(2) In any such action approval by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payment received from such investment company, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 80a–17 of this title, or rules, regulations, or orders thereunder, or to sales loads for the acquisition of any security issued by a registered investment company.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a–9 and 80a–48 of this title, section 78*o* of this title, or section 80b–3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

(c) Corporate or other trustees performing functions of investment advisers

For the purposes of subsections (a) and (b) of this section, the term ''investment adviser'' includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, § 36, 54 Stat. 841; Pub. L. 91–547, § 20, Dec. 14, 1970, 84 Stat. 1428; Pub. L. 94–29, § 28(7), June 4, 1975, 89 Stat. 166; Pub. L. 100–181, title VI, § 622, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (b)(4). Pub. L. 100–181, § 622(1), substituted ''loads'' for ''loans''.

Subsecs. (c), (d). Pub. L. 100–181, § 622(2), (3), redesignated as subsec. (c) provisions which were added and designated as subsec. (d) by Pub. L. 94–29, and substituted ''subsections (a) and (b)'' for ''subsections (a) through (c)''.

1975—Subsec. (d). Pub. L. 94–29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–547 designated existing provisions as subsec. (a) and substituted in first sentence ''has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct'' for ''has been guilty, after August 22, 1940, and within five years of the commencement of the action, of gross misconduct or gross abuse of trust'' and second sentence reading ''If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a–1(b) of this title'' for prior provision reading ''If the Commission's allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities either permanently or for such period of time as it in its discretion shall deem appropriate.''

Subsec. (b). Pub. L. 91–547 added subsec. (b).

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 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that subsec. (b) of this section effective on expiration of eighteen months after Dec. 14, 1970, see section 30 (introductory text and par. (4)) of Pub. L. 91–547, set out as a note under section 80a–52 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.

§ 80a–36. Larceny and embezzlement

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section 80a–48 of this title. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

(Aug. 22, 1940, ch. 686, title I, § 37, 54 Stat. 841.)

§ 80a–37. Rules, regulations, and orders

(a) Powers of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

(b) Filing of information and documents

The Commission, by such rules and regulations or order as it deems necessary or appro-