

(e) Money penalties in civil actions**(1) Authority of Commission**

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80b-3(k) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty**(A) First tier**

The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier

Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection**(A) Payment of penalty to Treasury**

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title.

(B) Collection of penalties

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

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other ac-

tion that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 80b-14 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to violation of cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80b-3(k) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(Aug. 22, 1940, ch. 686, title II, §209, 54 Stat. 853; Pub. L. 86-750, §12, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91-452, title II, §216, Oct. 15, 1970, 84 Stat. 929; Pub. L. 100-181, title VII, §704, Dec. 4, 1987, 101 Stat. 1264; Pub. L. 101-429, title IV, §402, Oct. 15, 1990, 104 Stat. 949; Pub. L. 107-204, title III, §308(d)(5), July 30, 2002, 116 Stat. 785.)

AMENDMENTS

2002—Subsec. (e)(3)(A). Pub. L. 107-204 inserted “, except as otherwise provided in section 7246 of this title” before period at end.

1990—Subsec. (e). Pub. L. 101-429 added subsec. (e).
1987—Subsecs. (d), (e). Pub. L. 100-181 redesignated subsec. (e) as (d).

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1960—Subsec. (e). Pub. L. 86-750 inserted “, is engaged,” after “has engaged” wherever appearing, and inserted provisions relating to aiders and abettors.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

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.

§80b-10. Disclosure of information by Commission**(a) Information available to public**

The information contained in any registration application or report or amendment thereto

filed with the Commission pursuant to any provision of this subchapter shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(b) Disclosure of fact of examination or investigation; exceptions

Subject to the provisions of subsections (c) and (d) of section 80b-9 of this title and section 78x(c) of this title, the Commission, or any member, officer, or employee thereof, shall not make public the fact that any examination or investigation under this subchapter is being conducted, or the results of or any facts ascertained during any such examination or investigation; and no member, officer, or employee of the Commission shall disclose to any person other than a member, officer, or employee of the Commission any information obtained as a result of any such examination or investigation except with the approval of the Commission. The provisions of this subsection shall not apply—

(1) in the case of any hearing which is public under the provisions of section 80b-12 of this title; or

(2) in the case of a resolution or request from either House of Congress.

(c) Disclosure by investment adviser of identity of clients

No provision of this subchapter shall be construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this subchapter.

(Aug. 22, 1940, ch. 686, title II, §210, 54 Stat. 854; Pub. L. 86-750, §13, Sept. 13, 1960, 74 Stat. 887; Pub. L. 101-550, title II, §202(b)(2), Nov. 15, 1990, 104 Stat. 2715.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-550 substituted “subsections (c) and (d) of section 80b-9 of this title and section 78x(c) of this title” for “subsections (c) and (e) of section 80b-9 of this title”.

1960—Subsec. (b). Pub. L. 86-750 inserted “, or any member, officer, or employee thereof,” after “the Commission”, and inserted proscription against disclosing information to any person not a member, officer, or employee of the Commission.

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.

INVESTOR ACCESS TO INFORMATION

Pub. L. 104-290, title III, §306, Oct. 11, 1996, 110 Stat. 3439, required the Securities and Exchange Commission to provide for investor access to information concerning disciplinary actions involving investment advisers, prior to repeal by Pub. L. 109-290, §7(b)(2), Sept. 29, 2006, 120 Stat. 1321.

§ 80b-10a. Consultation

(a) Examination results and other information

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access—

(A) with respect to the investment advisory activities of any—

(i) bank holding company or savings and loan holding company;

(ii) bank; or

(iii) separately identifiable department or division of a bank,

that is registered under section 80b-3 of this title; and

(B) in the case of a bank holding company or savings and loan holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, with respect to the investment advisory activities of such bank or bank holding company or savings and loan holding company.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company or savings and loan holding company, bank, or separately identifiable department or division of a bank, which is registered under section 80b-3 of this title.

(3) Notwithstanding any other provision of law, the Commission and the appropriate Federal banking agencies shall not be compelled to disclose any information provided under paragraph (1) or (2). Nothing in this paragraph shall authorize the Commission or such agencies to withhold information from Congress, or prevent the Commission or such agencies from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States, the Commission, or such agencies. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(b) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company or savings and loan holding company (or affiliates or subsidiaries thereof), bank, or subsidiary, department, or division or a bank under any other provision of law.