

strued to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

(c) Conditions for sale of security by beneficial owner, director, or officer

It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) Securities held in investment account, transactions in ordinary course of business, and establishment of primary or secondary market

The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 78e of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Application of section to foreign or domestic arbitrage transactions

The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.

(f) Treatment of transactions in security futures products

The provisions of this section shall apply to ownership of and transactions in security futures products.

(g) Limitation on Commission authority

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, §16, 48 Stat. 896; Pub. L. 88-467, §8, Aug. 20, 1964, 78 Stat. 579; Pub. L. 106-554, §1(a)(5) [title II, §208(b)(3), title III, §303(g), (h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435, 2763A-455, 2763A-456.)

REFERENCES IN TEXT

Section 206B of the Gramm-Leach-Bliley Act, referred to in subsecs. (a), (b), and (g), is section 206B of Pub. L. 106-102, which is set out in a note under section 78c of this title.

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106-554, §1(a)(5) [title III, §303(g)], amended subsecs. (a) and (b) generally, revising provisions to extend application to security-based swap agreements.

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §208(b)(3)], added subsec. (f).

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

1964—Subsec. (a). Pub. L. 88-467, §8(a), substituted “registered pursuant to section 78l of this title” for “registered on a national securities exchange”, “Commission (and, if such security is registered on a national securities exchange, also with the exchange)” for “exchange (and a duplicate original thereof with the Commission)”, “a change” for “any change”, and “Commission (and if such security is registered on a national securities exchange, shall also file with the exchange) a statement” for “exchange a statement (and a duplicate original thereof with the Commission)”, and inserted “on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title” after “registration of such security”.

Subsecs. (d), (e). Pub. L. 88-467, §8(b), added subsec. (d) and redesignated former subsec. (d) as (e).

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78c-1, 78j, 78l, 78hh, 79q of this title; title 26 section 83.

§ 78q. Records and reports

(a) Rules and regulations

(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(2) Every registered clearing agency shall also make and keep for prescribed periods such rec-

ords, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 78q-1 of this title.

(b) Records subject to examination

(1) Procedures for cooperation with other agencies

All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter: *Provided, however*, That the Commission shall, prior to conducting any such examination of a—

(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

(B) broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o-3(k) of this title gives notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

(2) Furnishing data and reports to CFTC

The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section

78f(g) of this title, or national securities association registered pursuant to section 78o-3(k) of this title and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

(3) Use of CFTC reports

Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if the information available therein is sufficient for the purposes of the examination, of—

(A) any broker or dealer registered pursuant to section 78o(b)(11) of this title;

(B) exchange¹ registered pursuant to section 78f(g) of this title; or

(C) national² securities association registered pursuant to section 78o-3(k) of this title;

that is made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 78o-3(k) of this title, or an exchange registered pursuant to section 78f(g) of this title.

(4) Rules of construction

(A) Notwithstanding any other provision of this subsection, the records of a broker or dealer registered pursuant to section 78o(b)(11) of this title, an exchange registered pursuant to section 78f(g) of this title, or a national securities association registered pursuant to section 78o-3(k) of this title described in this subparagraph shall not be subject to routine periodic examinations by the Commission.

(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 78o(b)(11) of this title, an exchange registered pursuant to section 78f(g) of this title, or a national securities association registered pursuant to section 78o-3(k) of this title shall be limited to records with respect to persons, accounts, agreements, contracts, and transactions involving security futures products.

(C) Nothing in the proviso in paragraph (1) shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this chapter or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

(c) Copies of reports filed with other regulatory agencies

(1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being

¹ So in original. Probably should be preceded by "an".

² So in original. Probably should be preceded by "a".

a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rule-making Board shall file with each agency enumerated in section 78c(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 78s(b) of this title.

(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against any clearing agency, transfer agent, municipal securities dealer, or person associated with a transfer agent or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency, if any, notice of the commencement of any proceeding and a copy of any order entered by the Commission against the clearing agency, transfer agent, or municipal securities dealer, or against any person associated with a transfer agent or municipal securities dealer for which the agency is the appropriate regulatory agency.

(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

(4) The Commission or the appropriate regulatory agency may specify that documents required to be filed pursuant to this subsection with the Commission or such agency, respectively, may be retained by the originating clearing agency, transfer agent, or municipal securities dealer, or filed with another appropriate regulatory agency. The Commission or the appropriate regulatory agency (as the case may be) making such a specification shall continue to have access to the document on request.

(d) Self-regulatory organizations

(1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this chapter (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce

compliance by such person, with specified provisions of this chapter, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this chapter.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization, or the Commission.

(e) Balance sheet and income statement; other financial statements and information

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or

for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this chapter and the accounting principles and accounting standards used in their preparation.

(f) Missing, lost, counterfeit, and stolen securities

(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission and, in the case of securities issued pursuant to chapter 31 of title 31, to the Secretary of the Treasury such information about missing, lost, counterfeit, or stolen securities, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, or stolen.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency, shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, or clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors. Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information.

(3)(A) In order to carry out the authority under paragraph (1) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the Na-

tional Crime Information Center (“NCIC”) to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC’s file on such securities for the financial community.

(B) In order to carry out the authority under paragraph (1) of this subsection, the Commission or its designee and the Secretary of the Treasury shall enter into an agreement whereby the Commission or its designee will receive, store, and disseminate information in the possession, and which comes into the possession, of the Department of the Treasury in regard to missing, lost, counterfeit, or stolen securities.

(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks and banks operating under the Code of Law for the District of Columbia;

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank or a bank operating under the Code of Law for the District of Columbia; and

(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information.

(g) Persons extending credit

Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this chapter shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this chapter. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

(h) Risk assessment for holding company systems

(1) Obligations to obtain, maintain, and report information

Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person’s policies, procedures, or systems for monitoring and controlling financial and operational risks to

it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

(2) Authority to require additional information

If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

(3) Special provisions with respect to associated persons subject to Federal banking agency regulation

(A) Cooperation in implementation

In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(B) Use of banking agency reports

A registered broker, dealer, or municipal securities dealer shall be in compliance with

any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 161 of title 12, subchapter VIII of chapter 3 of title 12, section 1817(a) of title 12, section 1467a(b) of title 12, or section 1847 of title 12. The Commission may, however, by rule adopted pursuant to paragraph (1), require any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

(C) Procedure for requiring additional information

Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

(i) notify such agency of the information required with respect to such associated person; and

(ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or the stability or integrity of the securities markets.

(D) Exclusion for examination reports

Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

(E) Confidentiality of information provided

No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding any associated person which

is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(F) Notice to banking agencies concerning financial and operational condition concerns

The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

(G) “Federal banking agency” defined

For purposes of this paragraph, the term “Federal banking agency” shall have the same meaning as the term “appropriate Federal bank agency” in section 1813(q) of title 12.

(4) Exemptions

The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 3401(6)³ of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(B) the primary business of any associated person;

(C) the nature and extent of domestic or foreign regulation of the associated person’s activities;

(D) the nature and extent of the registered person’s securities activities; and

(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

(5) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. 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. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 78x(b)(2) of this title.

(i) Investment bank holding companies

(1) Elective supervision of an investment bank holding company not having a bank or savings association affiliate

(A) In general

An investment bank holding company that is not—

(i) an affiliate of an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 1841(c)(2), or held under section 1843(f), of title 12), or a savings association;

(ii) a foreign bank, foreign company, or company that is described in section 3106(a) of title 12; or

(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.],

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

(B) Notification of status as a supervised investment bank holding company

An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such in-

³ See References in Text note below.

vestment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

(2) Election not to be supervised by the Commission as an investment bank holding company

(A) Voluntary withdrawal

A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until 1 year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

(B) Discontinuation of Commission supervision

If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

(3) Supervision of investment bank holding companies

(A) Recordkeeping and reporting

(i) In general

Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

(II) the extent to which the company or affiliate has complied with the provisions of this chapter and regulations prescribed and orders issued under this chapter.

(ii) Form and contents

Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

(I) a balance sheet and income statement;

(II) an assessment of the consolidated capital of the supervised investment bank holding company;

(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this chapter and any regulations prescribed and orders issued under this chapter.

(B) Use of existing reports

(i) In general

The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

(ii) Availability

A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

(C) Examination authority

(i) Focus of examination authority

The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

(I) inform the Commission regarding—

(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable pro-

visions of subchapter II of chapter 53, title 31 (commonly referred to as the “Bank Secrecy Act”) and regulations thereunder.

(ii) Restricted focus of examinations

The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

(I) the company; and

(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

(iii) Deference to other examinations

For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 1841(c)(2), or held under section 1843(f), of title 12 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

(4) Functional regulation of banking and insurance activities of supervised investment bank holding companies

The Commission shall defer to—

(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 1841(c)(2), or held under section 1843(f), of title 12; and

(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

(5) Definitions

For purposes of this subsection:

(A) The term “investment bank holding company” means—

(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

(ii) the associated persons of the investment bank holding company.

(B) The term “supervised investment bank holding company” means any investment bank holding company that is supervised by the Commission pursuant to this subsection.

(C) The terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, and “savings association” have the same meanings as given in section 1841 of title 12.

(D) The term “insured bank” has the same meaning as given in section 1813 of title 12.

(E) The term “foreign bank” has the same meaning as given in section 3101(7) of title 12.

(F) The terms “person associated with an investment bank holding company” and “associated person of an investment bank holding company” mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

(j) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) of this section or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. 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. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5)⁴ of this section as confidential information for purposes of section 78x(b)(2) of this title.

(k) Coordination of examining authorities

(1) Elimination of duplication

The Commission and the examining authorities, through cooperation and coordination of examination and oversight activities, shall eliminate any unnecessary and burdensome duplication in the examination process.

(2) Coordination of examinations

The Commission and the examining authorities shall share such information, including reports of examinations, customer complaint information, and other nonpublic regulatory information, as appropriate to foster a coordinated approach to regulatory oversight of brokers and dealers that are subject to examination by more than one examining authority.

(3) Examinations for cause

At any time, any examining authority may conduct an examination for cause of any broker or dealer subject to its jurisdiction.

(4) Confidentiality

(A) In general

Section 78x of this title shall apply to the sharing of information in accordance with this subsection. The Commission shall take

⁴So in original. Probably should be subsection “(i)(3)”.

appropriate action under section 78x(c) of this title to ensure that such information is not inappropriately disclosed.

(B) Appropriate disclosure not prohibited

Nothing in this paragraph authorizes the Commission or any examining authority to withhold information from the Congress, or prevent the Commission or any examining authority from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(5) “Examining authority” defined

For purposes of this subsection, the term “examining authority” means a self-regulatory organization registered with the Commission under this chapter (other than a registered clearing agency) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.

(June 6, 1934, ch. 404, title I, §17, 48 Stat. 897; May 27, 1936, ch. 462, §4, 49 Stat. 1379; June 25, 1938, ch. 677, §5, 52 Stat. 1076; Pub. L. 94-29, §14, June 4, 1975, 89 Stat. 137; Pub. L. 99-571, title I, §102(h), (i), Oct. 28, 1986, 100 Stat. 3219; Pub. L. 100-181, title III, §321, title VIII, §801(b), Dec. 4, 1987, 101 Stat. 1257, 1265; Pub. L. 101-432, §4(a), Oct. 16, 1990, 104 Stat. 966; Pub. L. 104-290, title I, §108, Oct. 11, 1996, 110 Stat. 3425; Pub. L. 105-353, title III, §301(b)(5), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-102, title II, §231(a), Nov. 12, 1999, 113 Stat. 1402; Pub. L. 106-554, §1(a)(5) [title II, §204], Dec. 21, 2000, 114 Stat. 2763, 2763A-424.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), (d)(1)(A), (B), (e)(2), (g), (i)(3)(A)(ii)(V), and (k)(5), was in the original “this title”, and this chapter, referred to in subsec. (i)(3)(A)(i)(II), was in the original “this Act”. See References in Text note set out under section 78a of this title.

Subchapter VIII of chapter 3 of title 12, referred to in subsec. (h)(3)(B), was in the original “section 9 of the Federal Reserve Act”, meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

Section 3401(6) of title 12, referred to in subsec. (h)(4)(A), was redesignated section 3401(7) of title 12 by Pub. L. 101-73, title IX, §941(1), Aug. 9, 1989, 103 Stat. 496.

Section 25A of the Federal Reserve Act, referred to in subsec. (i)(1)(A)(iii), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-554, §1(a)(5) [title II, §204(5)], which directed amendment of subsec. (b) by adding at the end pars. (2) to (4)(B), was executed by making the addition after par. (1), to reflect the probable intent of Congress.

Pub. L. 106-554, §1(a)(5) [title II, §204(1) to (4), (6)], inserted subsec. heading, inserted par. (1) designation and heading before “All”, substituted “prior to conducting any such examination of a—” for “prior to conducting any such examination of a”, inserted subpar. (A) designation before “registered clearing”, added subpar. (B), designated last sentence as par. (4)(C) and substituted “Nothing in the proviso in paragraph (1)” for “Nothing in the proviso to the preceding sentence”.

1999—Subsecs. (i) to (k). Pub. L. 106-102 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1998—Subsec. (g). Pub. L. 105-353 substituted “Board of Governors of the Federal Reserve System” for “Federal Reserve Board” in first sentence.

1996—Subsec. (i). Pub. L. 104-290 added subsec. (i).

1990—Subsec. (h). Pub. L. 101-432 added subsec. (h).

1987—Subsec. (c)(2). Pub. L. 100-181, §321(1), substituted new par. (2) for former par. (2) which read as follows: “The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against such clearing agency, transfer agent, or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency notice of the commencement of any proceeding and a copy of any order entered by the Commission against such clearing agency, transfer agent, or municipal securities dealer.”

Subsec. (f)(1)(A). Pub. L. 100-181, §801(b), substituted “securities issued pursuant to chapter 31 of title 31” for “government securities”.

Subsec. (f)(2). Pub. L. 100-181, §321(2), inserted at end “Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information.”

Subsec. (f)(3)(A). Pub. L. 100-181, §321(3), substituted “paragraph (1)” for “paragraphs (1) and (2)”.

1986—Subsec. (c)(4). Pub. L. 99-571, §102(h), added par. (4).

Subsec. (f)(1). Pub. L. 99-571, §102(i)(1), inserted “government securities broker, government securities dealer,” in introductory provisions and in subpar. (A).

Subsec. (f)(1)(A). Pub. L. 99-571, §102(i)(2), inserted “and, in the case of government securities, to the Secretary of the Treasury”.

Subsec. (f)(3). Pub. L. 99-571, §102(i)(3), designated existing provisions as subpar. (A) and added subpar. (B).

1975—Subsec. (a). Pub. L. 94-29 designated existing provisions as par. (1), expanded the coverage to require registered municipal securities dealers, the Municipal Securities Rulemaking Board, registered securities information processors, and registered clearing agencies to make and keep such records, to furnish copies thereof, and to make such reports as the Commission may prescribe and clarified the Commission’s authority to require the dissemination of reports submitted pursuant to the rules of the Commission, and added pars. (2) and (3).

Subsecs. (b) to (g). Pub. L. 94-29 added subsecs. (b) to (f) and redesignated former subsec. (b) as (g).

1938—Subsec. (a). Act June 25, 1938, inserted “every registered securities association”.

1936—Subsec. (a). Act May 27, 1936, substituted “every broker or dealer registered pursuant to section 78o of this title” for “every broker or dealer making or creating a market for both the purchase and sale of securities through the use of the mails or of any means or instrumentality of interstate commerce”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78o-5 of this title.

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78f, 78o, 78o-3, 78o-4, 78o-5, 78q-1, 78s, 78y, 78hh, 78ff-1, 78iii of this title; title 7 sections 1a, 2, 6d.

§ 78q-1. National system for clearance and settlement of securities transactions

(a) Congressional findings; facilitating establishment of system

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter—

(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

(B) The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System.

(b) Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings; exemption; facilities for handling derivatives

(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this chapter and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.