

# Securities Exchange Act of 1934

## Section 13 -- Periodical and Other Reports

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### a. Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 12 shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security--

1. such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.
2. such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

### b. Form of report; books, records, and internal accounting; directives

1. The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

2. Every issuer which has a class of securities registered pursuant to section 12 and every issuer which is required to file reports pursuant to section 15(d) shall--

- A. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
- B. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that--
  - i. transactions are executed in accordance with management's general or specific authorization;
  - ii. transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
  - iii. access to assets is permitted only in accordance with management's general or specific authorization; and
  - iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and
- C. notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.

3.

- A. With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.
- B. Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent

Select Committee on Intelligence of the House of Representatives  
and the Select Committee on Intelligence of the Senate.

4. No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.
5. No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).
6. Where an issuer which has a class of securities registered pursuant to section 78l of this title or an issuer which is required to file reports pursuant to section 15(d) holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).
7. For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

**c. Alternative reports**

If in the judgment of the Commission any report required under subsection (a) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

**d. Reports by persons acquiring more than five per centum of certain classes of securities**

1. Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G), or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of Title 43, is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and filed with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors--

- A. the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;
  - B. the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6), if the person filing such statement so requests, the name of the bank shall not be made available to the public;
  - C. if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;
  - D. the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and
  - E. information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.
2. If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
  3. When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.
  4. In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

5. The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.
6. The provisions of this subsection shall not apply to--
  - A. any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;
  - B. any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;
  - C. any acquisition of an equity security by the issuer of such security;
  - D. any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

**e. Purchase of securities by issuer**

1. It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 12, or which is a closed-end investment company registered under the Investment Company Act of 1940, to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.
2. For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall

have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

3. At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$ 92 per \$ 1,000,000 of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

4. **Offsetting collections**

Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. 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 (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 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 (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

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, United States Code. An adjusted rate prescribed under paragraph (5) or (6) and

published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) 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.

#### **9. Lapse of appropriation**

If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

#### **10. Publication**

The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.

#### **f. Reports by institutional investment managers**

1. Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) of this section having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for

accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes--

- A. the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;
- B. the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;
- C. the number of shares of each equity security of a class described in subsection (d)(1) of this section held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;
- D. the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and
- E. with respect to any transaction or series of transactions having a market value of at least \$500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in subsection (d)(1) of this section--
  - i. the name of the issuer and the title, class, and CUSIP number of the security;
  - ii. the number of shares or principal amount of the security involved in the transaction;
  - iii. whether the transaction was a purchase or sale;
  - iv. the per share price or prices at which the transaction was effected;
  - v. the date or dates of the transaction;
  - vi. the date or dates of the settlement of the transaction;
  - vii. the broker or dealer through whom the transaction was effected;
  - viii. the market or markets in which the transaction was effected; and



- ix. such other related information as the Commission, by rule, may prescribe.
2. The Commission, by rule or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.
3. The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in subsection (d)(1) of this section, updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of Title 5. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.
4. In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C.A. § 1811 et seq.], shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.
5.
  - A. For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person,

investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

- B. The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same account.

**g. Statement of equity security ownership**

1. Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) shall send to the issuer of the security and shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe--
  - A. such person's identity, residence, and citizenship; and
  - B. the number and description of the shares in which such person has an interest and the nature of such interest.
2. If any material change occurs in the facts set forth in the statement sent to the issuer and filed with the Commission, an amendment shall be transmitted to the issuer and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
3. When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.
4. In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.
5. In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.
6. The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of

this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.

## **h. Large trader reporting**

### **1. Identification requirements for large traders**

For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this title, each large trader shall--

- A. provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and
- B. identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

### **2. Recordkeeping and reporting requirements for brokers and dealers**

Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

### **3. Aggregation rules**

The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control.

### **4. Examination of broker and dealer records**

All records required to be made and kept by registered brokers and

dealers pursuant to this subsection with respect to transactions effected by large traders are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

#### **5. Factors to be considered in Commission actions**

In exercising its authority under this subsection, the Commission shall take into account--

- A. existing reporting systems;
- B. the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and
- C. the relationship between the United States and international securities markets.

#### **6. Exemptions**

The Commission, by rule, regulation, or order, consistent with the purposes of this title, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

#### **7. Authority of Commission to limit disclosure of information**

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting 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 or the Commission. For purposes of section 552 of Title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

#### **8. Definitions**

For purposes of this subsection--

- A. the term "large trader" means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

- B. the term "publicly traded security" means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;
- C. the term "identifying activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated;
- D. the term "reporting activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and
- E. the term "person" has the meaning given in section 3(a)(9) and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank.

**i. Accuracy of Financial Reports**

Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

**j. Off-Balance Sheet Transactions**

Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002 [enacted July 30, 2002], the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

**k. Prohibition on Personal Loans to Executives**

**1. In general**

It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such

extension of credit or any renewal of any such extension of credit on or after that date of enactment.

## 2. **Limitation**

Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners' Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e))), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is--

- A. made or provided in the ordinary course of the consumer credit business of such issuer;
- B. of a type that is generally made available by such issuer to the public; and
- C. made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

## 3. **Rule of construction for certain loans**

Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

### I. **Real Time Issuer Disclosures**

Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

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## **Legislative History**

June 6, 1934, c. 404, Title I, § 13, 48 Stat. 894; Aug. 20, 1964, Pub.L. 88 467, § 4, 78 Stat. 569; July 29, 1968, Pub.L. 90-439, § 2, 82 Stat. 454; Dec. 22, 1970, Pub.L. 91-567, §§ 1, 2, 84 Stat. 1497; June 4, 1975, Pub.L. 94-29, § 10, 89 Stat. 119; Feb. 5, 1976, Pub.L. 94-210, Title III, § 308(b), 90 Stat. 57; Dec. 19, 1977, Pub.L. 95-213, Title I, § 102, Title II, §§ 202, 203, 91 Stat. 1494, 1498, 1499; June 6, 1983, Pub.L. 98-38, § 2(a), 97 Stat. 205; Dec. 4, 1987, Pub.L. 100-181, Title III, §§ 315, 316, 101 Stat. 1256; Feb. 3, 1988, Pub.L. 100-241, § 12(d), 101 Stat.

1810; Aug. 23, 1988, Pub.L. 100-418, Title V, § 5002, 102 Stat. 1415; Oct. 16, 1990, Pub.L. 101-432, § 3, 104 Stat. 964; Jan. 16, 2002, P.L. 107-123, § 5, 115 Stat. 2395; July 30, 2002, P.L. 107-204, Title I, § 109(h), Title IV, §§ 401(a), 402(a), 409, 116 Stat. 771, 785, 787, 791.

## **Section 15 -- Registration and Regulation of Brokers and Dealers**

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### **a. Registration of all persons utilizing exchange facilities to effect transactions; exemptions**

1. It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.
2. The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

### **b. Manner of registration of brokers and dealers**

1. A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall--
  - A. by order grant registration, or
  - B. institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so



finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

2.
  - A. An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.
  - B. Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on June 4, 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this title.
  - C. Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this title and the rules and regulations thereunder: Provided, however, That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.
3. Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or

any means or instrumentality of interstate commerce in connection therewith.

4. The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated--
  - A. has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.
  - B. has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds--
    - i. involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;
    - ii. arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;
    - iii. involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or
    - iv. involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of Title 18, or a violation of a substantially equivalent foreign statute.

- C. is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.
- D. has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.
- E. has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if--
  - i. there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and
  - ii. such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.
- F. is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;
- G. has been found by a foreign financial regulatory authority to have--
  - i. made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before

a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

- ii. violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;
- iii. aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

H. is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that--

- i. bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or
- ii. constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

5. Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do

business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

6.

A. With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a broker or dealer, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person--

- i. has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;
- ii. has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or
- iii. is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

B. It shall be unlawful--

- i. for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;
- ii. for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or
- iii. for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

C. For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person acting as any promoter, finder, consultant, agent, or other person who engages

in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from such term.

7. No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A) shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may--
  - A. specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;
  - B. require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and
  - C. provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

8. It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A or effects transactions in securities solely on a national securities exchange of which it is a member.

9. The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.
10. For the purposes of determining whether a person is subject to a statutory disqualification under section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A), the term "Commission" in paragraph (4)(B) shall mean "exchange", "association", or "clearing agency", respectively.

## **11. Broker/dealer registration with respect to transactions in security futures products**

### **A. Notice registration**

#### **i. Contents of notice**

Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

#### **ii. Immediate effectiveness**

Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

#### **iii. Suspension**

Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) suspends the membership of that broker or dealer.

#### **iv. Termination**

Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

### **B. Exemptions for registered brokers and dealers**

A broker or dealer registered pursuant to the requirements of

subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security futures products:

- i. Section 8.
- ii. Section 11.
- iii. Subsections (c)(3) and (c)(5).
- iv. Section 15B.
- v. Section 15C.
- vi. Subsections (d), (e), (f), (g), (h), and (i) of section 17.

## **12. Exemption for security futures product exchange members**

### **A. Registration exemption**

A natural person shall be exempt from the registration requirements of this section if such person--

- i. is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);
- ii. effects transactions only in securities on the exchange of which such person is a member; and
- iii. does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

### **B. Other exemptions**

A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

- i. Section 8.
- ii. Section 11.
- iii. Subsections (c)(3), (c)(5), and (e).
- iv. Section 15B.
- v. Section 15C.



vi. Subsections (d), (e), (f), (g), (h), and (i) of section 17.

**c. Use of manipulative or deceptive devices; contravention of rules and regulations**

1.

- A. No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), by means of any manipulative, deceptive, or other fraudulent device or contrivance.
- B. No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.
- C. No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security or any security based swap agreement (as defined in section 206B of the Gramm-Leach Bliley Act) involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

2.

- A. No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.
- B. No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

- C. No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.
- D. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.
- E. The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

3.

- A. No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.
- B. Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the

Commodity Futures Trading Commission pursuant to section 6f(a) of Title 7 (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 8, section 15(c)(3), and section 17 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act and rules and regulations thereunder involving security futures products.

4. If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.
5. No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.
6. No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.
7. In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or

willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

**8. Prohibition of referral fees**

No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.

**d. Filing of supplementary and periodic information**

Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 in respect of a security registered pursuant to section 12. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

**e. Compliance with this title by members not required to be registered**

The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under this section and any person associated with any such member to comply with any provision of this title (other than subsection (a) of this section) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

**f. Prevention of misuse of material, nonpublic information**

Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

## **g. Requirements for transactions in penny stocks**

### **1. In general**

No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

### **2. Risk disclosure with respect to penny stocks**

Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer a risk disclosure document that--

- A. contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;
- B. contains a description of the broker's or dealer's duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;
- C. contains a brief, clear, narrative description of a dealer market, including "bid" and "ask" prices for penny stocks and the significance of the spread between the bid and ask prices;
- D. contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 15A(i);
- E. defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and
- F. contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

### **3. Commission rules relating to disclosure**

The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules--

- A. shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors--
  - i. the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

- ii. the number of shares to which such bid and ask prices apply, or other comparable information relating to the depth and liquidity of the market for such stock; and
  - iii. the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;
- B. shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and
- C. may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

#### **4. Exemptions**

The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

#### **5. Regulations**

It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets--

- A. as necessary or appropriate to carry out this subsection; or
- B. as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

#### **h. Limitations on State law**

##### **1. Capital, margin, books and records, bonding, and reports**

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this title. The Commission shall consult periodically the securities commissions (or any agency or

office performing like functions) of the States concerning the adequacy of such requirements as established under this title.

## 2. **De minimis transactions by associated persons**

No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) for a customer in such State if--

- A. such associated person is not ineligible to register with such State for any reason other than such a transaction;
- B. such associated person is registered with a registered securities association and at least one State; and
- C. the broker or dealer with which such person is associated is registered with such State.

## 3. **Described transactions**

### A. **In general**

A transaction is described in this paragraph if--

- i. such transaction is effected--
  - I. on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and
  - II. by an associated person of the broker or dealer--
    - (aa) to which the customer was assigned for 14 days prior to the day of the transaction; and
    - (bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or
- ii. the transaction is effected--
  - I. on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

- II. during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of--

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

#### **B. Rules of construction**

For purposes of subparagraph (A)(i)(II)--

- i. each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and
- ii. if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

#### **i. Rulemaking to extend requirements to new hybrid products**

##### **1. Consultation**

Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

##### **2. Limitation**

The Commission shall not--



- A. require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or
- B. bring an action against a bank for a failure to comply with a requirement described in subparagraph (A),

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

### **3. Criteria for rulemaking**

The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that--

- A. the new hybrid product is a security; and
- B. imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

### **4. Considerations**

In making a determination under paragraph (3), the Commission shall consider--

- A. the nature of the new hybrid product; and
- B. the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

### **5. Objection to Commission regulation**

#### **A. Filing of petition for review**

The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

#### **B. Transmittal of petition and record**

A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

**C. Exclusive jurisdiction**

On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

**D. Standard of review**

The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether--

- i. the subject product is a new hybrid product, as defined in this subsection;
- ii. the subject product is a security; and
- iii. imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

**E. Judicial stay**

The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

**F. Other authority to challenge**

Any aggrieved party may seek judicial review of the Commission's rulemaking under this subsection pursuant to section 25.

**6. Definitions**

For purposes of this subsection:

**A. New hybrid product**

The term "new hybrid product" means a product that--

- i. was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act [enacted Nov. 12, 1999];
- ii. is not an identified banking product as such term is defined in section 206 of such Act [15 U.S.C.A. § 78c note]; and

- iii. is not an equity swap within the meaning of section 206(a)(6) of such Act [15 U.S.C.A. § 78c note].

**B. Board**

The term "Board" means the Board of Governors of the Federal Reserve System.

**j. Limitation**

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 3A(b).

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## Legislative History

June 6, 1934, c. 404, Title I, § 15, 48 Stat. 895; May 27, 1936, c. 462, § 3, 49 Stat. 1377; June 25, 1938, c. 677, § 2, 52 Stat. 1075; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570; Dec. 30, 1970, Pub.L. 91-598, § 11(d), formerly § 7(d), 84 Stat. 1653, renumbered § 11(d), May 21, 1978, Pub.L. 95-283, § 9, 92 Stat. 260; June 4, 1975, Pub.L. 94-29, § 11, 89 Stat. 121; Dec. 19, 1977, Pub.L. 95-213, Title II, § 204, 91 Stat. 1500; June 6, 1983, Pub.L. 98-38, § 3(a), 97 Stat. 206; Aug. 10, 1984, Pub.L. 98-376, §§ 4, 6(b), 98 Stat. 1265; Oct. 28, 1986, Pub.L. 99-571, Title I, § 102(e), (f), 100 Stat. 3218; Dec. 4, 1987, Pub.L. 100-181, Title III, § 317, 101 Stat. 1256; Nov. 19, 1988, Pub.L. 100-704, § 3(b)(1), 102 Stat. 4679; Oct. 15, 1990, Pub.L. 101-429, Title V, §§ 504(a), 505, 104 Stat. 952, 953; Nov. 15, 1990, Pub.L. 101-550, Title II, § 203(a), (c)(1), 104 Stat. 2715, 2718; Dec. 17, 1993, Pub.L. 103-202, Title I, §§ 105, 106(b)(2)(B), 109(b)(2), 110, 107 Stat. 2348, 2350, 2353; Dec. 22, 1995, Pub.L. 104-67, Title I, § 103(a), 109 Stat. 756; Oct. 11, 1996, Pub.L. 104-290, Title I, § 103(a), 110 Stat. 3420; Nov. 3, 1998, Pub.L. 105-353, Title III, § 301(b)(8), 112 Stat. 3236; Nov. 12, 1999, Pub.L. 106-102, Title II, § 205, 113 Stat. 1391; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(5) [Title II, §§ 203(a)(1), (b), 206(h), Title III, § 303(e), (f)], 114 Stat. 2763, 2763A-421, 2763A-422, 2763A-432, 2763A-454, 2763A-455; July 30, 2002, P.L. 107-204, Title VI, § 604(a), (c)(1)(B), 116 Stat. 795, 796.

# The Investment Company Act of 1940

## Section 30-- Reports and Financial Statements of Investment Companies and Affiliated Persons

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- a. Annual report by company. Every registered investment company shall file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 [15 USCS § 78m(a)] and the rules and regulations issued thereunder.
- b. Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders. Every registered investment company shall file with the Commission--
  1. such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company filed under this title; and
  2. copies of every periodic or interim report or similar communication containing financial statements and transmitted to any class of such company's security holders, such copies to be filed not later than ten days after such transmission.

Any information or documents contained in a report or other communication to security holders filed pursuant to paragraph (2) may be incorporated by reference in any report subsequently or concurrently filed pursuant to paragraph (1).

- c. Minimizing reporting burdens.
  1. The Commission shall take such action as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons in exercising its authority--
    - A. under subsection (f); and
    - B. under subsection (b)(1), if the Commission requires the filing of information, documents, and reports under that subsection on a basis more frequently than semiannually.
  2. Action taken by the Commission under paragraph (1) shall include considering, and requesting public comment on--

- A. feasible alternatives that minimize the reporting burdens on registered investment companies; and
  - B. the utility of such information, documents, and reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing such information, documents, and reports.
- d. Reports under this section in lieu of reports under other provisions of law. The Commission shall issue rules and regulations permitting the filing with the Commission, and with any national securities exchange concerned, of copies of periodic reports, or of extracts therefrom, filed by any registered investment company pursuant to subsections (a) and (b), in lieu of any reports and documents required of such company under section 13 or 15(d) of the Securities Exchange Act of 1934 [15 USCS § § 78m, 78o(d)].
- e. Semiannual reports to stockholders. Every registered investment company shall transmit to its stockholders, at least semiannually, reports containing such of the following information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations for the protection of investors, which reports shall not be misleading in any material respect in the light of the reports required to be filed pursuant to subsections (a) and (b):
  - 1. a balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet;
  - 2. a list showing the amounts and values of securities owned on the date of such balance sheet;
  - 3. a statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;
  - 4. a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;
  - 5. a statement of the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person; and
  - 6. a statement of the aggregate dollar amounts of purchases and sales of investment securities, other than Government securities, made during the period covered by the report:

Provided, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

- f. Additional information requirements for semiannual reports. The Commission may, by rule, require that semiannual reports containing the information set forth in subsection (e) include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.
  - g. Certificate of independent public accountants. Financial statements contained in annual reports required pursuant to subsections (a) and (e), if required by the rules and regulations of the Commission, shall be accompanied by a certificate of independent public accountants. The certificate of such independent public accountants shall be based upon an audit not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the Commission may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinion of the accountants. Each such report shall state that such independent public accountants have verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the Commission may prescribe by rules and regulations.
  - h. Duties and liabilities of affiliated persons. Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of any advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 [15 USCS § 78p] upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.
  - i. Disclosure to church plan participants. A person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 3(c)(14) [15 USCS § 80a-3(c)(14)] shall provide disclosure to plan participants, in writing, and not less frequently than annually, and for new participants joining such a plan after May 31, 1996, as soon as is practicable after joining such plan, that--
    - 1. the plan, or any company or account maintained to manage or hold plan assets and interests in such plan, company, or account, are not subject to registration, regulation, or reporting under this title, the Securities Act of 1933 [15 USCS § § 77a et seq.], the Securities Exchange Act of 1934, or State securities laws; and
    - 2. plan participants and beneficiaries therefore will not be afforded the protections of those provisions.
  - j. Notice to Commission. The Commission may issue rules and regulations to require any person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 3(c)(14) [15 USCS § 80a-3(c)(14)] to file a notice with the Commission containing such information and in such form as the Commission may prescribe as necessary or appropriate in the public interest or consistent with the protection of investors.
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## Legislative History

Aug. 22, 1940, ch 686, Title I, § 30, 54 Stat. 836; Oct. 11, 1996, P.L. 104-290, Title II, § 206, Title V, § 508(g), 110 Stat. 3430, 3449; Nov. 3, 1998, P.L. 105-353, Title III, § 301(c)(5), 112 Stat. 3237.