pub. L. 91-547 added pars. (13) and (14).

1960-Par. (6). Pub. L. 86-624 struck out reference to Hawaii.

1959-Par. (6). Pub. L. 86-70 struck out reference to Alaska.

1954-Act Aug. 10, 1954, in pars. (3), (8), (10), and (11), redefined term "sale" so as to distinguish between "offers" and "sales", clarified definition of "registration statement", and conformed definition of "prospectus" to changes made by act Aug. 10, 1954, to sections 77e and 77j of this title.

1934-Act June 6, 1934, amended pars. (1), (4), and (10).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-106, [title I, §101\(d\)](#), [Apr. 5, 2012](#), 126 Stat. 308 , provided that: "Notwithstanding section 2(a) (19) of the Securities Act of 1933 [15 U.S.C. 77b(a)(19)] and section 3(a)(80) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(80)], an issuer shall not be an emerging growth company for purposes of such Acts [15 U.S.C. 77a et seq., 78a et seq.] if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] occurred on or before December 8, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, [title VII, §774](#), [July 21, 2010](#), 124 Stat. 1802 , provided that: "Unless otherwise provided, the provisions of this subtitle [subtitle B (§§761-774) of title VII of Pub. L. 111-203, enacting subchapter II (§8341 et seq.) of chapter 109 and sections 78c-3 to 78c-5, 78j-2, 78m-1, and 78o-10 of this title, amending this section and sections 77b-1, 77e, 77q, 78c, 78c-1, 78f, 78i, 78j, 78m, 78o, 78p, 78q-1, 78t, 78u-1, 78u-2, 78bb, 78dd, 78mm, 80a-2, and 80b-2 of this title, and amending provisions set out as a note under section 78c of this title] shall take effect on the later of 360 days after the date of the enactment of this subtitle [July 21, 2010] or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 10, 1954, ch. 667, §501, 68 Stat. 689 , provided that: "This Act [amending this section and sections 77c to 77e, 77j, 77l, 77q, 77v, 77ccc to 77fff, 77xxx, 78k, 78l, 80a-2 and 80a-24 of this title] shall take effect sixty days after the date of its enactment [Aug. 10, 1954]."

ADJUSTING THE ACCREDITED INVESTOR STANDARD

Pub. L. 111-203, title IV, §413, July 21, 2010, 124 Stat. 1577 , provided that:

"(a) IN GENERAL.-The [Securities and Exchange] Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than \$1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act [July 21, 2010], any net worth standard shall be \$1,000,000, excluding the value of the primary residence of such natural person.

"(b) REVIEW AND ADJUSTMENT.-

"(1) INITIAL REVIEW AND ADJUSTMENT.-

"(A) INITIAL REVIEW.-The Commission may undertake a review of the definition of the term 'accredited investor', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

"(B) ADJUSTMENT OR MODIFICATION.-Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

"(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.-

"(A) SUBSEQUENT REVIEWS.-Not earlier than 4 years after the date of enactment of this Act [July 21, 2010], and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

"(B) ADJUSTMENT OR MODIFICATION.-Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term 'accredited investor', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy."

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.

¹ So in original.

15 USC 77c: Classes of securities under this subchapter

Text contains those laws in effect on July 6, 2023

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§77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(3)]; or any security which is an industrial development bond (as defined in section 103(c)(2)¹ of title 26) the interest on which is excludable from gross income under section 103(a)(1)¹ of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c)¹ of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),¹ paragraph (1) of such section 103(c)¹ does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of title 26, (C) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 (other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26), or (iii) which is a plan funded by an annuity contract described in section 403(b) of title 26 (other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter. For purposes of this paragraph, a security issued or guaranteed by a bank shall

not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.];

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)];

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of title 26, (ii) a corporation described in section 501(c)(16) of title 26 and exempt from tax under section 501(a) of title 26, or (iii) a corporation described in section 501(c)(2) of title 26 which is exempt from tax under section 501(a) of title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 1842(a) of title 12 or a savings association under section 1467a(e) of title 12, if-

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 1813(b) of title 12) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)].

(14) Any security futures product that is-

(A) cleared by a clearing agency registered under section 78q-1 of this title or exempt from registration under subsection (b)(7) of such section 78q-1; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title.

(b) Additional exemptions

(1) Small issues exemptive authority

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

(2) Additional issues

The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed \$50,000,000.

(B) The securities may be offered and sold publicly.

(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

(D) The civil liability provision in section 77l(a)(2) of this title shall apply to any person offering or selling such securities.

(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include-

(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

(3) Limitation

Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

(4) Periodic disclosures

Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

(5) Adjustment

Not later than 2 years after April 5, 2012,¹ and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.

(c) Securities issued by small investment company

The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title I, §3, 48 Stat. 75 ; June 6, 1934, ch. 404, title II, §202, 48 Stat. 906 ; Feb. 4, 1887, ch. 104, title II, §214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557 ; amended June 29, 1938, ch. 811, §15, 52 Stat. 1240 ; May 15, 1945, ch. 122, 59 Stat. 167 ; Aug. 10, 1954, ch. 667, title I, §5, 68 Stat. 684 ; Pub. L. 85-699, title III, §307(a), Aug. 21, 1958, 72 Stat. 694 ; Pub. L. 91-373, title IV, §401(a), Aug. 10, 1970, 84 Stat. 718 ; Pub. L. 91-547, §27(b), (c), Dec. 14, 1970, 84 Stat. 1434 ; Pub. L. 91-565, Dec. 19, 1970, 84 Stat. 1480 ; Pub. L. 91-567, §6(a), Dec. 22, 1970, 84 Stat. 1498 ; Pub. L. 94-210, title III, §308(a)(1), (3), Feb. 5, 1976, 90 Stat. 56 , 57; Pub. L. 95-283, §18, May 21, 1978, 92 Stat. 275 ; Pub. L. 95-425, §2, Oct. 6, 1978, 92 Stat. 962 ; Pub. L. 95-598, title III, §306, Nov. 6, 1978, 92 Stat. 2674 ; Pub. L. 96-477, title III, §301, title VII, §701, Oct. 21, 1980, 94 Stat. 2291 , 2294; Pub. L. 97-261, §19(d), Sept. 20, 1982, 96 Stat. 1121 ; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095 ; Pub. L. 100-181, title II, §§203, 204, Dec. 4, 1987, 101 Stat. 1252 ; Pub. L. 103-325, title III, §320, Sept. 23, 1994, 108 Stat. 2225 ; Pub. L. 104-62, §3, Dec. 8, 1995, 109 Stat. 684 ; Pub. L. 104-290, title V, §508(b), Oct. 11, 1996, 110 Stat. 3447 ; Pub. L. 106-102, title II, §221(a), Nov. 12, 1999, 113 Stat. 1401 ; Pub. L. 106-554, §1(a)(5) [title II, §208(a)(2)], Dec. 21, 2000, 114 Stat. 2763 , 2763A-435; Pub. L. 108-359, §1(b), Oct. 25, 2004, 118 Stat. 1666 ; Pub. L. 111-203, title IX, §985(a)(1), July 21, 2010, 124 Stat. 1933 ; Pub. L. 112-106, title IV, §401(a), Apr. 5, 2012, 126 Stat. 323 ; Pub. L. 112-142, §2, July 9, 2012, 126 Stat. 989 .)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 103 of title 26, referred to in subsec. (a)(2), which related to interest on certain governmental obligations was amended generally by Pub. L. 99-514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602 , and as so amended relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Investment Company Act of 1940, referred to in subsec. (a)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789 , which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (b)(2)(G)(ii), is section 926 of Pub. L. 111-203, which is set out as a note under section 77d of this title.

April 5, 2012, referred to in subsec. (b)(5), was in the original "the date of enactment of the Small Company Capital Formation Act of 2011", and was translated as meaning the date of enactment of the Jumpstart Our Business Startups Act, Pub. L. 112-106, which enacted subsec. (b)(5), to reflect the probable intent of Congress.

The Small Business Investment Act of 1958, referred to in subsec. (c), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689 , which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

2012-Subsec. (a)(2). Pub. L. 112-142 inserted "(other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account)" after "403(b) of title 26" and "(other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26)" after "(ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26".

Subsec. (b). Pub. L. 112-106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added pars. (2) to (5).

2010-Subsec. (a)(4). Pub. L. 111-203 substituted "individual," for "individual;".

2004-Subsec. (a)(2). Pub. L. 108-359 struck out "or" before "(C) a governmental plan" and substituted "or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)" for "other than any plan described in clause (A), (B), or (C)".

2000-Subsec. (a)(14). Pub. L. 106-554 added par. (14).

1999-Subsec. (a)(2). Pub. L. 106-102 substituted "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940" for "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian".

1996-Subsec. (a)(13). Pub. L. 104-290 added par. (13).

1995-Subsec. (a)(4). Pub. L. 104-62 inserted at end "or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;".

1994-Subsec. (a)(12). Pub. L. 103-325 added par. (12).

1987-Subsec. (a)(1). Pub. L. 100-181, §203, substituted "Reserved." for "Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;".

Subsec. (a)(5)(A). Pub. L. 100-181, §204, struck out ", except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security" after "any such institution".

1986-Subsec. (a)(2), (5). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1982-Subsec. (a)(6). Pub. L. 97-261 struck out provisions relating to any security issued by a motor carrier subject to provisions of section 314 [11302] of title 49.

1980-Subsec. (a)(2). Pub. L. 96-477, §701, provided that single trust funds did not have to be maintained by banks in order to qualify for exemption from the provisions of this subchapter, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, provided that an interest, participation, or security could be issued in connection with certain governmental plans as defined in section 414(d) of title 26 and qualify for exemption from the provisions of this subchapter, and excluded from exemption plans described in cls. (A), (B), or (C) of par. (2) which were funded by annuity contracts described in section 403(b) of title 26.

Subsec. (b). Pub. L. 96-477, §301, substituted "\$5,000,000" for "\$2,000,000".

1978-Subsec. (a)(7). Pub. L. 95-598, §306(a), substituted "or debtor in possession in a case under title 11" for "in bankruptcy".

Subsec. (a)(9), (10). Pub. L. 95-598, §306(b), substituted "Except with respect to a security exchanged in a case under title 11, any" for "Any".

Subsec. (b). Pub. L. 95-425 substituted "\$2,000,000" for "\$1,500,000".

Pub. L. 95-283 substituted "\$1,500,000" for "\$500,000".

1976-Subsec. (a)(6). Pub. L. 94-210 substituted provisions relating to any security issued by a motor carrier subject to the provisions of section 314 of title 49 or any interest in a railroad equipment trust, and provisions defining "interest in a railroad equipment trust", for provisions relating to any security issued by a common or contract carrier, subject to the provisions of section 20a of title 49.

1970-Subsec. (a)(2). Pub. L. 91-567 exempted any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian, any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26, any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, directed the Commission to exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors, and provided that for the purposes of this paragraph a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank, and that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940.

Pub. L. 91-547, §27(b), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and exempted from registration provisions interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity interests or participations in bank collective trust funds maintained for funding of employees' stock bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and interests or participations issued by bank collective trust funds or insurance company separate accounts for funding

certain stock-bonus, pension, profit-sharing, or annuity plans when the Commission by rule, regulation, or order determines this to be necessary in the public interest; provided that a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; substituted where first appearing "security issued or guaranteed by any bank" for "security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official", the latter provision now incorporated in a separate definition of term "bank"; and made the Investment Company Act definition of bank applicable as in the case of a common trust fund or similar fund, or a collective trust fund.

Pub. L. 91–373 inserted reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26.

Subsec. (a)(5). Pub. L. 91–547, §27(c), designated existing provisions as cl. (A), included cooperative bank issues, required the issuer to be an institution which is supervised and examined by State or Federal authority having supervision over such institution, struck out "substantially all the business of which is confined to the making of loans to members" after "similar institution" and substituted provisions designated as cl. (B) for prior provision relating to a security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932.

Subsec. (b). Pub. L. 91–565 substituted "\$500,000" for "\$300,000".

1958-Subsec. (c). Pub. L. 85–699 added subsec. (c).

1954-Subsec. (a)(11). Act Aug. 10, 1954, inserted "offered and" before "sold".

1945-Subsec. (b). Act May 15, 1945, substituted "\$300,000" for "\$100,000".

1938-Subsec. (a)(6). Act June 29, 1938, reenacted par. (6) without change.

1935-Subsec. (a)(6). Act Feb. 4, 1887, as added by act Aug. 9, 1935, included a security issued by a contract carrier.

1934-Subsec. (a). Act June 6, 1934, amended pars. (2), (4), and (8) and added pars. (9) to (11).

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 1999 AMENDMENT

Pub. L. 106–102, [title II, §225, Nov. 12, 1999](#), 113 Stat. 1402, provided that: "This subtitle [subtitle B (§§211–225) of title II of Pub. L. 106–102, enacting section 80b–10a of this title and amending this section and sections 78c, 80a–2, 80a–3, 80a–9, 80a–10, 80a–17, 80a–26, 80a–34, and 80b–2 of this title] shall take effect 18 months after the date of the enactment of this Act [Nov. 12, 1999]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–62, [§7, Dec. 8, 1995](#), 109 Stat. 686, provided that: "This Act [enacting section 80a–3a of this title, amending this section and sections 78c, 78l, 80a–3, 80a–7, and 80b–3 of this title, and enacting provisions set out as a note under section 80a–51 of this title] and the amendments made by this Act shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act [Dec. 8, 1995], as a defense to any claim that any person, security, interest, or participation of the type described in this Act and the amendments made by this Act is subject to the provisions of 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.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or any State statute or regulation preempted as provided in section 6 of this Act [enacting section 80a–3a of this title], except as otherwise specifically provided in such Acts or State law."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–261, [§31, Sept. 20, 1982](#), 96 Stat. 1129, provided that:

"(a) Except as provided in subsections (b) and (c) of this section, this Act [see Tables for classification] shall take effect on the 60th day after the date of enactment of this Act [Sept. 20, 1982].

"(b) The amendment made by section 10(e)(4) of this Act [amending provisions set out as a note under former section 10706 of Title 49, Transportation] shall take effect on October 1, 1982.

"(c) The provisions of sections 6(g) and 30 of this Act [amending former sections 10922 and 10525 of Title 49, respectively] shall take effect on the date of enactment of this Act [Sept. 20, 1982]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–210, §308(d)(1), Feb. 5, 1976, 90 Stat. 57 , provided that: "The amendments made by subsection (a) of this section [amending this section, section 77s of this title, and section 314 of former Title 49, Transportation] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976], but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day."

EFFECTIVE DATE OF 1970 AMENDMENTS

Pub. L. 91–567, §6(d), Dec. 22, 1970, 84 Stat. 1499 , provided that: "The amendments made by this section [amending this section and sections 77ddd and 78c of this title] shall apply with respect to securities sold after January 1, 1970."

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.

Pub. L. 91–373, title IV, §401(c), Aug. 10, 1970, 84 Stat. 718 , provided that: "The amendments made by this section [amending this section and section 78c of this title] shall apply with respect to securities sold after January 1, 1970."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

REPEALS

Section 214 of act Feb. 4, 1887 (the Interstate Commerce Act), as added Aug. 9, 1935, ch. 498, 49 Stat. 557 , cited as a credit to this section, was repealed by Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2443 , 2444.

FURTHER PROMOTING THE ADOPTION OF THE NAIC MODEL REGULATIONS THAT ENHANCE PROTECTION OF SENIORS AND OTHER CONSUMERS

Pub. L. 111–203, title IX, §989J, July 21, 2010, 124 Stat. 1949 , provided that:

"(a) IN GENERAL.—The Commission shall treat as exempt securities described under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance or endowment policy or annuity contract or optional annuity contract—

"(1) the value of which does not vary according to the performance of a separate account;

"(2) that—

"(A) satisfies standard nonforfeiture laws or similar requirements of the applicable State at the time of issue; or

"(B) in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners; and

"(3) that is issued—

"(A) on and after June 16, 2013, in a State, or issued by an insurance company that is domiciled in a State, that—

"(i) adopts rules that govern suitability requirements in the sale of an insurance or endowment policy or annuity contract or optional annuity contract, which shall substantially meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation adopted by the National Association of Insurance Commissioners in March 2010; and

"(ii) adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulations described in subparagraph (A) within 5 years of the adoption by the Association of any further successors thereto; or

"(B) by an insurance company that adopts and implements practices on a nationwide basis for the sale of any insurance or endowment policy or annuity contract or optional annuity contract that meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto, and is therefore subject to examination by the State of domicile of the insurance company, or

by any other State where the insurance company conducts sales of such products, for the purpose of monitoring compliance under this section.

"(b) RULE OF CONSTRUCTION.-Nothing in this section shall be construed to affect whether any insurance or endowment policy or annuity contract or optional annuity contract that is not described in this section is or is not an exempt security under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8))."

[For definitions of terms used in section 989J of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

SECURITIES AND INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959

Pub. L. 91-547, §29, Dec. 14, 1970, 84 Stat. 1436 , provided that: "The provisions of the Securities Act of 1933 [this subchapter] and the Investment Company Act of 1940 [section 80a-1 et seq. of this title] shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other fund providing for the sharing of income or gains and losses, and any interest or participation in such account or fund) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses. Nothing herein contained shall be taken to imply that any such interest or participation constitutes a 'security' under any other laws of the United States."

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.

¹ See References in Text note below.

15 USC 77d: Exempted transactions

Text contains those laws in effect on July 6, 2023

From Title 15-COMMERCE AND TRADE

CHAPTER 2A-SECURITIES AND TRUST INDENTURES

SUBCHAPTER I-DOMESTIC SECURITIES

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§77d. Exempted transactions

(a) In general

The provisions of section 77e of this title shall not apply to-

- (1) transactions by any person other than an issuer, underwriter, or dealer.
- (2) transactions by an issuer not involving any public offering.
- (3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except-
 - (A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,
 - (B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and
 - (C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

- (4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.
- (5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 77c(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.
- (6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that-
 - (A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;
 - (B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed-
 - (i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and
 - (ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;
 - (C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 77d-1(a) of this title; and
 - (D) the issuer complies with the requirements of section 77d-1(b) of this title.

- (7) transactions meeting the requirements of subsection (d).

(b) Offers and sales exempt under 17 CFR 230.506

Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(c) Securities offered and sold in compliance with Rule 506 of Regulation D

(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 78o(a)(1) of this title,¹ solely because-

- (A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;
- (B) that person or any person associated with that person co-invests in such securities; or
- (C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if-

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 78c(a)(39) of this title ¹ and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term "ancillary services" means-

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(d) Certain accredited investor transactions

The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

(1) ACCREDITED INVESTOR REQUIREMENT.-Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.-Neither the seller, nor any person acting on the seller's behalf, offers or sells securities by any form of general solicitation or general advertising.

(3) INFORMATION REQUIREMENT.-In the case of a transaction involving the securities of an issuer that is neither subject to section 78m or 78o(d) of this title, nor exempt from reporting pursuant to section 240.12g3-2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

- (A) The exact name of the issuer and the issuer's predecessor (if any).
- (B) The address of the issuer's principal executive offices.
- (C) The exact title and class of the security.
- (D) The par or stated value of the security.
- (E) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year.
- (F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.
- (G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.
- (H) The names of the officers and directors of the issuer.
- (I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person's participation in the offer or sale of the securities.
- (J) The issuer's most recent balance sheet and profit and loss statement and similar financial statements, which shall-
 - (i) be for such part of the 2 preceding fiscal years as the issuer has been in operation;
 - (ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

(iii) be presumed reasonably current if-

(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer's balance sheet; and

(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

(4) ISSUERS DISQUALIFIED.-The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.

(5) BAD ACTOR PROHIBITION.-Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 CFR 230.506(d)(1)) or is subject to a statutory disqualification described under section 78c(a)(39) of this title.

(6) BUSINESS REQUIREMENT.-The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer's primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(7) UNDERWRITER PROHIBITION.-The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

(8) OUTSTANDING CLASS REQUIREMENT.-The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

(e) Additional requirements

(1) IN GENERAL.-With respect to an exempted transaction described under subsection (a)(7):

(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

(B) Such transaction shall be deemed not to be a distribution for purposes of section 77b(a)(11) of this title.

(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 CFR 230.144).

(2) RULE OF CONSTRUCTION.-The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 77e of this title.

(May 27, 1933, ch. 38, title I, §4, 48 Stat. 77 ; June 6, 1934, ch. 404, title II, §203, 48 Stat. 906 ; Aug. 10, 1954, ch. 667, title I, §6, 68 Stat. 684 ; Pub. L. 88-467, §12, Aug. 20, 1964, 78 Stat. 580 ; Pub. L. 94-29, §30, June 4, 1975, 89 Stat. 169 ; Pub. L. 96-477, title VI, §602, Oct. 21, 1980, 94 Stat. 2294 ; Pub. L. 111-203, title IX, §944(a), July 21, 2010, 124 Stat. 1897 ; Pub. L. 112-106, title II, §201(b), (c), title III, §302(a), title IV, §401(c), Apr. 5, 2012, 126 Stat. 314 , 315, 325; Pub. L. 114-94, div. G, title LXXVI, §76001(a), Dec. 4, 2015, 129 Stat. 1787 .)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 201 of the Jumpstart Our Business Startups Act, referred to in subsec. (b), is section 201 of Pub. L. 112-106, which amended this section and enacted provisions set out as a note under this section.

Section 78o(a)(1) of this title, referred to in subsec. (c)(1), was in the original "section 15(a)(1) of this title" and was translated as meaning section 15(a)(1) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

Section 78c(a)(39) of this title, referred to in subsec. (c)(2)(C), was in the original "section 3(a)(39) of this title" and was translated as meaning section 3(a)(39) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

AMENDMENTS

2015-Subsec. (a)(7). Pub. L. 114-94, §76001(a)(1), added par. (7).

Subsec. (c). Pub. L. 114–94, §76001(a)(2), redesignated subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D as (c).

Subsecs. (d), (e). Pub. L. 114–94, §76001(a)(3), added subsecs. (d) and (e).

2012-Pub. L. 112–106, §201(b)(1), (c)(1), made identical amendments, designating existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 112–106, §401(c), which directed amendment of this section by substituting "section 77c(b)(1)" for "section 77c(b)" in par. (5), was executed by making the substitution in subsec. (a) (5) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (a)(6). Pub. L. 112–106, §302(a), which directed amendment of this section by adding par. (6) at the end, was executed by making the addition at the end of subsec. (a) to reflect the probable intent of Congress and the amendment by Pub. L. 112–106, §201(b)(1), (c)(1). See above.

Subsec. (b). Pub. L. 112–106, §201(c)(2), added subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter.

Pub. L. 112–106, §201(b)(2), added subsec. (b) relating to offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations.

2010-Pars. (5), (6). Pub. L. 111–203 redesignated par. (6) as (5) and struck out former par. (5) which related to exemption for certain transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and exemption for certain transactions between entities involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years.

1980-Par. (6). Pub. L. 96–477 added par. (6).

1975-Par. (5). Pub. L. 94–29 added par. (5).

1964-Pub. L. 88–467 substituted "shall not apply to-" for "shall not apply to any of the following transactions:" in introductory text.

Par. (1). Pub. L. 88–467 reenacted existing first provision of par. (1) and struck out second and third provisions, which are incorporated in pars. (2) and (3)(A) to (C).

Par. (2). Pub. L. 88–467 redesignated existing second provision of par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 88–467 redesignated existing third provision of par. (1) as (3), designated the excepted transactions as cls. (A) to (C), inserted in cl. (B) "or such shorter period as the Commission may specify by rules and regulations or order" and inserted sentence relating to the applicable period to transactions referred to in clause (B).

Par. (4). Pub. L. 88–467 redesignated former par. (2) as (4) and substituted "over-the-counter market" for "open or counter market".

1954-Act Aug. 10, 1954, reduced from 1 year to 40 days the period during which the delivery of a prospectus is required in trading transactions as distinguished from initial distribution of the new securities.

1934-Act June 6, 1934, among other changes, repealed par. (3), provisions of which were replaced by section 77c(9), (10) of this title.

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 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.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

MODIFICATION OF EXEMPTION RULES

Pub. L. 112–106, title II, §201(a), Apr. 5, 2012, 126 Stat. 313 , provided that:

"(1) Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 ([now] 15 U.S.C. 77d(a)(2)).

"(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer."

RULEMAKING

Pub. L. 112–106, title III, §302(c), Apr. 5, 2012, 126 Stat. 320 , provided that: "Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission (in this title [enacting section 77d–1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] referred to as the 'Commission') shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) [probably means "section 4(a)(6)"] and section 4A of the Securities Act of 1933 [15 U.S.C. 77d(a)(6), 77d–1], as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association."

DISQUALIFICATION

Pub. L. 112–106, title III, §302(d), Apr. 5, 2012, 126 Stat. 320 , provided that:

"(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the [Securities and Exchange] Commission shall, by rule, establish disqualification provisions under which-

"(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) [probably means "section 4(a)(6)"] of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)], as added by this title; and

"(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

"(2) INCLUSIONS.—Disqualification provisions required by this subsection shall-

"(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

"(B) disqualify any offering or sale of securities by a person that-

"(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that-

"(I) bars the person from-

"(aa) association with an entity regulated by such commission, authority, agency, or officer;

"(bb) engaging in the business of securities, insurance, or banking; or

"(cc) engaging in savings association or credit union activities; or

"(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

"(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission."

DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS

Pub. L. 111–203, title IX, §926, July 21, 2010, 124 Stat. 1851 , provided that: "Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules for the disqualification

of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that-

"(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

"(2) disqualify any offering or sale of securities by a person that-

"(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that-

"(i) bars the person from-

"(I) association with an entity regulated by such commission, authority, agency, or officer;

"(II) engaging in the business of securities, insurance, or banking; or

"(III) engaging in savings association or credit union activities; or

"(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

"(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission."

[For definitions of terms used in section 926 of Pub. L. 111-203, set out above, see 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.

¹ See References in Text note below.

15 USC 77e: Prohibitions relating to interstate commerce and the mails

Text contains those laws in effect on July 6, 2023

From Title 15-COMMERCE AND TRADE

CHAPTER 2A-SECURITIES AND TRUST INDENTURES

SUBCHAPTER I-DOMESTIC SECURITIES

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§77e. Prohibitions relating to interstate commerce and the mails

(a) Sale or delivery after sale of unregistered securities

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly-

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) Necessity of prospectus meeting requirements of section 77j of this title

It shall be unlawful for any person, directly or indirectly-

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

(c) Necessity of filing registration statement

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

(d) Limitation

Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

(e) Security-based swaps

Notwithstanding the provisions of section 77c or 77d of this title, unless a registration statement meeting the requirements of section 77j(a) of this title is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of title 7.

(May 27, 1933, ch. 38, title I, §5, 48 Stat. 77 ; June 6, 1934, ch. 404, title II, §204, 48 Stat. 906 ; Aug. 10, 1954, ch. 667, title I, §7, 68 Stat. 684 ; Pub. L. 111–203, title VII, §768(b), July 21, 2010, 124 Stat. 1801 ; Pub. L. 112–106, title I, §105(c), Apr. 5, 2012, 126 Stat. 311 .)

EDITORIAL NOTES

AMENDMENTS

2012-Subsecs. (d), (e). Pub. L. 112–106 added subsec. (d) and redesignated former subsec. (d) as (e).

2010-Subsec. (d). Pub. L. 111–203 added subsec. (d).

1954-Subsec. (a)(1). Act Aug. 10, 1954, struck out "or offer to buy" after "to sell".

Subsec. (b). Act Aug. 10, 1954, in par. (1) substituted "with respect to which a registration statement has been filed" for "registered" and in par. (2) omitted "to" after "to carry or" and inserted "subsection (a) of" before "section 77j of this title".

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

1934-Act June 6, 1934, repealed subsec. (c), the provisions of which were replaced by section 77c(a)(11) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

ENCOURAGING EMPLOYEE OWNERSHIP

Pub. L. 115–174, [title V, §507, May 24, 2018](#), 132 Stat. 1363, provided that: "Not later than 60 days after the date of the enactment of this Act [May 24, 2018], the Securities and Exchange Commission shall revise section 230.701(e) of title 17, Code of Federal Regulations, so as to increase from \$5,000,000 to \$10,000,000 the aggregate sales price or amount of securities sold during any consecutive 12-month period in excess of which the issuer is required under such section to deliver an additional disclosure to investors. The Commission shall index for inflation such aggregate sales price or amount every 5 years to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, rounding to the nearest \$1,000,000."

FAIR ACCESS TO INVESTMENT RESEARCH

Pub. L. 115–66, [Oct. 6, 2017](#), 131 Stat. 1196, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Fair Access to Investment Research Act of 2017'.

"SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

"(a) EXPANSION OF THE SAFE HARBOR.—Not later than the end of the 180-day period beginning on the date of enactment of this Act [Oct. 6, 2017], the Securities and Exchange Commission shall propose, and not later than the end of the 270-day period beginning on such date, the Commission shall adopt, upon such terms, conditions, or requirements as the Commission may determine necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation, revisions to section 230.139 of title 17, Code of Federal Regulations, to provide that a covered investment fund research report that is published or distributed by a broker or dealer, other than a broker or dealer that is an investment adviser to the fund or an affiliated person of the investment adviser to the fund—

"(1) shall be deemed, for purposes of sections 2(a)(10) and 5(c) of the Securities Act of 1933 (15 U.S.C. 77b(a)(10), 77e(c)), not to constitute an offer for sale or an offer to sell a security that is the subject of an offering pursuant to a registration statement that is effective, even if the broker or dealer is participating or will participate in the registered offering of the covered investment fund's securities; and

"(2) shall be deemed to satisfy the conditions of paragraph (1) or (2) of section 230.139(a) of title 17, Code of Federal Regulations, or any successor provisions, for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization.

"(b) IMPLEMENTATION OF SAFE HARBOR.—In implementing the safe harbor pursuant to subsection (a), the Commission shall—

"(1) not, in the case of a covered investment fund with a class of securities in substantially continuous distribution, condition the safe harbor on whether the broker's or dealer's publication or distribution of a covered investment fund research report constitutes such broker's or dealer's initiation or reinitiation of research coverage on such covered investment fund or its securities;

"(2) not—

"(A) require the covered investment fund to have been registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) for any period exceeding the period of time referenced under section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations; or

"(B) impose a minimum float provision exceeding that referenced in section 230.139(a)(1)(i)(A)(1)(i) of title 17, Code of Federal Regulations;

"(3) provide that a self-regulatory organization may not maintain or enforce any rule that would-

"(A) prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or

"(B) prohibit the ability of a member to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities; and

"(4) provide that a covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(b)) or the rules and regulations thereunder, except that such report may still be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

"(c) RULES OF CONSTRUCTION.-Nothing in this Act shall be construed as in any way limiting-

"(1) the applicability of the antifraud or antimanipulation provisions of the Federal securities laws and rules adopted thereunder to a covered investment fund research report, including section 17 of the Securities Act of 1933 (15 U.S.C. 77q), section 34(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-33(b)), and sections 9 and 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78i, 78j); or

"(2) the authority of any self-regulatory organization to examine or supervise a member's practices in connection with such member's publication or distribution of a covered investment fund research report for compliance with applicable provisions of the Federal securities laws or self-regulatory organization rules related to research reports, including those contained in rules governing communications with the public, or to require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds.

"(d) INTERIM EFFECTIVENESS OF SAFE HARBOR.-

"(1) IN GENERAL.-From and after the 270-day period beginning on the date of enactment of this Act, if the Commission has not adopted revisions to section 230.139 of title 17, Code of Federal Regulations, as required by subsection (a), and until such time as the Commission has done so, a broker or dealer distributing or publishing a covered investment fund research report after such date shall be able to rely on the provisions of section 230.139 of title 17, Code of Federal Regulations, and the broker or dealer's publication of such report shall be deemed to satisfy the conditions of paragraph (1) or (2) of section 230.139(a) of title 17, Code of Federal Regulations, if the covered investment fund that is the subject of such report satisfies the reporting history requirements (without regard to Form S-3 or Form F-3 eligibility) and minimum float provisions of such subsections for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization, as if revised and implemented in accordance with subsections (a) and (b).

"(2) STATUS OF COVERED INVESTMENT FUND.-After such period and until the Commission has adopted revisions to section 230.139 of title 17, Code of Federal Regulations, and FINRA has revised rule 2210, for purposes of subsection (c)(7)(O) of such rule, a covered investment fund shall be deemed to be a security that is listed on a national securities exchange and that is not subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(b)).

"(3) COVERED INVESTMENT FUNDS COMMUNICATIONS.-

"(A) IN GENERAL.-Except as provided in subparagraph (B), communications that concern only covered investment funds that fall within the scope of section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(b)) shall not be required to be filed with FINRA.

"(B) EXCEPTION.-FINRA may require the filing of communications with the public if the purpose of those communications is not to provide research and analysis of covered investment funds.

"(e) EXCEPTION.-The safe harbor under subsection (a) shall not apply to the publication or distribution by a broker or a dealer of a covered investment fund research report, the subject of which is a business development company or a registered closed-end investment company, during the time period described in section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations, except where expressly permitted by the rules and regulations of the Securities and Exchange Commission under the Federal securities laws.

"(f) DEFINITIONS.-For purposes of this Act:

"(1) The term 'affiliated person' has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

"(2) The term 'covered investment fund' means-

"(A) an investment company registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and that has filed a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

"(B) a trust or other person-

"(i) issuing securities in an offering registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and which class of securities is listed for trading on a national securities exchange;

"(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

"(iii) that provides in its registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

"(3) The term 'covered investment fund research report' means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.

"(4) The term 'FINRA' means the Financial Industry Regulatory Authority.

"(5) The term 'investment adviser' has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

"(6) The term 'research report' has the meaning given that term under section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)), except that such term shall not include an oral communication.

"(7) The term 'self-regulatory organization' has the meaning given that term under section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26))."

INCREASED ACCESS TO FOREIGN BUSINESS INFORMATION

Pub. L. 104-290, [title I, §109](#), Oct. 11, 1996, 110 Stat. 3426 , provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall adopt rules under the Securities Act of 1933 [15 U.S.C. 77a et seq.] concerning the status under the registration provisions of the Securities Act of 1933 of foreign press conferences and foreign press releases by persons engaged in the offer and sale of securities."

15 USC 77f: Registration of securities

Text contains those laws in effect on July 6, 2023

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§77f. Registration of securities

(a) Method of registration

Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this subchapter. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) Registration fee

(1) Fee payment required

At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to \$92¹ per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

(2) Annual adjustment

For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target fee collection amount for such fiscal year.

(3) Pro rata application

The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

(4) Review and effective date

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

(5) Publication

The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 78m(e) and 78n(g)¹ of this title for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

(6) Definitions

For purposes of this subsection:

(A) Target fee collection amount

The target fee collection amount for each fiscal year is determined according to the following table:

Fiscal year:	Target fee collection amount
2002	\$377,000,000
2003	\$435,000,000
2004	\$467,000,000
2005	\$570,000,000
2006	\$689,000,000
2007	\$214,000,000
2008	\$234,000,000
2009	\$284,000,000
2010	\$334,000,000
2011	\$394,000,000
2012	\$425,000,000
2013	\$455,000,000
2014	\$485,000,000
2015	\$515,000,000
2016	\$550,000,000
2017	\$585,000,000
2018	\$620,000,000
2019	\$660,000,000
2020	\$705,000,000
2021 and each fiscal year thereafter	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.

(B) Baseline estimate of the aggregate maximum offering prices

The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 907 of title 2.

(c) Time registration effective

The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b).

(d) Information available to public

The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

(e) Emerging growth companies

(1) In general

Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto. An issuer that was an emerging growth company at the time it submitted a confidential registration statement or, in lieu thereof, a publicly filed registration statement for review under this subsection but ceases to be an emerging growth company thereafter shall continue to be treated as an emerging market growth company for the purposes of this subsection through the earlier of the date on which the issuer consummates its initial public offering pursuant to such registrations statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company.

(2) Confidentiality

Notwithstanding any other provision of this subchapter, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 78x(b)(2) of this title.

(May 27, 1933, ch. 38, title I, §6, 48 Stat. 78 ; Pub. L. 89–289, §1, Oct. 22, 1965, 79 Stat. 1051 ; Pub. L. 100–181, title II, §205, Dec. 4, 1987, 101 Stat. 1252 ; Pub. L. 104–290, title IV, §404, Oct. 11, 1996, 110 Stat. 3441 ; Pub. L. 107–123, §4, Jan. 16, 2002, 115 Stat. 2393 ; Pub. L. 111–203, title IX, §991(b)(1), July 21, 2010, 124 Stat. 1951 ; Pub. L. 112–106, title I, §106(a), Apr. 5, 2012, 126 Stat. 312 ; Pub. L. 114–94, div. G, title LXXI, §§71001, 71002, Dec. 4, 2015, 129 Stat. 1783 .)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 78m(e) and 78n(g) of this title, referred to in subsec. (b)(5), were in the original, "sections 13(e) and 14(g)" and were translated as meaning sections 13(e) and 14(g) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

AMENDMENTS

2015-Subsec. (e)(1). Pub. L. 114–94 substituted "15 days" for "21 days" and inserted at end "An issuer that was an emerging growth company at the time it submitted a confidential registration statement or, in lieu thereof, a publicly filed registration statement for review under this subsection but ceases to be an emerging growth company thereafter shall continue to be treated as an emerging market growth company for the purposes of this subsection through the earlier of the date on which the issuer consummates its initial public offering pursuant to such registrations statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company."

2012-Subsec. (e). Pub. L. 112–106 added subsec. (e).

2010-Subsec. (b). Pub. L. 111–203, §991(b)(1)(A)–(G), in par. (5), substituted "target fee" for "target offsetting" and, in par. (11)(A), substituted "Target fee" for "Target offsetting" in heading and table and "target fee" for "target offsetting" in introductory provisions, redesignated pars. (2), (5), (7), (10), and (11) as (1), (2), (3), (5), and (6), respectively, and struck out former pars. (1), (3), (4), (6), (8), and (9) which related to recovery of cost of services, offsetting collections, prohibition of treatment of fees as general revenues, final rate adjustment, review and effective date of rates, and rate during lapse of appropriation, respectively.

Subsec. (b)(1). Pub. L. 111–203, §991(b)(1)(H), substituted "paragraph (2)." for "paragraph (5) or (6)."

Subsec. (b)(2). Pub. L. 111–203, §991(b)(1)(I), substituted "For each fiscal year" for "For each of the fiscal years 2003 through 2011" and "paragraph (1)" for "paragraph (2)".

Subsec. (b)(4). Pub. L. 111–203, §991(b)(1)(J), added par. (4). Former par. (4) struck out.

Subsec. (b)(5). Pub. L. 111–203, §991(b)(1)(K), substituted "August 31" for "April 30".

Subsec. (b)(6)(A). Pub. L. 111–203, §991(b)(1)(L), substituted "each fiscal year" for "each of the fiscal years 2002 through 2011" in introductory provisions and, in table, added items for fiscal years 2012 to 2021 and each fiscal year thereafter.

2002-Subsec. (b)(2) to (11). Pub. L. 107–123 added pars. (2) to (11) and struck out former pars. (2) to (5), which required fee payment, set out rates for general revenue and offsetting collection fees, and required pro rata rates for amounts and balances equal to less than \$1,000,000.

1996-Subsec. (b). Pub. L. 104–290 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: "At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than \$100."

1987-Subsec. (e). Pub. L. 100–181 struck out subsec. (e) which provided that no registration statement should be filed within the first 40 days following May 27, 1933.

1965-Subsec. (b). Pub. L. 89–289 substituted "one-fiftieth" for "one one-hundredth" and "\$100" for "\$25".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title IX, §991(b)(4), July 21, 2010, 124 Stat. 1953 , provided that: "The amendments made by this subsection [amending this section and sections 78m and 78n of this title] shall take effect on October 1, 2011, except that for fiscal year 2012, the [Securities and Exchange] Commission shall publish the rate established under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), as amended by this Act, on August 31, 2011."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, except that authorities provided by subsec. (b)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–289, §2, Oct. 22, 1965, 79 Stat. 1051 , provided that: "The amendment made by the first section of this Act [amending this section] shall take effect January 1, 1966."

INCREASE IN REGISTRATION FEES AND DEPOSIT INTO TREASURY

Pub. L. 105–46, §113, Sept. 30, 1997, 111 Stat. 1156 , provided that the amount made available to the Securities and Exchange Commission, under the heading Salaries and Expenses, was to include, in addition to direct appropriations, the amount collected under the fee rate and offsetting collection authority contained in Public Law 104–208, which fee rate and offsetting collection authority was to remain in effect during the period of Pub. L. 105–46 which provided continuing appropriations for fiscal year 1998.

Pub. L. 104–208, div. A, title I, §101(a) [title V], Sept. 30, 1996, 110 Stat. 3009 , 3009-61, which provided in part that on Sept. 30, 1996, the rate of fees under subsec. (b) of this section were increased from one-fiftieth of one percentum to one-thirty-third of one percentum, and such increase was to be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover costs of services of the securities registration process, was from the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–134, title I, §101[(a)] [title V], Apr. 26, 1996, 110 Stat. 1321 , 1321-60; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327 .

Pub. L. 104–99, title II, §209, Jan. 26, 1996, 110 Stat. 37 .

Pub. L. 104–56, §119, Nov. 20, 1995, 109 Stat. 552 .

Pub. L. 104–54, §119, Nov. 19, 1995, 109 Stat. 544 .

Pub. L. 104–31, §120, Sept. 30, 1995, 109 Stat. 282 .

Pub. L. 103–352, Oct. 10, 1994, 108 Stat. 3148 .

Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1168 .

Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1848 .

Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 798 .

Pub. L. 101–515, title V, Nov. 5, 1990, 104 Stat. 2139 .

Pub. L. 101–162, title V, Nov. 21, 1989, 103 Stat. 1022 .

ADJUSTMENT OF REGISTRATION FEE RATE

By order dated Aug. 25, 2022, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$110.20 per \$1,000,000, effective Oct. 1, 2022, see 87 F.R. 53030.

By order dated Aug. 23, 2021, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$92.70 per \$1,000,000, effective Oct. 1, 2021, see 86 F.R. 47696.

By order dated Aug. 26, 2020, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$109.10 per \$1,000,000, effective Oct. 1, 2020, see 85 F.R. 53890.

By order dated Aug. 23, 2019, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$129.80 per \$1,000,000, effective Oct. 1, 2019, see 84 F.R. 45601.

By order dated Aug. 24, 2018, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$121.20 per \$1,000,000, effective Oct. 1, 2018, see 83 F.R. 44101.

By order dated Aug. 24, 2017, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$124.50 per \$1,000,000, effective Oct. 1, 2017, see 82 F.R. 41080.

By order dated Aug. 30, 2016, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$115.90 per \$1,000,000, effective Oct. 1, 2016, see 81 F.R. 61283.

By order dated Aug. 26, 2015, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$100.70 per \$1,000,000, effective Oct. 1, 2015, see 80 F.R. 52824.

By order dated Aug. 29, 2014, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$116.20 per \$1,000,000, effective Oct. 1, 2014, see 79 F.R. 52771.

By order dated Aug. 30, 2013, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$128.80 per \$1,000,000, effective Oct. 1, 2013, see 78 F.R. 54934.

By order dated Aug. 31, 2012, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$136.40 per \$1,000,000, effective Oct. 1, 2012, see 77 F.R. 55240.

By order dated Aug. 31, 2011, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (b) of this section to \$114.60 per \$1,000,000, effective Oct. 1, 2011, see 76 F.R. 55139.

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.

¹ See Adjustment of Registration Fee Rate notes below.

¹ See References in Text note below.

15 USC 77g: Information required in registration statement

Text contains those laws in effect on July 6, 2023

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§77g. Information required in registration statement

(a) Information required in registration statement

(1) In general

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A of section 77aa of this title, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B of section 77aa of this title; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(2) Treatment of emerging growth companies

An emerging growth company-

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and

(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) Registration statement for blank check companies

(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors-

(A) require such issuers to provide timely disclosure, prior to or after such statement becomes effective under section 77h of this title, of (i) information regarding the company to be acquired and the specific application of the proceeds of the offering, or (ii) additional information necessary to prevent such statement from being misleading;

(B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and

(C) provide a right of rescission to shareholders of such securities.

(2) The Commission may, as it determines consistent with the public interest and the protection of investors, by rule or order exempt any issuer or class of issuers from the rules prescribed under paragraph (1).

(3) For purposes of paragraph (1) of this subsection, the term "blank check company" means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title) and that-

(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.

(c) Disclosure requirements

(1) In general

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

(2) Content of regulations

In adopting regulations under this subsection, the Commission shall-

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including-

(i) data having unique identifiers relating to loan brokers or originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security;

and

(iii) the amount of risk retention by the originator and the securitizer of such assets.

(3) Data standards for asset-backed securities disclosures

(A) Requirement

The Commission shall, by rule, adopt data standards for all disclosures required under this subsection.

(B) Consistency

The data standards required under subparagraph (A) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(d) Registration statement for asset-backed securities

Not later than 180 days after July 21, 2010, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 78c(a)(77) ¹ of this title) that require any issuer of an asset-backed security-

(1) to perform a review of the assets underlying the asset-backed security; and

(2) to disclose the nature of the review under paragraph (1).

(May 27, 1933, ch. 38, title I, §7, 48 Stat. 78 ; Pub. L. 101-429, title V, §508, Oct. 15, 1990, 104 Stat. 956 ; Pub. L. 111-203, title IX, §942(b), 945, July 21, 2010, 124 Stat. 1897 , 1898; Pub. L. 112-106, title I, §102(b)(1), Apr. 5, 2012, 126 Stat. 309 ; Pub. L. 117-263, div. E, title LVIII, §5821(d), Dec. 23, 2022, 136 Stat. 3425 .)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 78c(a)(77) of this title, referred to in subsec. (d), was redesignated section 78c(a)(79) of this title by Pub. L. 112-106, title I, §101(b)(1), Apr. 5, 2012, 126 Stat. 307 .

AMENDMENTS

2022-Subsec. (c)(3). Pub. L. 117-263 added par. (3).

2012-Subsec. (a). Pub. L. 112-106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

2010-Subsec. (c). Pub. L. 111-203, §942(b), added subsec. (c).

Subsec. (d). Pub. L. 111-203, §945, added subsec. (d).

1990-Pub. L. 101-429 designated existing provision as subsec. (a) and 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 1990 AMENDMENT

Pub. L. 101-429, §1(c), Oct. 15, 1990, 104 Stat. 931 , provided that:

"(1) IN GENERAL.-Except as provided in paragraphs (2) and (3), the amendments made by this Act [enacting sections 77h-1, 78q-2, 78u-2, and 78u-3 of this title, amending this section and sections 77t, 78c, 78o, 78o-3, 78o-4, 78q-1, 78u, 78u-1, 78w, 78cc, 80a-9, 80a-41, 80b-3, 80b-9, and 80b-14 of this title, and enacting provisions set out as notes under sections 78a, 78o, and 78s of this title] shall be effective upon enactment [Oct. 15, 1990].

"(2) CIVIL PENALTIES.-

"(A) IN GENERAL.-No civil penalty may be imposed pursuant to the amendments made by this Act on the basis of conduct occurring before the date of enactment of this Act [Oct. 15, 1990].

"(B) ACCOUNTING AND DISGORGEMENT.-Subparagraph (A) shall not operate to preclude the Securities and Exchange Commission from ordering an accounting or disgorgement pursuant to the amendments made by this Act.

"(3) SPECIAL RULES FOR TITLE V.-

"(A) SECTIONS 503 AND 504.-Except as provided in subparagraph (C), sections 503 [amending section 78c of this title] and 504 [amending section 78o of this title and enacting provisions set out as a note under section 78o of this title] shall be effective 12 months after the date of enactment of this Act [Oct. 15, 1990] or upon the issuance of final regulations initially implementing such section [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

"(B) SECTIONS 505 AND 508.-Except as provided in subparagraph (C), sections 505 [amending section 78o of this title] and 508 [amending this section] shall be effective 18 months after the date of enactment of this Act or upon the issuance of final regulations initially implementing such sections [Such regulations were issued effective Apr. 28, 1992. See 57 F.R. 18004, 18037.], whichever is earlier.

"(C) COMMENCEMENT OF RULEMAKING.-Not later than 180 days after the date of enactment of this Act, the Commission shall commence rulemaking proceedings to implement sections 503, 505, and 508."

RULEMAKING

Pub. L. 117-263, div. E, title LVIII, §5821(i), Dec. 23, 2022, 136 Stat. 3427 , provided that:

"(1) IN GENERAL.-The rules that the Securities and Exchange Commission are required to issue under the amendments made by this section [enacting sections 77z-4 and 78rr of this title and amending this section and sections 78m, 78n, 78o-7, 80a-8, 80a-29, and 80b-4 of this title] shall take effect not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title.

"(2) SCALING OF REGULATORY REQUIREMENTS; MINIMIZING DISRUPTION.-In issuing the rules required under the amendments made by this section, as described in paragraph (1), the Securities and Exchange Commission-

"(A) may scale data reporting requirements in order to reduce any unjustified burden on emerging growth companies, lending institutions, accelerated filers, smaller reporting companies, and other smaller issuers, as determined by any study required under section 5825(b) [set out in a note below], while still providing searchable information to investors; and

"(B) shall seek to minimize disruptive changes to the persons affected by those rules."

IMPROVEMENT OF REGULATION S-K

Pub. L. 114-94, div. G, title LXXII, §72002, Dec. 4, 2015, 129 Stat. 1784 , provided that: "Not later than the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 4, 2015], the Securities and Exchange Commission shall take all such actions to revise regulation S-K (17 CFR 229.10 et seq.)-

"(1) to further scale or eliminate requirements of regulation S-K, in order to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors;

"(2) to eliminate provisions of regulation S-K, required for all issuers, that are duplicative, overlapping, outdated, or unnecessary; and

"(3) for which the Commission determines that no further study under section 72203 [probably means section 72003 of Pub. L. 114-94, set out as a note under section 77s of this title] is necessary to determine the efficacy of such revisions to regulation S-K."

RULE OF CONSTRUCTION-NO NEW DISCLOSURE REQUIREMENTS

Pub. L. 117–263, div. E, title LVIII, §5826, Dec. 23, 2022, 136 Stat. 3430 , provided that: "Nothing in this subtitle [subtitle B (§§5821–5826) of title LVIII of div. E of Pub. L. 117–263, enacting sections 77z–4 and 78rr of this title, amending this section and sections 78d, 78m, 78n, 78o–3, 78o–4, 78o–7, 80a–8, 80a–29, and 80b–4 of this title, and enacting provisions set out as notes under this section and sections 78o–3 and 78o–4 of this title], or the amendments made by this subtitle, shall be construed to require the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, or any national securities association to collect or make publicly available additional information under the provisions of law amended by this subtitle (or under any provision of law referenced in an amendment made by this subtitle), beyond information that was collected or made publicly available under any such provision, as of the day before the date of enactment of this Act [Dec. 23, 2022]."

SHORTER-TERM BURDEN REDUCTION AND DISCLOSURE SIMPLIFICATION AT THE SECURITIES AND EXCHANGE COMMISSION; SUNSET

Pub. L. 117–263, div. E, title LVIII, §5825, Dec. 23, 2022, 136 Stat. 3429 , provided that:

"(a) BETTER ENFORCEMENT OF THE QUALITY OF CORPORATE FINANCIAL DATA SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION.-

"(1) DATA QUALITY IMPROVEMENT PROGRAM.-

"(A) IN GENERAL.-Not later than 180 days after the date of enactment of this Act [Dec. 23, 2022], the Securities and Exchange Commission shall establish a program to improve the quality of corporate financial data filed or furnished by issuers under 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.), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

"(B) CONTENTS.-The program established under subparagraph (A) shall include the following:

"(i) The designation of an official in the Office of the Chairman of the Securities and Exchange Commission responsible for the improvement of the quality of data filed with or furnished to the Commission by issuers.

"(ii) The issuance by the Division of Corporation Finance of the Securities and Exchange Commission of comment letters requiring correction of errors in data filings and submissions, where necessary.

"(2) GOALS.-In establishing the program required under this subsection, the Securities and Exchange Commission shall seek to-

"(A) improve the quality of data filed with or furnished to the Commission to a commercially acceptable level; and

"(B) make data filed with or furnished to the Commission useful to investors.

"(b) REPORT ON THE USE OF MACHINE-READABLE DATA FOR CORPORATE DISCLOSURES.-

"(1) IN GENERAL.-Not later than 180 days after the date of enactment of this Act, and once every 180 days thereafter, the Securities and Exchange Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report regarding the public and internal use of machine-readable data for corporate disclosures.

"(2) CONTENT.-Each report required under paragraph (1) shall include-

"(A) an identification of which corporate disclosures required under section 7 of the Securities Act of 1933 (15 U.S.C. 77g), section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), and section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) are expressed as machine-readable data and which are not;

"(B) an analysis of the costs and benefits of the use of machine-readable data in corporate disclosure to investors, markets, the Securities and Exchange Commission, and issuers;

"(C) a summary of enforcement actions that result from the use or analysis of machine-readable data collected under the provisions of law described in subparagraph (A); and

"(D) an analysis of how the Securities and Exchange Commission uses the machine-readable data collected by the Commission.

"(c) SUNSET.-Beginning on the date that is 7 years after the date of enactment of this Act [Dec. 23, 2022], this section shall have no force or effect."

FORWARD INCORPORATION BY REFERENCE FOR FORM S–1

Pub. L. 114–94, div. G, title LXXXIV, §84001, Dec. 4, 2015, 129 Stat. 1797 , provided that: "Not later than 45 days after the date of the enactment of this Act [Dec. 4, 2015], the Securities and Exchange Commission shall revise Form S–1 so as to permit a smaller reporting company (as defined in section 230.405 of title 17, Code of Federal Regulations) to incorporate by reference in a registration statement

filed on such form any documents that such company files with the Commission after the effective date of such registration statement."

OTHER DISCLOSURES

Pub. L. 112-106, title I, §102(c), Apr. 5, 2012, 126 Stat. 310 , provided that: "An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations, or any successor thereto, by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than \$75,000,000."

SIMPLIFIED DISCLOSURE REQUIREMENTS

Pub. L. 112-106, title I, §102(d), as added by Pub. L. 114-94, div. G, title LXXI, §71003, Dec. 4, 2015, 129 Stat. 1783 , provided that: "With respect to an emerging growth company (as such term is defined under section 2 of the Securities Act of 1933 [15 U.S.C. 77b]):

"(1) REQUIREMENT TO INCLUDE NOTICE ON FORMS S-1 AND F-1.-Not later than 30 days after the date of enactment of this subsection [Dec. 4, 2015], the Securities and Exchange Commission shall revise its general instructions on Forms S-1 and F-1 to indicate that a registration statement filed (or submitted for confidential review) by an issuer prior to an initial public offering may omit financial information for historical periods otherwise required by regulation S-X (17 CFR 210.1-01 et seq.) as of the time of filing (or confidential submission) of such registration statement, provided that-

"(A) the omitted financial information relates to a historical period that the issuer reasonably believes will not be required to be included in the Form S-1 or F-1 at the time of the contemplated offering; and

"(B) prior to the issuer distributing a preliminary prospectus to investors, such registration statement is amended to include all financial information required by such regulation S-X at the date of such amendment.

"(2) RELIANCE BY ISSUERS.-Effective 30 days after the date of enactment of this subsection, an issuer filing a registration statement (or submitting the statement for confidential review) on Form S-1 or Form F-1 may omit financial information for historical periods otherwise required by regulation S-X (17 CFR 210.1-01 et seq.) as of the time of filing (or confidential submission) of such registration statement, provided that-

"(A) the omitted financial information relates to a historical period that the issuer reasonably believes will not be required to be included in the Form S-1 or Form F-1 at the time of the contemplated offering; and

"(B) prior to the issuer distributing a preliminary prospectus to investors, such registration statement is amended to include all financial information required by such regulation S-X at the date of such amendment."

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.

¹ See References in Text note below.

15 USC 77h: Taking effect of registration statements and amendments thereto

Text contains those laws in effect on July 6, 2023

From Title 15-COMMERCE AND TRADE

CHAPTER 2A-SECURITIES AND TRUST INDENTURES

SUBCHAPTER I-DOMESTIC SECURITIES

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§77h. Taking effect of registration statements and amendments thereto**(a) Effective date of registration statement**

Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) Incomplete or inaccurate registration statement

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

(c) Effective date of amendment to registration statement

An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) Untrue statements or omissions in registration statement

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) Examination for issuance of stop order

The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Notice requirements

Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

(May 27, 1933, ch. 38, title I, §8, 48 Stat. 79 ; Aug. 22, 1940, ch. 686, title III, §301, 54 Stat. 857 .)

EDITORIAL NOTES

AMENDMENTS

1940-Subsec. (a). Act Aug. 22, 1940, amended subsec. (a) generally.

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.

15 USC 77j: Information required in prospectus

Text contains those laws in effect on July 6, 2023

From Title 15-COMMERCE AND TRADE

CHAPTER 2A-SECURITIES AND TRUST INDENTURES

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§77j. Information required in prospectus

(a) Information in registration statement; documents not required

Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e)-

(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A of section 77aa of this title;

(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B of section 77aa of this title;

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

(4) there may be omitted from any prospectus any of the information required under this subsection which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

(b) Summarizations and omissions allowed by rules and regulations

In addition to the prospectus permitted or required in subsection (a), the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 77e of this title which omits in part or summarizes information in the prospectus specified in subsection (a). A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 77k of this title. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection, if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

(c) Additional information required by rules and regulations

Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(d) Classification of prospectuses

In the exercise of its powers under subsections (a), (b), or (c), the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

(e) Information in conspicuous part of prospectus

The statements or information required to be included in a prospectus by or under authority of subsections (a), (b), (c), or (d), when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

(f) Prospectus consisting of radio or television broadcast

In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this subchapter.

(May 27, 1933, ch. 38, title I, §10, 48 Stat. 81 ; June 6, 1934, ch. 404, title II, §205, 48 Stat. 906 ; Aug. 10, 1954, ch. 667, title I, §8, 68 Stat. 685 .)

EDITORIAL NOTES

AMENDMENTS

1954-Act Aug. 10, 1954, complemented changes in section 77e of this title by act Aug. 10, 1954, permitted offering activities in the waiting period and in so doing rearranged the sequence of the subsections, added new text contained in subsec. (b), and renumbered subsecs. (c) and (d) as (e) and (f), respectively.

1934-Subsec. (b)(1). Act June 6, 1934, amended par. (1).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b 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.