

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.

PROMOTION OF RECIPROCAL SUBPOENA ENFORCEMENT

Pub. L. 105-353, title I, §102, Nov. 3, 1998, 112 Stat. 3233, provided that:

“(a) COMMISSION ACTION.—The Securities and Exchange Commission, in consultation with State securities commissions (or any agencies or offices performing like functions), shall seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission seeking to compel persons to attend, testify in, or produce documents or records in connection with an action or investigation by a State securities commission of an alleged violation of State securities laws.

“(b) REPORT.—Not later than 24 months after the date of enactment of this Act [Nov. 3, 1998], the Securities and Exchange Commission (hereafter in this section referred to as the ‘Commission’) shall submit a report to the Congress—

“(1) identifying the States that have adopted laws described in subsection (a);

“(2) describing the actions undertaken by the Commission and State securities commissions to promote the adoption of such laws; and

“(3) identifying any further actions that the Commission recommends for such purposes.”

**§ 78u-1. Civil penalties for insider trading**

**(a) Authority to impose civil penalties**

**(1) Judicial actions by Commission authorized**

Whenever it shall appear to the Commission that any person has violated any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options or security futures products, the Commission—

(A) may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by the person who committed such violation; and

(B) may, subject to subsection (b)(1) of this section, bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by a person who, at the time of the violation, directly or indirectly controlled the person who committed such violation.

**(2) Amount of penalty for person who committed violation**

The amount of the penalty which may be imposed on the person who committed such violation shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication.

**(3) Amount of penalty for controlling person**

The amount of the penalty which may be imposed on any person who, at the time of the violation, directly or indirectly controlled the person who committed such violation, shall be determined by the court in light of the facts and circumstances, but shall not exceed the greater of \$1,000,000, or three times the amount of the profit gained or loss avoided as a result of such controlled person's violation. If such controlled person's violation was a violation by communication, the profit gained or loss avoided as a result of the violation shall, for purposes of this paragraph only, be deemed to be limited to the profit gained or loss avoided by the person or persons to whom the controlled person directed such communication.

**(b) Limitations on liability**

**(1) Liability of controlling persons**

No controlling person shall be subject to a penalty under subsection (a)(1)(B) of this section unless the Commission establishes that—

(A) such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 78o(f) of this title or section 80b-4a of this title and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

**(2) Additional restrictions on liability**

No person shall be subject to a penalty under subsection (a) of this section solely by reason of employing another person who is subject to a penalty under such subsection, unless such employing person is liable as a controlling person under paragraph (1) of this subsection. Section 78t(a) of this title shall not apply to actions under subsection (a) of this section.

**(c) Authority of Commission**

The Commission, by such rules, regulations, and orders as it considers necessary or appropriate in the public interest or for the protection of investors, may exempt, in whole or in part, either unconditionally or upon specific terms and conditions, any person or transaction or class of persons or transactions from this section.

**(d) Procedures for collection**

**(1) Payment of penalty to Treasury**

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

**(2) 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 ac-

tion in the appropriate United States district court.

**(3) Remedy not exclusive**

The actions authorized by this section may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring.

**(4) Jurisdiction and venue**

For purposes of section 78aa of this title, actions under this section shall be actions to enforce a liability or a duty created by this chapter.

**(5) Statute of limitations**

No action may be brought under this section more than 5 years after the date of the purchase or sale. This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within 5 years of such transaction.

**(e) Authority to award bounties to informants**

Notwithstanding the provisions of subsection (d)(1) of this section, there shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review.

**(f) Definition**

For purposes of this section, “profit gained” or “loss avoided” is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

**(g) Limitation on Commission authority**

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, § 21A, as added Pub. L. 100-704, § 3(a)(2), Nov. 19, 1988, 102 Stat. 4677; amended Pub. L. 101-429, title II, § 202(b), Oct. 15, 1990, 104 Stat. 938; Pub. L. 106-554, § 1(a)(5) [title II, § 205(a)(4), title III, § 303(k), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A-426, 2763A-456, 2763A-457; Pub. L. 107-204, title III, § 308(d)(2), July 30, 2002, 116 Stat. 785.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(4), (5), was in the original “this title”. See References in Text note set out under section 78a of this title.

Section 206B of the Gramm-Leach-Bliley Act, referred to in subsecs. (a)(1) and (g), is section 206B of Pub. L. 106-102, which is set out in a note under section 78c of this title.

AMENDMENTS

2002—Subsec. (d)(1). Pub. L. 107-204 inserted “, except as otherwise provided in section 7246 of this title” before period at end.

2000—Subsec. (a)(1). Pub. L. 106-554, § 1(a)(5) [title III, § 303(k)], inserted “or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” after “purchasing or selling a security” in introductory provisions.

Pub. L. 106-554, § 1(a)(5) [title II, § 205(a)(4)], substituted “standardized options or security futures products, the Commission—” for “standardized options, the Commission—” in introductory provisions.

Subsec. (g). Pub. L. 106-554, § 1(a)(5) [title III, § 303(l)], added subsec. (g).

1990—Pub. L. 101-429 inserted “for insider trading” in section catchline.

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

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

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 100-704 provided that: “The Congress finds that—

“(1) the rules and regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing trading while in possession of material, nonpublic information are, as required by such Act, necessary and appropriate in the public interest and for the protection of investors;

“(2) the Commission has, within the limits of accepted administrative and judicial construction of such rules and regulations, enforced such rules and regulations vigorously, effectively, and fairly; and

“(3) nonetheless, additional methods are appropriate to deter and prosecute violations of such rules and regulations.”

COMMISSION RECOMMENDATIONS FOR ADDITIONAL CIVIL PENALTY AUTHORITY REQUIRED

Section 3(c) of Pub. L. 100-704 provided that: “The Securities and Exchange Commission shall, within 60 days after the date of enactment of this Act [Nov. 19, 1988], submit to each House of the Congress any recommendations the Commission considers appropriate with respect to the extension of the Commission’s authority to seek civil penalties or impose administrative fines for violations other than those described in section 21A of the Securities Exchange Act of 1934 [15 U.S.C. 78u-1] (as added by this section).”

**§ 78u-2. Civil remedies in administrative proceedings**

**(a) Commission authority to assess money penalties**

In any proceeding instituted pursuant to sections 78o(b)(4), 78o(b)(6), 78o-6, 78o-4, 78o-5, 78o-7,