

an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

**(D) Counting of certain class members**

For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

**(E) Covered security**

The term “covered security” means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933 [15 U.S.C. 77r(b)], at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] pursuant to rules issued by the Commission under section 4(2) of that Act [15 U.S.C. 77d(2)].

**(F) Rule of construction**

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

(June 6, 1934, ch. 404, title I, §28, 48 Stat. 903; Pub. L. 94-29, §21, June 4, 1975, 89 Stat. 160; Pub. L. 97-303, §4, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100-181, title III, §§327-329, Dec. 4, 1987, 101 Stat. 1259; Pub. L. 104-290, title I, §103(b), Oct. 11, 1996, 110 Stat. 3422; Pub. L. 105-353, title I, §101(b)(1), Nov. 3, 1998, 112 Stat. 3230; Pub. L. 106-554, §1(a)(5) [title II, §§203(a)(2), 210], Dec. 21, 2000, 114 Stat. 2763, 2763A-422, 2763A-436.)

REFERENCES IN TEXT

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

The Securities Act of 1933, referred to in subsec. (f)(5)(E), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title II, §210], inserted “subject to this chapter” after “privilege, or other security”, substituted “any such security” for “any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title”, and inserted at end “No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.”

Subsec. (e)(4). Pub. L. 106-554, §1(a)(5) [title II, §203(a)(2)], added par. (4).

1998—Subsec. (a). Pub. L. 105-353, §101(b)(1)(A), substituted “Except as provided in subsection (f) of this section, the rights and remedies” for “The rights and remedies”.

Subsec. (f). Pub. L. 105-353, §101(b)(1)(B), added subsec. (f).

1996—Subsec. (a). Pub. L. 104-290 substituted “Except as otherwise specifically provided in this chapter, nothing” for “Nothing”.

1987—Subsec. (c). Pub. L. 100-181, §327, substituted “on” for “or” after “self-regulatory organization”.

Subsec. (d). Pub. L. 100-181, §328, substituted “change in beneficial” for “change is beneficial”.

Subsec. (e)(1). Pub. L. 100-181, §329, substituted “subsequent to the date of enactment of the Securities Acts Amendments of 1975” for “subsequent to the date of enactment of the Securities Acts Amendments in 1975”, which for purposes of codification was translated as “subsequent to June 4, 1975,” thus requiring no change in text.

1982—Subsec. (a). Pub. L. 97-303 inserted provision that no State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of “bucket shops” or other similar or related activities, shall invalidate any put, call, straddle, option, privilege, or other security, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 78s(b) of this title.

1975—Subsec. (b). Pub. L. 94-29, §21(1), struck out provisions that nothing in this chapter be construed to modify existing law with regard to the binding effect on any member of an exchange of any disciplinary action taken by the authorities of an exchange and made the remaining provisions applicable to all members of and participants in all self-regulatory organizations as well as municipal securities professionals.

Subsecs. (c) to (e). Pub. L. 94-29, §21(2), added subsecs. (c) to (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-353 not to affect or apply to any action commenced before and pending on Nov. 3, 1998, see section 101(c) of Pub. L. 105-353, set out as a note under section 77p 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.

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.

**§ 78cc. Validity of contracts**

**(a) Waiver provisions**

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of an exchange required thereby shall be void.

**(b) Contract provisions in violation of chapter**

Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any

such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation: *Provided*, (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78o of this title, and (B) that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) or (2) of subsection (c) of section 78o of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation. The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.

**(c) Validity of loans, extensions of credit, and creation of liens; actual knowledge of violation**

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(June 6, 1934, ch. 404, title I, §29, 48 Stat. 903; June 25, 1938, ch. 677, §3, 52 Stat. 1076; Pub. L. 101-429, title V, §507, Oct. 15, 1990, 104 Stat. 956.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-429 substituted in cl. (A) "paragraph (3)" for "paragraph (2) or (3)" and in cl. (B) "paragraph (1) or (2)" for "paragraph (1)", and inserted at end "The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 78o(c) of this title, designate such rule or regula-

tion, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection."

1938—Subsec. (b). Act June 25, 1938, inserted proviso.

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.

**§ 78dd. Foreign securities exchanges**

(a) It shall be unlawful for any broker or dealer, directly or indirectly, to make use of the mails or of any means or instrumentality of interstate commerce for the purpose of effecting on an exchange not within or subject to the jurisdiction of the United States, any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place within or subject to the jurisdiction of the United States, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors or to prevent the evasion of this chapter.

(b) The provisions of this chapter or of any rule or regulation thereunder shall not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States, unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of this chapter.

(June 6, 1934, ch. 404, title I, §30, 48 Stat. 904.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this title". See References in Text note set out under section 78a 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.

**§ 78dd-1. Prohibited foreign trade practices by issuers**

**(a) Prohibition**

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or