

of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (A)(i) or (A)(ii) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (A)(i) or any insurance company described in subparagraph (A)(ii), the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or the Government National Mortgage Association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (A)(i)(a) through (c).

(C) The¹ exemption provided by subparagraphs (A) and (B) shall not apply to resales of the securities acquired pursuant thereto, unless each of the conditions for sale contained in subparagraphs (A)(i)(a) through (c) are satisfied.

(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 77c(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(May 27, 1933, ch. 38, title I, § 4, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 203, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 6, 68 Stat. 684; Pub. L. 88-467, § 12, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, § 30, June 4, 1975, 89 Stat. 169; Pub. L. 96-477, title VI, § 602, Oct. 21, 1980, 94 Stat. 2294.)

AMENDMENTS

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

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

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.

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

(a) Sale or delivery after sale of unregistered securities

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

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

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

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

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

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

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

(c) Necessity of filing registration statement

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

(May 27, 1933, ch. 38, title I, § 5, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 204, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 7, 68 Stat. 684.)

AMENDMENTS

1954—Subsec. (a)(1), Act Aug. 10, 1954, struck out “or offer to buy” after “to sell”.

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

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).
1934—Act June 6, 1934, repealed subsec. (c), the provisions of which were replaced by section 77c(a)(11) of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

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

INCREASED ACCESS TO FOREIGN BUSINESS INFORMATION

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

§ 77f. Registration of securities

(a) Method of registration

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

(b) Registration fee

(1) Recovery of cost of services

The Commission shall, in accordance with this subsection, collect registration fees that are designed to recover the costs to the government of the securities registration process, and costs related to such process, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

(2) Fee payment required

At the time of filing a registration statement, the applicant shall pay to the Commis-

sion a fee at a rate that shall be equal to \$92 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (5) or (6).

(3) Offsetting collections

Fees collected pursuant to this subsection for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(4) General revenues prohibited

No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(5) Annual adjustment

For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (2) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target offsetting collection amount for such fiscal year.

(6) Final rate adjustment

For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (2) for all of such fiscal years to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this subsection in fiscal year 2012 equal to the target offsetting collection amount for fiscal year 2011.

(7) Pro rata application

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

(8) Review and effective date

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (3)(B) and (9)—

(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

(i) the first day of the fiscal year to which such rate applies; or

(ii) five days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

(i) the first day of fiscal year 2012; or

(ii) five days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.