

drawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this chapter shall be issued ex parte by said court.

**(b) Injunction or restraining order**

Upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

**(c) Writs or other orders**

Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this chapter or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte.

**(d) Civil penalties**

(1) In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation a civil penalty in the amount of not more than the higher of \$100,000 or triple the monetary gain to the person for each violation.

(2) If a person on whom such a penalty is imposed fails to pay the penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover the penalty by action in the appropriate United States district court.

**(e) Venue and process**

Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

**(f) Action by Attorney General**

In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action.

**(g) Notice to Attorney General of action brought by Commission**

Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

**(h) Notice of investigations and enforcement actions**

The Commission shall provide the Securities and Exchange Commission with notice of the

commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6)<sup>1</sup> of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.

(Sept. 21, 1922, ch. 369, §6c, as added Pub. L. 93-463, title II, §211, Oct. 23, 1974, 88 Stat. 1402; amended Pub. L. 97-444, title II, §220, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99-641, title I, §104, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102-546, title II, §221, Oct. 28, 1992, 106 Stat. 3614; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(15), title II, §253(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409, 2763A-449.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(15)], substituted "registered entity" for "contract market".

Subsec. (h). Pub. L. 106-554, §1(a)(5) [title II, §253(c)], added subsec. (h).

1992—Pub. L. 102-546 designated first, second, and third sentences as subsecs. (a) to (c), respectively, added subsec. (d), and designated fourth, fifth, and sixth sentences as subsecs. (e) to (g), respectively.

1986—Pub. L. 99-641 inserted ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

1983—Pub. L. 97-444 inserted "(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property)" after "*Provided*, That no restraining order".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2 of this title.

**§ 13a-2. Jurisdiction of States**

(1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, derivatives transaction execution facility, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule, reg-

<sup>1</sup> So in original. Probably should refer to the second par. (5) of section 6k.

ulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this chapter, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia, shall have jurisdiction of all suits in equity and actions at law brought under this section to enforce any liability or duty created by this chapter or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this chapter or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this chapter shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(8)(A) Nothing in this chapter shall prohibit an authorized State official from proceeding in a State court against any person registered under this chapter (other than a floor broker, floor trader, or registered futures association) for an

alleged violation of any antifraud provision of this chapter or any antifraud rule, regulation, or order issued pursuant to the chapter.

(B) The State shall give the Commission prior written notice of its intent to proceed before instituting a proceeding in State court as described in this subsection and shall furnish the Commission with a copy of its complaint immediately upon instituting any such proceeding. The Commission shall have the right to (i) intervene in the proceeding and, upon doing so, shall be heard on all matters arising therein, and (ii) file a petition for appeal. The Commission or the defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as amicus curiae in any such proceeding.

(Sept. 21, 1922, ch. 369, §6d, as added Pub. L. 95-405, §15, Sept. 30, 1978, 92 Stat. 872; amended Pub. L. 97-444, title II, §221, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 102-546, title II, §207(b)(1), (2), Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

#### AMENDMENTS

2000—Par. (1). Pub. L. 106-554 inserted "derivatives transaction execution facility," after "contract market,".

1992—Pars. (1), (8)(A). Pub. L. 102-546 inserted reference to floor trader.

1983—Par. (8). Pub. L. 97-444 added par. (8).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 6f, 6k of this title.

### **§ 13b. Manipulations or other violations; cease and desist orders against persons other than registered entities; punishment; misdemeanor or felony; separate offenses**

If any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regula-