§ 78k. Trading by members of exchanges, brokers, and dealers

(a) Trading for own account or account of associated person; exceptions

(1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: Provided, however, That this paragraph shall not make unlawful—

(A) any transaction by a dealer acting in the capacity of market maker;

(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(C) any stabilizing transaction effected in compliance with rules under section 78j (b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

(E) any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person;

(F) any transaction to offset a transaction made in error;

(G) any other transaction for a member’s own account provided that

(i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and

(ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange;

(H) any transaction for an account with respect to which such member or an associated person thereof exercises investment discretion if such member—

(i) has obtained, from the person or persons authorized to transact business for the account, express authorization for such member or associated person to effect such transactions prior to engaging in the practice of effecting such transactions;

(ii) furnishes the person or persons authorized to transact business for the account with a statement at least annually disclosing the aggregate compensation received by the exchange member in effecting such transactions; and

(iii) complies with any rules the Commission has prescribed with respect to the requirements of clauses (i) and (ii); and

(I) any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of this paragraph, the protection of investors, and the maintenance of fair and orderly markets.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation of exchange markets and markets occurring otherwise than on an exchange, may regulate or prohibit:
(A) transactions on a national securities exchange not unlawful under paragraph (1) of this subsection effected by any member thereof for its own account (unless such member is acting in the capacity of market maker or odd-lot dealer), the account of an associated person, or an account with respect to which such member or an associated person thereof exercises investment discretion;

(B) transactions otherwise than on a national securities exchange effected by use of the mails or any means or instrumentality of interstate commerce by any member of a national securities exchange, broker, or dealer for the account of such member, broker, or dealer (unless such member, broker, or dealer is acting in the capacity of a market maker) the account of an associated person, or an account with respect to which such member, broker, or dealer or associated person thereof exercises investment discretion; and

(C) transactions on a national securities exchange effected by any broker or dealer not a member thereof for the account of such broker or dealer (unless such broker or dealer is acting in the capacity of market maker), the account of an associated person, or an account with respect to which such broker or dealer or associated person thereof exercises investment discretion.

(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on February 1, 1978 shall not become effective until February 1, 1979. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to February 1, 1979, pursuant to paragraph (2) of this subsection.

(b) Registration of members as odd-lot dealers and specialists

When not in contravention of such rules and regulations as the Commission may 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, the rules of a national securities exchange may permit

(1) a member to be registered as an odd-lot dealer and as such to buy and sell for his own account so far as may be reasonably necessary to carry on such odd-lot transactions, and

(2) a member to be registered as a specialist. Under the rules and regulations of the Commission a specialist may be permitted to act as a broker and dealer or limited to acting as a broker or dealer. It shall be unlawful for a specialist or an official of the exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: Provided, however, That the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. It shall also be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order.

(c) Exemptions from provisions of section and rules and regulations

If because of the limited volume of transactions effected on an exchange, it is in the opinion of the Commission impracticable and not necessary or appropriate in the public interest or for the protection of investors to apply any of the foregoing provisions of this section or the rules and regulations thereunder, the Commission shall have power, upon application of the exchange and on a showing that the rules of such exchange are otherwise adequate for the protection of investors, to exempt such exchange and its members from any such provision or rules and regulations.

(d) Prohibition on extension of credit by broker-dealer

It shall be unlawful for a member of a national securities exchange who is both a dealer and a broker, or for any person who both as a broker and a dealer transacts a business in securities through the medium
of a member or otherwise, to effect through the use of any facility of a national securities exchange or of the mails or of any means or instrumentality of interstate commerce, or otherwise in the case of a member,

(1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction: Provided, That credit shall not be deemed extended by reason of a bona fide delayed delivery of

(i) any such security against full payment of the entire purchase price thereof upon such delivery within thirty-five days after such purchase or

(ii) any mortgage related security or any small business related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such purchase, or within such shorter period as the Commission may prescribe by rule or regulation, or

(2) any transaction with respect to any security (other than an exempted security) unless, if the transaction is with a customer, he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.

Footnotes

1 So in original. Probably should be followed by a comma.

(Amendments)


Subsec. (a)(1)(H), (I). Pub. L. 103–68, § 1(2)–(4), added subpar. (H) and redesignated former subpar. (H) as (I).


1975—Subsec. (a). Pub. L. 94–29, § 283, § 6(2), prohibited stock exchange members from effecting any transaction on the exchange for its own account, the account of an associated person, or an account with respect to which the member or an associated person exercises investment discretion, exempted from that prohibition 8 types of transactions, and authorized the Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, to regulate or prohibit the specifically exempted transactions, certain transactions otherwise that on a national securities exchange, and transactions on a national securities exchange effected by a broker or dealer not a member thereof for the account of such broker or dealer, the account of an associated person, or an account with respect to which such broker, dealer, or associated person exercises investment discretion.

Subsec. (b). Pub. L. 94–29, § 6(2), struck out requirement that specialist’s dealings be limited to those transactions reasonably necessary to permit him to maintain a fair and orderly market, expanded the Commission’s rulemaking authority in the area of specialist’s dealings so that the Commission may define responsibilities and restrict activities of specialists in response to changing conditions in the market, expanded the standards to be followed by the Commission in exercising its rulemaking power to include the maintenance of fair and orderly markets and the removal of impediments to and the perfection of the mechanism of a national market system, and inserted specific reference to the Commission’s power to limit the activity of a specialist to that of a broker or dealer.

Subsec. (c). Pub. L. 94–29, § 6(3), struck out subsec. (c) which directed the Commission to make a study, to be submitted on or before Jan. 3, 1936, of the feasibility of segregating the functions of dealer and broker.
1954—Subsec. (d). Act Aug. 10, 1954, reduced from 6 months to 30 days the prohibition period against extending credit to purchasers of a new issue by dealers.

**Effective Date of 1978 Amendment**

Pub. L. 95–283, § 18(b), May 21, 1978, 92 Stat. 275, provided that: “The amendment made by subsection (a) of this section [amending this section] shall be effective as of May 1, 1978.”

**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 1954 Amendment**

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

**Transfer of Functions**

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