

§ 77d. Exempted transactions**(a) In general**

The provisions of section 77e of this title shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 77c(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 77d-1(a) of this title; and

(D) the issuer complies with the requirements of section 77d-1(b) of this title.

(7) transactions meeting the requirements of subsection (d).

(b) Offers and sales exempt under 17 CFR 230.506

Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(c) Securities offered and sold in compliance with Rule 506 of Regulation D

(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 78o(a)(1) of this title,¹ solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

¹ See References in Text note below.

(C) such person is not subject to a statutory disqualification as defined in section 78c(a)(39) of this title¹ and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term “ancillary services” means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(d) Certain accredited investor transactions

The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

(1) ACCREDITED INVESTOR REQUIREMENT.—Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.—Neither the seller, nor any person acting on the seller’s behalf, offers or sells securities by any form of general solicitation or general advertising.

(3) INFORMATION REQUIREMENT.—In the case of a transaction involving the securities of an issuer that is neither subject to section 78m or 78o(d) of this title, nor exempt from reporting pursuant to section 240.12g3-2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

(A) The exact name of the issuer and the issuer’s predecessor (if any).

(B) The address of the issuer’s principal executive offices.

(C) The exact title and class of the security.

(D) The par or stated value of the security.

(E) The number of shares or total amount of the securities outstanding as of the end of the issuer’s most recent fiscal year.

(F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.

(G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.

(H) The names of the officers and directors of the issuer.

(I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person’s participation in the offer or sale of the securities.

(J) The issuer’s most recent balance sheet and profit and loss statement and similar financial statements, which shall—

(i) be for such part of the 2 preceding fiscal years as the issuer has been in operation;

(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

(iii) be presumed reasonably current if—

(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer’s balance sheet; and

(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

(4) ISSUERS DISQUALIFIED.—The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.

(5) BAD ACTOR PROHIBITION.—Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 CFR 230.506(d)(1)) or is subject to a statutory disqualification described under section 78c(a)(39) of this title.

(6) BUSINESS REQUIREMENT.—The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer’s primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(7) UNDERWRITER PROHIBITION.—The transaction is not with respect to a security that constitutes the whole or part of an unsold al-

lotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

(8) **OUTSTANDING CLASS REQUIREMENT.**—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

(e) Additional requirements

(1) **IN GENERAL.**—With respect to an exempted transaction described under subsection (a)(7):

(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

(B) Such transaction shall be deemed not to be a distribution for purposes of section 77b(a)(11) of this title.

(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 CFR 230.144).

(2) **RULE OF CONSTRUCTION.**—The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 77e of this title.

(May 27, 1933, ch. 38, title I, § 4, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 203, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 6, 68 Stat. 684; Pub. L. 88-467, § 12, Aug. 20, 1964, 78 Stat. 580; Pub. L. 94-29, § 30, June 4, 1975, 89 Stat. 169; Pub. L. 96-477, title VI, § 602, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 111-203, title IX, § 944(a), July 21, 2010, 124 Stat. 1897; Pub. L. 112-106, title II, § 201(b), (c), title III, § 302(a), title IV, § 401(c), Apr. 5, 2012, 126 Stat. 314, 315, 325; Pub. L. 114-94, div. G, title LXXVI, § 76001(a), Dec. 4, 2015, 129 Stat. 1787.)

Editorial Notes

REFERENCES IN TEXT

Section 201 of the Jumpstart Our Business Startups Act, referred to in subsec. (b), is section 201 of Pub. L. 112-106, which amended this section and enacted provisions set out as a note under this section.

Section 780(a)(1) of this title, referred to in subsec. (c)(1), was in the original “section 15(a)(1) of this title” and was translated as meaning section 15(a)(1) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

Section 78c(a)(39) of this title, referred to in subsec. (c)(2)(C), was in the original “section 3(a)(39) of this title” and was translated as meaning section 3(a)(39) of the Securities Exchange Act of 1934 to reflect the probable intent of Congress.

AMENDMENTS

2015—Subsec. (a)(7). Pub. L. 114-94, § 76001(a)(1), added par. (7).

Subsec. (c). Pub. L. 114-94, § 76001(a)(2), redesignated subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D as (c).

Subsecs. (d), (e). Pub. L. 114-94, § 76001(a)(3), added subsecs. (d) and (e).

2012—Pub. L. 112-106, § 201(b)(1), (c)(1), made identical amendments, designating existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 112-106, § 401(c), which directed amendment of this section by substituting “section 77c(b)(1)” for “section 77c(b)” in par. (5), was executed

by making the substitution in subsec. (a)(5) to reflect the probable intent of Congress and the amendment by Pub. L. 112-106, § 201(b)(1), (c)(1). See above.

Subsec. (a)(6). Pub. L. 112-106, § 302(a), which directed amendment of this section by adding par. (6) at the end, was executed by making the addition at the end of subsec. (a) to reflect the probable intent of Congress and the amendment by Pub. L. 112-106, § 201(b)(1), (c)(1). See above.

Subsec. (b). Pub. L. 112-106, § 201(c)(2), added subsec. (b) relating to securities offered and sold in compliance with Rule 506 of Regulation D under this subchapter.

Pub. L. 112-106, § 201(b)(2), added subsec. (b) relating to offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations.

2010—Pars. (5), (6). Pub. L. 111-203 redesignated par. (6) as (5) and struck out former par. (5) which related to exemption for certain transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and exemption for certain transactions between entities involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years.

1980—Par. (6). Pub. L. 96-477 added par. (6).

1975—Par. (5). Pub. L. 94-29 added par. (5).

1964—Pub. L. 88-467 substituted “shall not apply to—” for “shall not apply to any of the following transactions:” in introductory text.

Par. (1). Pub. L. 88-467 reenacted existing first provision of par. (1) and struck out second and third provisions, which are incorporated in pars. (2) and (3)(A) to (C).

Par. (2). Pub. L. 88-467 redesignated existing second provision of par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 88-467 redesignated existing third provision of par. (1) as (3), designated the excepted transactions as cls. (A) to (C), inserted in cl. (B) “or such shorter period as the Commission may specify by rules and regulations or order” and inserted sentence relating to the applicable period to transactions referred to in clause (B).

Par. (4). Pub. L. 88-467 redesignated former par. (2) as (4) and substituted “over-the-counter market” for “open or counter market”.

1954—Act Aug. 10, 1954, reduced from 1 year to 40 days the period during which the delivery of a prospectus is required in trading transactions as distinguished from initial distribution of the new securities.

1934—Act June 6, 1934, among other changes, repealed par. (3), provisions of which were replaced by section 77c(9), (10) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

MODIFICATION OF EXEMPTION RULES

Pub. L. 112-106, title II, § 201(a), Apr. 5, 2012, 126 Stat. 313, provided that:

“(1) Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 [now] 15 U.S.C. 77d(a)(2)).

“(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.”

RULEMAKING

Pub. L. 112-106, title III, §302(c), Apr. 5, 2012, 126 Stat. 320, provided that: “Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the Securities and Exchange Commission (in this title [enacting section 77d-1 of this title, amending sections 77d, 77r, 78c, 78l, and 78o of this title, and enacting provisions set out as notes under sections 77d, 77r, 78c, and 78l of this title] referred to as the ‘Commission’) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) [probably means ‘section 4(a)(6)’] and section 4A of the Securities Act of 1933 [15 U.S.C. 77d(a)(6), 77d-1], as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.”

DISQUALIFICATION

Pub. L. 112-106, title III, §302(d), Apr. 5, 2012, 126 Stat. 320, provided that:

“(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Apr. 5, 2012], the [Securities and Exchange] Commission shall, by rule, establish disqualification provisions under which—

“(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) [probably means ‘section 4(a)(6)’] of the Securities Act of 1933 [15 U.S.C. 77d(a)(6)], as added by this title; and

“(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

“(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

“(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

“(B) disqualify any offering or sale of securities by a person that—

“(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

“(I) bars the person from—

“(aa) association with an entity regulated by such commission, authority, agency, or officer;

“(bb) engaging in the business of securities, insurance, or banking; or

“(cc) engaging in savings association or credit union activities; or

“(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

“(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.”

DISQUALIFYING FELONS AND OTHER “BAD ACTORS” FROM REGULATION D OFFERINGS

Pub. L. 111-203, title IX, §926, July 21, 2010, 124 Stat. 1851, provided that: “Not later than 1 year after the date of enactment of this Act [July 21, 2010], the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

“(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

“(2) disqualify any offering or sale of securities by a person that—

“(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

“(i) bars the person from—

“(I) association with an entity regulated by such commission, authority, agency, or officer;

“(II) engaging in the business of securities, insurance, or banking; or

“(III) engaging in savings association or credit union activities; or

“(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

“(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.”

[For definitions of terms used in section 926 of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 77d-1. Requirements with respect to certain small transactions

(a) Requirements on intermediaries

A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 77d(6)¹ of this title shall—

¹ See References in Text note below.