

Public Law 100-181
100th Congress

An Act

To extend and amend the authorization of appropriations for the Securities and Exchange Commission, and for other purposes.

Dec. 4, 1987

[S. 1452]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Securities and Exchange Commission Authorization Act of 1987".

Securities and
Exchange
Commission
Authorization
Act of 1987.
15 USC 78a note.

TITLE I—AUTHORIZATION

SEC. 101. Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 35. (a) There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

"(1) \$158,600,000 for fiscal year 1988; and

"(2) \$172,200,000 for fiscal year 1989.

"(b) Of the amounts authorized by subsection (a), the amount which may, subject to section 35A, be obligated or expended by the Commission for the purpose of funding a contract for the establishment and operation of the electronic data gathering, analysis, and retrieval ('EDGAR') system shall not exceed—

"(1) \$15,000,000 for fiscal year 1988; and

"(2) \$20,000,000 for fiscal year 1989."

SEC. 102. The Securities Exchange Act of 1934 is amended by inserting after section 35 the following new section:

"REQUIREMENTS FOR THE EDGAR SYSTEM

Contracts.

"SEC. 35A. (a)(1) Of the funds appropriated to the Commission pursuant to section 35 of this title for fiscal year 1988 which are available pursuant to section 35(b) for establishment or operation of the electronic data gathering, analysis, and retrieval ('EDGAR') system, the Commission may not obligate or expend more than \$5,000,000 for the establishment or operation of the EDGAR system unless the Commission has made the certification required by subsection (c) of this section.

15 USC 78ll

"(2) Notwithstanding section 35(b), no funds appropriated for fiscal year 1989 may be obligated or expended for the establishment or operation of the EDGAR system, unless the Commission has—

"(A) filed each report required during fiscal year 1988 by subsection (b) of this section; and

Reports.

"(B) made the certification required by subsection (c) of this section.

"(3) Amounts which are available to the Commission under section 35(b) for the EDGAR contract shall be the exclusive source of funds for the procurement and operation of the systems created

under that contract by or on behalf of the Securities and Exchange Commission—

“(A) for the receipt of filings under Federal securities laws, and

“(B) for the automated acceptance and review of the filings and information derived from such filings.

Reports.

“(b) The Commission shall submit a report to the Committees on Banking, Housing, and Urban Affairs and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Operations of the House of Representatives on the status of EDGAR development, implementation, and progress at six-month intervals beginning December 31, 1987, and ending at the close of 1990 (unless otherwise extended by the Congress). Such report shall include the following:

“(1) The overall progress and status of the project, including achievement of significant milestones and current project schedule.

“(2) The results of Commission efforts to test new or revised technical solutions for key EDGAR functions. In particular, the following functions shall be addressed and the indicated information provided:

“(A) Automating receipt and acceptance processing, including—

“(i) development and testing progress and results;

“(ii) actual versus estimated development cost; and

“(iii) actual effect of this function on Commission staff needs to assist filers.

“(B) Data tagging (identifying financial data for analysis by EDGAR), including—

“(i) description of the approach selected, identifying the types of financial data to be tagged and the calculations to be performed;

“(ii) comments by the filer population on the approach selected;

“(iii) the results of testing this approach, including information on the number of filers taking part in the test and their representativeness of the overall filer population;

“(iv) actual versus estimated development cost; and

“(v) effect of implementing this function on EDGAR benefits.

“(C) Searching text for keywords, including—

“(i) the technical approach adopted for this function;

“(ii) development and testing progress and results;

“(iii) data storage requirements and search response times as compared to EDGAR pilot system experience;

“(iv) actual versus estimated development cost; and

“(v) effect of implementing this function on EDGAR benefits.

“(3) An update of cost information for the receipt, acceptance and review, and dissemination portions of the system including a comparison of actual costs with original estimated costs and revised estimates of total system cost and total funding needs for the contract.

“(4) The status of Commission efforts to obtain and maintain staff with the proper contractual, managerial, and technical expertise to oversee the EDGAR project.

"(5) The fees, revenues, costs, and profits obtained or incurred by the contractor as a result of the required dissemination of information from the system to the public under the EDGAR contract, except that the information required under this paragraph (A) need be obtained from the contractor no more frequently than once each year, and (B) may be submitted to the Congress as a separate confidential document.

"(6) Such other information or recommendations as the Commission considers appropriate.

"(c) On or before the date the Commission enters into the contract for the EDGAR system, the Commission shall submit to the Committees on Banking, Housing, and Urban Affairs and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Operations of the House of Representatives a certification by the Commission—

"(1) of the total contract costs to the Federal Government of the EDGAR system for each of the 3 succeeding fiscal years;

"(2) that the Commission has analyzed the quantitative and qualitative benefits to be obtained by the establishment and operation of the system and has determined that such benefits justify the costs certified pursuant to paragraph (1);

"(3) that (A) the contract requires the contractor to establish a schedule for the implementation of the system; (B) the Commission has reviewed and approved that schedule; and (C) the contract contains adequate assurances of contractor compliance with that schedule;

"(4) of the capabilities which the system is intended to provide and of the competence of the contractor and of Commission personnel to implement those capabilities; and

"(5) that mandatory filings from a significant test group of registrants will be received and reviewed by the Commission for a period of at least six months before the adoption of any rule requiring mandatory filing by all registrants.

"(d) The Commission, by rule or regulation—

"(1) shall provide that any information in the EDGAR system that is required to be disseminated by the contractor—

"(A) may be sold or disseminated by the contractor only pursuant to a uniform schedule of fees prescribed by the Commission;

"(B) may be obtained by a purchaser by direct interconnection with the EDGAR system;

"(C) shall be equally available on equal terms to all persons; and

"(D) may be used, resold, or redisseminated by any person who has lawfully obtained such information without restriction and without payment of additional fees or royalties; and

"(2) shall require that persons, or classes of persons, required to make filings with the Commission submit such filings in a form and manner suitable for entry into the EDGAR system and shall specify the date that such requirement is effective with respect to that person or class; except that the Commission may exempt persons or classes of persons, or filings or classes of filings, from such rules or regulations in order to prevent hardships or to avoid imposing unreasonable burdens or as otherwise may be necessary or appropriate; and

"(3) shall require all persons who make any filing with the Commission, in addition to complying with such other rules concerning the form and manner of filing as the Commission may prescribe, to submit such filings in written or printed form—

"(A) for a period of at least one year after the effective date specified for such person or class under paragraph (2); or

"(B) for a shorter period if the Commission determines that the EDGAR system (i) is reliable, (ii) provides a suitable alternative to such written and printed filings, and (iii) assures that the provision of information through the EDGAR system is as effective and efficient for filers, users, and disseminators as provision of such information in written or printed form.

"(e) For the purposes of carrying out its responsibilities under subsection (d)(3) of this section, the Commission shall consult with representatives of persons filing, disseminating, and using information contained in filings with the Commission."

TITLE II—AMENDMENTS TO THE SECURITIES ACT OF 1933

SEC. 201. Section 2(5) of the Securities Act of 1933 (15 U.S.C. 77b(5)) is amended by striking out "Federal Trade Commission" and inserting in lieu thereof "Securities and Exchange Commission".

SEC. 202. Section 2(6) of the Securities Act of 1933 (15 U.S.C. 77b(6)) is amended by striking out "Canal Zone,".

SEC. 203. Section 3(a)(1) of the Securities Act of 1933 (15 U.S.C. 77c(a)(1)) is amended by striking all that appears therein and inserting in lieu thereof "(1) Reserved.".

SEC. 204. Section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) is amended by striking out ", except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security".

SEC. 205. Section 6(e) of the Securities Act of 1933 (15 U.S.C. 77f(e)) is repealed.

SEC. 206. Section 9(a) of the Securities Act of 1933 (15 U.S.C. 77i(a)) is amended—

(1) by striking out "Circuit Court of Appeals" and inserting in lieu thereof "court of appeals";

(2) by striking out "Court of Appeals of the District of Columbia, by filing in such court" and inserting in lieu thereof "United States Court of Appeals for the District of Columbia, by filing in such Court"; and

(3) by striking out "sections 239 and 240 of the Judicial Code, as amended (U.S.C. title 28, secs. 346 and 347)" and inserting in lieu thereof "section 1254 of title 28, United States Code".

SEC. 207. Section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that

term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or by chapter 5 of title 5, United States Code, in connection with cooperation, coordination, or consultation with—

“(A) any association referred to in paragraph (1) or (3) or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

“(B) any forum, agency, or organization, or group referred to in section 503 of the Small Business Investment Incentive Act of 1980, while such forum, agency, organization, or group is carrying out activities in furtherance of the provisions of such section 503.

As used in this paragraph, the terms ‘association’, ‘conference’, ‘meeting’, ‘forum’, ‘agency’, ‘organization’, and ‘group’ include any committee, subgroup, or representative of such entities.”.

SEC. 208. (a) Section 20(b) of the Securities Act of 1933 (15 U.S.C. 77t(b)) is amended by striking out the first sentence and inserting in lieu thereof the following: “Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.”.

(b) Section 20(c) of such Act (15 U.S.C. 77t(c)) is amended to read as follows:

“(c) Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.”.

Courts.

SEC. 209. Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(1) by striking out “United States, the” in the first sentence and inserting in lieu thereof “United States and”;

(2) by striking out “, and the United States District Court for the District of Columbia”; and

(3) by striking out “sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)” and inserting in lieu thereof “sections 1254, 1291, 1292, and 1294 of title 28, United States Code”.

TITLE III—AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 301. Section 3(a)(6)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)(C)) is amended by striking out “under section 11(k) of the Federal Reserve Act, as amended” and inserting in lieu thereof “under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a)”.

SEC. 302. Section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)) is amended by striking out “the Canal Zone,”.

SEC. 303. Section 3(a)(22)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(22)(B)) is amended—

(1) by striking out "association or any" and inserting in lieu thereof "association, or any"; and

(2) by striking out "own behalf in" and inserting in lieu thereof "own behalf, in".

SEC. 304. Section 3(a)(34)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(C)) is amended by striking out "state" each place it appears and inserting in lieu thereof "State".

SEC. 305. Section 3(a)(39)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(B)) is amended—

(1) by striking out "months, revoking" and inserting in lieu thereof "months, or revoking"; and

(2) by striking out "barring his" and inserting in lieu thereof "barring or suspending for a period not exceeding 12 months his".

SEC. 306. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by inserting after paragraph (46) the following:

"(47) The term 'securities laws' means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(2) by adding at the end thereof the following:

"(49) The term 'person associated with a transfer agent' and 'associated person of a transfer agent' mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities."

SEC. 307. Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash."

SEC. 308. (a) The Securities Exchange Act of 1934 is amended by inserting after section 4 (15 U.S.C. 78d) the following new sections:

"DELEGATION OF FUNCTIONS BY COMMISSION

15 USC 78d-1.

"SEC. 4A. (a) In addition to its existing authority, the Securities and Exchange Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Nothing in this section shall be deemed to supersede the provisions of section 556(b) of title 5, or to authorize the delegation of the function of rule-making as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from

rules of particular applicability, or of the making of any rule pursuant to section 19(c) of this title.

“(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe. The vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review. A person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 8(a) or section 8(c) of the Securities Act of 1933 or the first sentence of section 12(d) of this title; (2) suspends trading in a security pursuant to section 12(k) of this title; or (3) is pursuant to any provision of this title in a case of adjudication, as defined in section 551 of title 5, United States Code, not required by this title to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a) (1) through (6) of such title 5).

“(c) If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

“TRANSFER OF FUNCTIONS WITH RESPECT TO ASSIGNMENT OF
PERSONNEL TO CHAIRMAN

“SEC. 4B. In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to the Commission personnel, including Commissioners, pursuant to section 4A of this title.”

15 USC 78d-2.

(b) The Act of August 20, 1962 (Public Law 87-592; 76 Stat. 394) is hereby repealed.

15 USC 78d-1,
78d-2.

SEC. 309. The first sentence of section 6(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(c)(2)) is amended by striking out “protection shall” and inserting in lieu thereof “protection of investors shall”.

SEC. 310. Section 6(c)(3)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(c)(3)(A)) is amended by striking out “association” and inserting in lieu thereof “associated”.

SEC. 311. Section 6(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(c)(4)) is amended by striking out “may (A) limit” and inserting in lieu thereof “may limit (A)”.

SEC. 312. Section 6(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(e)) is amended—

(1) by striking out “paragraph (4) of this section” in paragraph (1) and inserting in lieu thereof “paragraph (3) of this subsection”;

(2) by striking out paragraph (3) thereof and by redesignating paragraph (4) as paragraph (3); and

(3) in paragraph (3)(E) (as so redesignated)—

(A) by striking out “fixes” and inserting in lieu thereof “fixing”;

(B) by striking out “paragraph (4)(A)” and inserting in lieu thereof “subparagraph (A) of this paragraph”; and

(C) by striking out “paragraph (4)(B)” and inserting in lieu thereof “subparagraph (B) of this paragraph”.

SEC. 313. Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1) is amended—

(1) by striking out “transaction” in paragraph (2) of subsection (b) and inserting in lieu thereof “transactions”; and

(2) by striking out everything after the first sentence in paragraph (4) of subsection (c).

SEC. 314. Sections 11A(e) and 12(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(e) and 78l(m)) are repealed.

SEC. 315. Section 13(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(c)) is amended by striking out “thereof of” and inserting in lieu thereof “thereof”.

SEC. 316. Section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(h)) is repealed.

SEC. 317. Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended—

(1) by striking out “fiduciary, or any” in clause (ii) of subparagraph (B) of paragraph (4) and inserting in lieu thereof “fiduciary, transfer agent, or”;

(2) by striking out subparagraph (C) of paragraph (4) and inserting in lieu thereof the following:

“(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, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, 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.”;

(3) by striking out “or seeking to become associated,” in the first sentence of paragraph (6) and inserting in lieu thereof “seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated”; and

(4) by striking out “17A(b)(4)(B)” in paragraph (10) and inserting in lieu thereof “17A(b)(4)(A)”.

SEC. 318. Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)(2)(C)) is amended—

(1) by striking out “security” and inserting in lieu thereof “securities”;

(2) by striking out “or the securities”; and

(3) by striking out “burden or competition” and inserting in lieu thereof “burden on competition”.

SEC. 319. Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is amended by striking out the first sentence and inserting in lieu thereof the following: “The Commission, by

order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted by any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4)."

SEC. 320. Section 15B(c)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(6)(A)) is amended by striking out "board" and inserting in lieu thereof "Board".

SEC. 321. Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking out subsection (c)(2) and inserting in lieu thereof the following:

"(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against any clearing agency, transfer agent, municipal securities dealer, or person associated with a transfer agent or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency, if any, notice of the commencement of any proceeding and a copy of any order entered by the Commission against the clearing agency, transfer agent, or municipal securities dealer, or against any person associated with a transfer agent or municipal securities dealer for which the agency is the appropriate regulatory agency.";

(2) by adding at the end of subsection (f)(2) the following: "Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information."; and

(3) by striking out "paragraphs (1) and (2)" in subsection (f)(3)(A) and inserting in lieu thereof "paragraph (1)".

SEC. 322. Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended—

(1) by inserting after "concerning such transfer agent" in subsection (c)(2) "and any persons associated with the transfer agent";

(2) by striking out "thirty" in subsection (c)(2) and inserting in lieu thereof "45";

(3) by redesignating subparagraphs (B) and (C) of subsection (c)(3) as subparagraphs (A) and (B), respectively, of new subsection (c)(4);

(4) by striking out subsection (c)(3)(A) and inserting in lieu thereof:

“(3) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

“(B) is subject to an order entered pursuant to subparagraph (C) of paragraph (4) of this subsection barring or suspending the right of such person to be associated with a transfer agent.”;

(5) by inserting after subsection (c)(4)(B) (as redesignated) the following new subparagraph:

“(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act enumerated in subparagraph (A), (D), or (E) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.”;

(6) by striking out “clearing agency or transfer agent” in subsection (d)(3)(B) and inserting in lieu thereof “clearing agency, transfer agent, or person associated with a transfer agent”; and

(7) by striking out “or transfer agent” in subsection (d)(4), and inserting in lieu thereof “, transfer agent, or person associated with a transfer agent,”.

SEC. 323. Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(1) by striking out “Wherever” in subsection (d) and inserting in lieu thereof “Whenever”;

(2) by striking out “, the United States District Court for the District of Columbia,” in subsection (e); and

(3) by striking out the second sentence of subsection (g).

SEC. 324. Section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended—

(1) by inserting “or” before “any self-regulatory organization” in the last sentence of paragraph (1); and

(2) by inserting “shall” after “section 19(b) of this title,” in paragraph (3).

SEC. 325. Section 23(b)(4)(F) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(b)(4)(F)) is amended by striking out “The” and inserting in lieu thereof “the”.

SEC. 326. Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(1) by striking out “, the United States District Court for the District of Columbia,”; and

(2) by striking out “sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)” and inserting in lieu thereof “sections 1254, 1291, 1292, and 1294 of title 28, United States Code”.

SEC. 327. Section 28(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(c)) is amended by striking out “self-regulatory organization or a member thereof” and inserting in lieu thereof “self-regulatory organization on a member thereof”.

SEC. 328. Section 28(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(d)) is amended by striking out “change is beneficial” and inserting in lieu thereof “change in beneficial”.

SEC. 329. Section 28(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)) is amended by striking out “Amendments in 1975” and inserting in lieu thereof “Amendments of 1975”.

SEC. 330. Section 211 of the Securities Exchange Act of 1934 (15 U.S.C. 78jj) is hereby repealed.

TITLE IV—AMENDMENTS TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

SEC. 401. Section 8 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79h) is amended by striking out “otherwise, —” and inserting in lieu thereof “otherwise—”.

SEC. 402. Section 18 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r) is amended—

(1) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively; and

(2) in subsections (e) and (f) (as so redesignated), by striking out “, the district court of the United States for the District of Columbia,”.

SEC. 403. Section 24 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 78x) is amended by striking out “sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)”

15 USC 79x.

and inserting in lieu thereof "section 1254 of title 28, United States Code".

SEC. 404. Section 25 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y) is amended—

(1) by striking out ", the district court of the United States for the District of Columbia,"; and

(2) by striking out "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893 (D.C. Code, title 18, sec. 26)" and inserting in lieu thereof "sections 1254, 1291, 1292, and 1294 of title 28, United States Code".

SEC. 405. Section 30 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-4) is amended by striking out the last sentence thereof.

TITLE V—AMENDMENTS TO THE TRUST INDENTURE ACT OF 1939

SEC. 501. Section 303(4) of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc(4)) is amended by striking out "undertakng" and inserting in lieu thereof "undertaking".

SEC. 502. Section 303(12) of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc(12)) is amended by inserting "(including a guarantor)" after "person" each place it appears.

TITLE VI—AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

SEC. 601. Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)) is amended by inserting "completed" before "fiscal years" each place it appears.

SEC. 602. Section 2(a)(39) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(39)) is amended by striking out "the Canal Zone,".

SEC. 603. Section 2(a)(48)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by striking out "sections 55(a)(1) through (3)" and inserting in lieu thereof "paragraphs (1) through (3) of section 55(a)".

SEC. 604. Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended—

(1) by inserting "or" after "therefor,"; and

(2) by inserting a period after "guardian" and striking out all that follows through "principal to another or others.".

SEC. 605. Section 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(7)) is amended to read as follows:

"(7) Reserved."

SEC. 606. Section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(11)) is amended—

(1) by striking out "Code of 1954" each place it appears and inserting in lieu thereof "Code of 1986";

(2) by striking out "or which holds only assets of governmental plans" and inserting in lieu thereof "; or any governmental plan"; and

(3) by striking out "trusts;" and inserting in lieu thereof "trusts or governmental plans, or both;".

SEC. 607. Section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)) is amended by striking out "Close-end" and inserting in lieu thereof "Closed-end".

SEC. 608. Section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)) is amended—

(1) by striking out "the Canal Zone," in paragraph (1); and

(2) by striking out paragraph (2) and redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

SEC. 609. Section 9 of the Investment Company Act of 1940 (15 U.S.C. 80a-9) is amended by striking out paragraphs (1) and (2) in subsection (a) and inserting in lieu thereof the following:

"(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, 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; or"

SEC. 610. Section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a-12) is amended—

(1) by striking out "Treasury" in subsection (d)(1)(A)(iii) and inserting in lieu thereof "treasury";

(2) by striking out "it reasonably possible" in subsection (d)(1)(G) and inserting in lieu thereof "is reasonably possible"; and

(3) by striking out "only thereof" in subsection (f) and inserting in lieu thereof "thereof only".

SEC. 611. Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a-15) is amended—

(1) by striking out "(40)" in subsection (d) and inserting in lieu thereof "(42)"; and

(2) by striking out the period at the end of subparagraph (B) of paragraph (3) of subsection (f) and inserting in lieu thereof a comma.

SEC. 612. Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is amended by striking out the second sentence of each of subsections (h) and (i).

SEC. 613. Section 18(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-18(e)) is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SEC. 614. Section 20 of the Investment Company Act of 1940 (15 U.S.C. 80a-20) is amended—

- (1) by striking out the second sentence of subsection (b);
- (2) by striking out the first sentence of subsection (d); and
- (3) by striking out "at any time after the effective date of this title" in subsection (d).

SEC. 615. Section 21(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-21(b)) is amended by striking out "to the extension or renewal of any such loan made prior to March 15, 1940, or".

SEC. 616. Section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a-22) is amended—

- (1) by striking out "subsection (b)(8)" in paragraph (1) of subsection (b) and inserting in lieu thereof "subsection (b)(6)";
- (2) by striking out paragraph (2) of subsection (b) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;
- (3) by striking out "section 15A(k)(2)" in subsection (b)(2) (as so redesignated) and inserting in lieu thereof "section 19(c)";
- (4) by inserting in the first sentence of subsection (e) a comma after the word "redemption" where it first appears and where it appears for the third time; and
- (5) by striking out the last sentence of subsection (e).

SEC. 617. Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(d)) is amended by inserting a period immediately after "is the issuer" in the second sentence thereof and by striking out all that follows in such sentence.

SEC. 618. Section 26(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(b)) is amended by striking out "intend" and inserting in lieu thereof "intended".

SEC. 619. Section 26(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(c)) is amended by striking out "contract of agreement" and inserting in lieu thereof "contract or agreement".

SEC. 620. Section 28(a)(2)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-28(a)(2)(B)) is amended by striking out "subsection" and inserting in lieu thereof "paragraph".

SEC. 621. Section 28(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-28(d)(2)) is amended by inserting "of" immediately before "subsection (a)".

SEC. 622. Section 36 of the Investment Company Act of 1940 (15 U.S.C. 80a-35) is amended—

- (1) by striking out "loans" in paragraph (4) of subsection (b) and inserting in lieu thereof "loads";
- (2) by redesignating subsection (d) as subsection (c); and
- (3) in subsection (c) (as so redesignated), by striking out "through (c)" and inserting in lieu thereof "and (b)".

SEC. 623. Section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-41) is amended by redesignating subsection (e) as subsection (d).

SEC. 624. Section 53 of the Investment Company Act of 1940 (15 U.S.C. 80a-52) is amended by inserting a period in the first sentence thereof immediately after "1941" and by striking out everything that follows in such sentence.

SEC. 625. Section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-53(a)) is amended by striking out "defined in sections" and inserting in lieu thereof "defined in section".

SEC. 626. Section 55(a)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-54(a)(1)(B)) is amended by striking out "described in sections" and inserting in lieu thereof "described in section".

SEC. 627. Section 57(i) of the Investment Company Act of 1940 (15 U.S.C. 80a-56(i)) is amended by striking out "sections 17 (a) and (d)" each place it appears and inserting in lieu thereof "subsections (a) and (d) of section 17".

TITLE VII—AMENDMENTS TO THE INVESTMENT ADVISERS ACT OF 1940

SEC. 701. Section 202(a)(19) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(19)) is amended by striking out "the Canal Zone,".

SEC. 702. Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended—

(1) by inserting "transfer agent," after "fiduciary," in subsection (e)(2)(B);

(2) by inserting "transfer agent," after "government securities dealer," in subsection (e)(3);

(3) by striking out "or seeking to become associated" in the first sentence of subsection (f) and inserting in lieu thereof ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated"; and

(4) by striking out "subsection (d)" in subsection (g) and inserting in lieu thereof "subsection (c) or subsection (e)".

SEC. 703. Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended to read as follows:

"INVESTMENT ADVISORY CONTRACTS

"SEC. 205. (a) No investment adviser, unless exempt from registration pursuant to section 203(b), shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to enter into, extend, or renew any investment advisory contract, or in any way to perform any investment advisory contract entered into, extended, or renewed on or after the effective date of this title, if such contract—

"(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

"(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

"(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

"(b) Paragraph (1) of subsection (a) shall not—

"(1) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

"(2) apply to an investment advisory contract with—

"(A) an investment company registered under title I of this Act, or

“(B) any other person (except a trust, governmental plan, collective trust fund, or separate account referred to in section 3(c)(11) of title I of this Act), provided that the contract relates to the investment of assets in excess of \$1 million,

if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify; or

“(3) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this title, if (A) the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 61(a)(3)(B)(iii) of title I of this Act is satisfied, and (B) the business development company does not have outstanding any option, warrant, or right issued pursuant to section 61(a)(3)(B) of title I of this Act and does not have a profit-sharing plan described in section 57(n) of title I of this Act.

“(c) For purposes of paragraph (2) of subsection (b), the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise.

“(d) As used in paragraphs (2) and (3) of subsection (a), ‘investment advisory contract’ means any contract or agreement whereby a person agrees to act as investment adviser to or to manage any investment or trading account of another person other than an investment company registered under title I of this Act.”.

SEC. 704. Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended by redesignating subsection (e) as subsection (d).

SEC. 705. Section 211(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11(b)) is amended by striking out “the Federal Register Act” and inserting in lieu thereof “chapter 15 of title 44, United States Code.”.

SEC. 706. Section 213(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-13(a)) is amended by striking out “sections 239 and 240 of the Judicial Code, as amended” and inserting in lieu thereof “section 1254 of title 28, United States Code”.

SEC. 707. Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by striking out “sections 128 and 240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled, ‘An Act to establish a court of appeals for the District of Columbia’, approved February 9, 1893”, and inserting in lieu thereof “sections 1254, 1291, 1292, and 1294 of title 28, United States Code”.

TITLE VIII—AMENDMENTS RELATING TO GOVERNMENT SECURITIES ACT OF 1986

SEC. 801. (a) Section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)(1)(B)(i)) is amended by striking out "When" and inserting "When such".

15 USC 78o-5.

(b) Section 17(f)(1)(A) of such Act (15 U.S.C. 78q(f)(1)(A)) is amended by striking out "government securities," and inserting "securities issued pursuant to chapter 31 of title 31, United States Code,".

SEC. 802. Section 16(12) of the Securities Investor Protection Act of 1970 (15 U.S.C. 7811(12)) is amended by inserting before the period at the end thereof the following: "other than a government securities broker or government securities dealer registered under section 15C(a)(1)(A) of the 1934 Act".

15 USC 7811.

Approved December 4, 1987.

LEGISLATIVE HISTORY—S. 1452 (H.R. 2600):

HOUSE REPORTS: No. 100-296 accompanying H.R. 2600 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-105 (Comm. on Banking, Housing, and Urban Affairs). CONGRESSIONAL RECORD, Vol. 133 (1987):

July 10, considered and passed Senate.

Sept. 10, H.R. 2600 considered and passed House; proceedings vacated and S. 1452, amended, passed in lieu.

Oct. 30, Senate concurred in House amendments with an amendment.

Nov. 20, House concurred in Senate amendment.