

“(c) ADDITIONAL EXCEPTIONS.—The authorities provided by section 6(b)(9) of the Securities Act of 1933 [15 U.S.C. 77f(b)(9)] and sections 13(e)(9), 14(g)(9), and 31(k) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(e)(9), 78n(g)(9), and 78ee(k)], as so designated by this Act, shall not apply until October 1, 2002.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 405(b) of Pub. L. 104-290 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions in securities that occur on or after October 1, 1997.

“(2) OFF-EXCHANGE TRADES OF LAST SALE REPORTED TRANSACTIONS.—The amendment made by subsection (a) [amending this section] shall apply with respect to transactions described in section 31(d)(1) of the Securities Exchange Act of 1934 [subsec. (d)(1) of this section] (as amended by subsection (a) of this section) that occur on or after September 1, 1997.”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective Jan. 1, 1976, 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.

STUDY OF THE EFFECT OF FEE REDUCTIONS

Pub. L. 107-123, §9, Jan. 16, 2002, 115 Stat. 2400, provided that:

“(a) STUDY.—The Office of Economic Analysis of the Securities and Exchange Commission (hereinafter referred to as the ‘Office’) shall conduct a study of the extent to which the benefits of reductions in fees effected as a result of this Act [see Short Title of 2002 Amendment note set out under section 78a of this title] are passed on to investors.

“(b) FACTORS FOR CONSIDERATION.—In conducting the study under subsection (a), the Office shall—

“(1) consider the various elements of the securities industry directly and indirectly benefiting from the fee reductions, including purchasers and sellers of securities, members of national securities exchanges, issuers, broker-dealers, underwriters, participants in investment companies, retirement programs, and others;

“(2) consider the impact on different types of investors, such as individual equity holders, individual investment company shareholders, businesses, and other types of investors;

“(3) include in the interpretation of the term ‘investor’ shareholders of entities subject to the fee reductions; and

“(4) consider the economic benefits to investors flowing from the fee reductions to include such factors as market efficiency, expansion of investment opportunities, and enhanced liquidity and capital formation.

“(c) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act [Jan. 16, 2002], the Securities and Exchange Commission shall submit to the Congress the report prepared by the Office on the findings of the study conducted under subsection (a).”

FEES FROM NATIONAL SECURITIES ASSOCIATIONS FOR MEMBER TRANSACTIONS OTHER THAN ON NATIONAL SECURITIES EXCHANGES

Pub. L. 104-208, div. A, title I, §101(a) [title V], Sept. 30, 1996, 110 Stat. 3009, 3009-61, provided in part: “That effective January 1, 1997, every national securities association shall pay to the Commission a fee at a rate of one-three-hundredth of one percentum of the aggregate

dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee), and such increase shall be deposited as an offsetting collection to this appropriation, to remain available until expended, to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals: *Provided further*, That the fee due from every national securities association shall be paid on or before September 30, 1997, with respect to transactions and sales occurring during the period beginning on January 1, 1997, and ending at the close of August 31, 1997”.

§ 78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding \$25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)(A) Any issuer that violates subsection (a) or (g) of section 78dd-1 of this title shall be fined not more than \$2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd-1 of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(2)(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd-1 of this title shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd-1 of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

(June 6, 1934, ch. 404, title I, §32, 48 Stat. 904; May 27, 1936, ch. 462, §9, 49 Stat. 1380; June 25, 1938, ch. 677, §4, 52 Stat. 1076; Pub. L. 88-467, §11, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, §§23, 27(b), June 4, 1975, 89 Stat. 162, 163; Pub. L. 95-213, title I, §103(b), Dec. 19, 1977, 91 Stat. 1496; Pub. L. 98-376, §3, Aug. 10, 1984, 98 Stat. 1265; Pub. L. 100-418, title V, §5003(b), Aug. 23, 1988, 102 Stat. 1419; Pub. L. 100-704, §4, Nov. 19, 1988, 102 Stat. 4680; Pub. L. 105-366, §2(d), Nov. 10, 1998, 112 Stat. 3303; Pub. L. 107-204, title XI, §1106, July 30, 2002, 116 Stat. 810.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”. See References in Text note set out under section 78a of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-204 substituted “\$5,000,000, or imprisoned not more than 20 years” for “\$1,000,000, or imprisoned not more than 10 years” and “\$25,000,000” for “\$2,500,000”.

1998—Subsec. (c)(1). Pub. L. 105-366, §2(d)(1), (2), substituted “subsection (a) or (g) of section 78dd-1” for “section 78dd-1(a)” in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 105-366, §2(d)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) of this title shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

“(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 78dd-1(a) of this title, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

“(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 78dd-1(a) of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.”

1988—Subsec. (a). Pub. L. 100-704 substituted “\$1,000,000” for “\$100,000”, “10 years” for “five years”, “is a person other than a natural person” for “is an exchange”, and “\$2,500,000” for “\$500,000”.

Subsec. (c). Pub. L. 100-418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) Any issuer which violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than \$1,000,000.

“(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) of this title shall, upon con-

viction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

“(3) Whenever an issuer is found to have violated section 78dd-1(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

“(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.”

1984—Subsec. (a). Pub. L. 98-376 substituted “\$100,000” for “\$10,000”.

1977—Subsec. (a). Pub. L. 95-213, §103(b)(1), inserted “(other than section 78dd-1 of this title)” after “Any person who willfully violates any provision of this chapter”.

Subsec. (c). Pub. L. 95-213, §103(b)(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 94-29, §§23(1), 27(b), inserted “or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof,” and substituted “or imprisoned not more than five years” for “or imprisoned not more than two years”.

Subsec. (c). Pub. L. 94-29, §23(2), struck out subsec. (c) which rendered this section inapplicable to violations of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title.

1964—Subsec. (b). Pub. L. 88-467 substituted “required to be filed under” for “pursuant to an undertaking contained in a registration statement as provided in” and inserted “or any rule or regulation thereunder” after “section 78o of this title.”

1938—Subsec. (c). Act June 25, 1938, added subsec. (c). 1936—Subsec. (a). Act May 27, 1936, inserted “or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title”.

Subsec. (b). Act May 27, 1936, added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-704 not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100-704, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 12a; title 22 section 2197; title 26 sections 162, 952, 964.

§ 78gg. Separability

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.