

(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.

(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.)

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, as amended, 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, as amended, 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

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, 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).

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

Section 501 of act Aug. 10, 1954, 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].”

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.

§ 77b-1. Swap agreements

(a) Non-security-based swap agreements

The definition of “security” in section 77b(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

(b) Security-based swap agreements

(1) The definition of “security” in section 77b(a)(1) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this subchapter of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

(3) The Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this subchapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic

measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

(4) References in this subchapter to the “purchase” or “sale” of a security-based swap agreement 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 agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), as the context may require.

(May 27, 1933, ch. 38, title I, §2A, as added Pub. L. 106-554, §1(a)(5) [title III, §302(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-451.)

REFERENCES IN TEXT

Sections 206B and 206C of the Gramm-Leach-Bliley Act, referred to in text, are sections 206B and 206C of Pub. L. 106-102 which are set out in a note under section 78c of this title.

§ 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, or (iii) which is a plan funded by an annuity contract described in section 403(b) of title 26. 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 of the maturity of which is likewise limited;

¹ See References in Text note below.