

*** CURRENT THROUGH PL 111-40, APPROVED 07/01/2009 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 2B. SECURITIES EXCHANGES

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15 USCS § 78u-1

§ 78u-1. Civil penalties for insider trading

(a) Authority to impose civil penalties.

(1) Judicial actions by Commission authorized. Whenever it shall appear to the Commission that any person has violated any provision of this *title* [15 USCS §§ 78a et seq.] or the rules or regulations thereunder by purchasing or selling a security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act [15 USCS § 78c note]) while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options or security futures products, the Commission--

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

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

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

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

(b) Limitations on liability.

(1) Liability of controlling persons. No controlling person shall be subject to a penalty under subsection (a)(1)(B) unless the Commission establishes that--

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

(B) such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 15(f) of this *title* [15 USCS § 78o(f)] or section 204A of the Investment Advisers Act of 1940 [15 USCS § 80b-4a] and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

(2) Additional restrictions on liability. No person shall be subject to a penalty under subsection (a) solely by reason of employing another person who is subject to a penalty under such subsection, unless such employing person is liable as a controlling person under paragraph (1) of this subsection. Section 20(a) of this *title* [15 USCS § 78t(a)] shall not apply to actions under subsection (a) of this section.

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

(d) Procedures for collection.

(1) Payment of penalty to treasury. A penalty imposed under this section shall (subject to subsection (e)) be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 [15 USCS § 7246].

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

(3) Remedy not exclusive. The actions authorized by this section may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring.

(4) Jurisdiction and venue. For purposes of section 27 of this title [15 USCS § 78aa], actions under this section shall be actions to enforce a liability or a duty created by this title [15 USCS §§ 78a et seq.].

(5) Statute of limitations. No action may be brought under this section more than 5 years after the date of the purchase or sale. This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this title [15 USCS §§ 78a et seq.], nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within 5 years of such transaction.

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

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

(g) Limitations on Commission authority. The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act [15 USCS § 78c note]) shall be subject to the restrictions and limitations of section 3A(b) of this title [15 USCS § 78c-1(b)].

HISTORY:

(June 6, 1934, ch 404 Title I, § 21A, as added Nov. 19, 1988, P.L. 100-704, § 3(a)(2), 102 Stat. 4677; Oct. 15, 1990, P.L. 101-429, Title II, § 202(b), 104 Stat. 938; Dec. 21, 2000, P.L. 106-554, § 1(a)(5), 114 Stat. 2763; July 30, 2002, P.L. 107-204, Title III, § 308(d)(2), 116 Stat. 785.)