

Public Law 96-433
96th Congress

An Act

To amend the Securities Investor Protection Act to increase the amount of protection available under such Act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission.

Oct. 10, 1980
[H.R. 7939]

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

Brokers and dealers' customers, increased protection; financial privacy, applicability to SEC.

AMENDMENTS TO THE SECURITIES INVESTOR PROTECTION ACT

SECTION 1. Section 9(a) of the Securities Investor Protection Act (15 U.S.C. 78fff-3(a)) is amended—

- (1) by striking out "\$100,000" and inserting in lieu thereof "\$500,000"; and
- (2) in paragraph (1), by striking out "\$40,000" and inserting in lieu thereof "\$100,000".

AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

SEC. 2. Section 1122 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3422) is amended to read as follows:

"SECURITIES AND EXCHANGE COMMISSION

"SEC. 1122. Except as provided in the Securities Exchange Act of 1934, this Act shall apply with respect to the Securities and Exchange Commission."

15 USC 78a.

AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 3. Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end thereof the following:

"(h)(1) The Right to Financial Privacy Act of 1978 shall apply with respect to the Commission, except as otherwise provided in this subsection.

12 USC 3401 note.

"(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpoena issued in conformity with the requirements of section 19(b) of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934, section 18(c) of the Public Utility Holding Company Act of 1935, section 42(b) of the Investment Company Act of 1940, or section 209(b) of the Investment Advisers Act of 1940, and that the Commission has reason to believe that—

Records, access.
12 USC 3405, 3407.

"(A) delay in obtaining access to such financial records, or the required notice, will result in—

15 USC 77s.
15 USC 78u.
15 USC 79r.
15 USC 80a-41.
15 USC 80b-9.

"(i) flight from prosecution;

“(ii) destruction of or tampering with evidence;
 “(iii) transfer of assets or records outside the territorial limits of the United States;

“(iv) improper conversion of investor assets; or

“(v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

“(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

“(C) the acts, practices or course of conduct under investigation involve—

“(i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or

“(ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

“(D) the acts, practices or course of conduct under investigation—

“(i) involve significant financial speculation in securities; or

“(ii) endanger the stability of any financial or investment intermediary.

“(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable specificity.

Ex parte order granting delay.

“(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made.

Delay, extension.

“(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section 1109(a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978.

12 USC 3409.
Subpena.

“(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpoena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records:

Notice.

“Records or information concerning your transactions which are held by the financial institution named in the attached subpoena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(h) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose).”

Ante, p. 1855.

Proceedings and records.

“(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate may permit.

Annual tabulation; report to Congress.
12 USC 3401 note.

“(6) The Commission shall compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of paragraph (2) of this subsection or the provisions of the Right to Financial Privacy Act of 1978 to obtain access to financial records of a customer and include it in its annual report to the

Congress. Section 1121(b) of the Right to Financial Privacy Act of 1978 shall not apply with respect to the Commission. 12 USC 3421.

"(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

"(i) \$100 without regard to the volume of records involved;

"(ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and

"(iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorney's fees as determined by the court.

"(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpoena which the Commission issues in the future for financial records of such customer for purposes of the same investigation. Injunctive relief.

"(C) Whenever the court determines that the Commission has failed to comply with this subsection, other than paragraph (1), and the court finds that the circumstances raise questions of whether an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends. OPM investigation.

"(8) The relief described in paragraphs (7) and (10) shall be the only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 shall be deemed to prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpoena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate finds that the customer's claims were made in bad faith. Findings and recommendations, submittal to SEC.

"(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978, except that the customer notice required under section 1112 (b) or (c) of such Act may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply. 12 USC 3401 note. Costs and fees.

Records, transfer.

12 USC 3412.

Records, transfer. 12 USC 3412. Disclosure restrictions, customer notification. 12 USC 3401 note. Procedures and penalties. Financial institution's records. Records requests, challenges. Defined terms.

“(B) The Commission may, without notice to the customer pursuant to section 1112 of the Right to Financial Privacy Act of 1978, transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978, within 30 days of its determination, or complies with the requirements of section 1109 of such Act regarding delay of notice.

“(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

“(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978.

“(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

“(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 which are common to this subsection shall have the same meaning as in such Act.”

CONFORMING AMENDMENT

SEC. 4. The second sentence of section 21(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(g)) is amended by inserting “and in subsection (h)” after “as used herein”.

EFFECTIVE DATES

15 USC 78u note. SEC. 5. (a) The amendments made by section 1 of this Act shall take effect on the date of enactment of this Act. (b) The amendments made by sections 2, 3, and 4 of this Act shall take effect on November 10, 1980. Nothing in this Act or in the Right to Financial Privacy Act of 1978 shall apply to any Securities and Exchange Commission subpoena issued prior to such date.

Approved October 10, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1321, Pt. I (Comm. on Interstate and Foreign Commerce). CONGRESSIONAL RECORD, Vol. 126 (1980): Sept. 22, 23, considered and passed House. Sept. 25, considered and passed Senate.