



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 242.601 Dissemination of transaction reports and last sale data with respect to transactions in NMS stocks.

(a) Filing and effectiveness of transaction reporting plans.

- (1) Every national securities exchange shall file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities, and every national securities association shall file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed by its members otherwise than on a national securities exchange.
- (2) Any transaction reporting plan, or any amendment thereto, filed pursuant to this section shall be filed with the Commission, and considered for approval, in accordance with the procedures set forth in § 242.608(a) and (b). Any such plan, or amendment thereto, shall specify, at a minimum:
 - (i) The listed equity and Nasdaq securities or classes of such securities for which transaction reports shall be required by the plan;
 - (ii) Reporting requirements with respect to transactions in listed equity securities and Nasdaq securities, for any broker or dealer subject to the plan;
 - (iii) The manner of collecting, processing, sequencing, making available and disseminating transaction reports and last sale data reported pursuant to such plan;
 - (iv) The manner in which such transaction reports reported pursuant to such plan are to be consolidated with transaction reports from national securities exchanges and national securities associations reported pursuant to any other effective transaction reporting plan;
 - (v) The applicable standards and methods which will be utilized to ensure promptness of reporting, and accuracy and completeness of transaction reports;
 - (vi) Any rules or procedures which may be adopted to ensure that transaction reports or last sale data will not be disseminated in a fraudulent or manipulative manner;
 - (vii) Specific terms of access to transaction reports made available or disseminated pursuant to the plan; and
 - (viii) That transaction reports or last sale data made available to any vendor for display on an interrogation device identify the marketplace where each transaction was executed.
- (3) No transaction reporting plan filed pursuant to this section, or any amendment to an effective transaction reporting plan, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608.

(b) Prohibitions and reporting requirements.

- (1) No broker or dealer may execute any transaction in, or induce or attempt to induce the purchase or sale of, any NMS stock:
 - (i) On or through the facilities of a national securities exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed on or through such exchange facilities; or
 - (ii) Otherwise than on a national securities exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed otherwise than on a national securities exchange by such broker or dealer.
- (2) Every broker or dealer who is a member of a national securities exchange or national securities association shall promptly transmit to the exchange or association of which it is a member all information required by any effective transaction reporting plan filed by such exchange or association (either individually or jointly with other exchanges and/or associations).
- (c) **Retransmission of transaction reports or last sale data.** Notwithstanding any provision of any effective transaction reporting plan, no national securities exchange or national securities association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan; *provided, however,* that a national securities exchange or national securities association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (d) of this section are collected.
- (d) **Charges.** Nothing in this section shall preclude any national securities exchange or national securities association, separately or jointly, pursuant to the terms of an effective transaction reporting plan, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports or last sale data.
- (e) **Appeals.** The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective transaction reporting plan in accordance with the provisions of § 242.608(d).
- (f) **Exemptions.** The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any national securities exchange, national securities association, broker, dealer, or specified security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 210.2-02 Accountants' reports and attestation reports.

- (a) **Technical requirements for accountants' reports.** The accountant's report:
 - (1) Shall be dated;
 - (2) Shall be signed manually;
 - (3) Shall indicate the city and State where issued; and
 - (4) Shall identify without detailed enumeration the financial statements covered by the report.
- (b) **Representations as to the audit included in accountants' reports.** The accountant's report:
 - (1) Shall state the applicable professional standards under which the audit was conducted; and
 - (2) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Nothing in this rule shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (c) of this section.
- (c) **Opinions to be expressed in accountants' reports.** The accountant's report shall state clearly:
 - (1) The opinion of the accountant in respect of the financial statements covered by the report and the accounting principles and practices reflected therein; and
 - (2) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements.
- (d) **Exceptions identified in accountants' reports.** Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given. (See section 101 of the Codification of Financial Reporting Policies.)
- (e) Paragraph (e) of this section applies only to registrants that are providing financial statements in a filing for a period with respect to which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") issued an accountants' report. Notwithstanding any other Commission rule or regulation, a registrant that cannot obtain an accountants' report that meets the technical requirements of paragraph (a) of this section after reasonable efforts may include in the document a copy of the latest signed and dated accountants' report issued by Andersen for such period in satisfaction of that requirement, if prominent disclosure that the report is a copy of the previously issued Andersen accountants' report and that the report has not been reissued by Andersen is set forth on such copy.
- (f) **Attestation report on internal control over financial reporting.**
 - (1) Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than a registrant that is neither an accelerated filer nor a large accelerated filer (as defined in § 240.12b-2 of this chapter), or is an emerging growth company, as defined in Rule 405 of the Securities Act (§ 230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§ 240.12b-2 of this chapter), or an investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must include an attestation report on internal control over financial reporting.

- (2) If an attestation report on internal control over financial reporting is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), it shall clearly state the opinion of the accountant, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting, except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion. The attestation report on internal control over financial reporting shall be dated, signed manually, identify the period covered by the report and indicate that the accountant has audited the effectiveness of internal control over financial reporting. The attestation report on internal control over financial reporting may be separate from the accountant's report.
- (g) ***Attestation report on assessment of compliance with servicing criteria for asset-backed securities.*** The attestation report on assessment of compliance with servicing criteria for asset-backed securities, as required by § 240.13a-18(c) or § 240.15d-18(c) of this chapter, shall be dated, signed manually, identify the period covered by the report and clearly state the opinion of the registered public accounting firm as to whether the asserting party's assessment of compliance with the servicing criteria is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, explain why.

[37 FR 14594, July 21, 1972, as amended at 41 FR 35479, Aug. 23, 1976; 45 FR 63668, Sept. 25, 1980; 50 FR 25215, June 18, 1985; 67 FR 13533, Mar. 22, 2002; 68 FR 36660, June 18, 2003; 70 FR 1593, Jan. 7, 2005; 72 FR 35321, June 27, 2007; 75 FR 57387, Sept. 21, 2010; 82 FR 17551, Apr. 12, 2017; 83 FR 50198, Oct. 4, 2018]



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 240.12g3-2 Exemptions for American depositary receipts and certain foreign securities.

- (a) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) (15 U.S.C. 78l(g)) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph:
- (1) Securities held of record by persons resident in the United States shall be determined as provided in § 240.12g5-1 except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.
 - (2) Persons in the United States who hold the security only through a Canadian Retirement Account (as that term is defined in rule 237(a)(2) under the Securities Act of 1933 (§ 230.237(a)(2) of this chapter)), shall not be counted as holders resident in the United States.
-
- (b)
- (1) A foreign private issuer shall be exempt from the requirement to register a class of equity securities under section 12(g) of the Act (15 U.S.C. 78l(g)) if:
 - (i) The issuer is not required to file or furnish reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d));
 - (ii) The issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and
 - (iii) The issuer has published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, since the first day of its most recently completed fiscal year, it:
 - (A) Has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;
 - (B) Has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and
 - (C) Has distributed or been required to distribute to its security holders.

Note 1 to paragraph (b)(1):

For the purpose of paragraph (b) of this section, *primary trading market* means that at least 55 percent of the trading in the subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this paragraph, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities. When determining an issuer's primary trading market under this paragraph, calculate average daily trading volume in the United States and on a worldwide basis as under Rule 12h-6 under the Act (§ 240.12h-6).

Note 2 to paragraph (b)(1):

Paragraph (b)(1)(iii) of this section does not apply to an issuer when claiming the exemption under paragraph (b) of this section upon the effectiveness of the termination of its registration of a class of securities under section 12(g) of the Act, or the termination of its obligation to file or furnish reports under section 15(d) of the Act.

Note 3 to paragraph (b)(1):

Compensatory stock options for which the underlying securities are in a class exempt under paragraph (b) of this section are also exempt under that paragraph.

(2)

- (i) In order to maintain the exemption under paragraph (b) of this section, a foreign private issuer shall publish, on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, the information specified in paragraph (b)(1)(iii) of this section.
- (ii) An issuer must electronically publish the information required by paragraph (b)(2) of this section promptly after the information has been made public.

(3)

- (i) The information required to be published electronically under paragraph (b) of this section is information that is material to an investment decision regarding the subject securities, such as information concerning:
 - (A) Results of operations or financial condition;
 - (B) Changes in business;
 - (C) Acquisitions or dispositions of assets;
 - (D) The issuance, redemption or acquisition of securities;
 - (E) Changes in management or control;
 - (F) The granting of options or the payment of other remuneration to directors or officers; and
 - (G) Transactions with directors, officers or principal security holders.
- (ii) At a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be published under paragraph (b) of this section if in a foreign language:
 - (A) Its annual report, including or accompanied by annual financial statements;
 - (B) Interim reports that include financial statements;
 - (C) Press releases; and

(D) All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

-
- (c) The exemption under paragraph (b) of this section shall remain in effect until:
- (1) The issuer no longer satisfies the electronic publication condition of paragraph (b)(2) of this section;
 - (2) The issuer no longer maintains a listing of the subject class of securities on one or more exchanges in a primary trading market, as defined under paragraph (b)(1) of this section; or
 - (3) The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.
- (d) Depository shares registered on Form F-6 (§ 239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph.

[48 FR 46739, Oct. 14, 1983, as amended at 49 FR 12689, Mar. 30, 1984; 56 FR 30068, July 1, 1991; 65 FR 37676, June 15, 2000; 72 FR 16955, Apr. 5, 2007; 73 FR 52768, Sept. 10, 2008]

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2B - SECURITIES EXCHANGES

Sec. 78m - Periodical and other reports

From the U.S. Government Publishing Office, www.gpo.gov

§78m. Periodical and other reports

(a) Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 [15 U.S.C. 77a et seq.] and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) Form of report; books, records, and internal accounting; directives

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 7219 of this title.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 781 of this title or an issuer which is required to file reports pursuant to section 780(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

(c) Alternative reports

If in the judgment of the Commission any report required under subsection (a) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

(d) Reports by persons acquiring more than five per centum of certain classes of securities

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78l(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of title 43, or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not

have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) Purchase of securities by issuer

(1) It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 781 of this title, or which is a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

(2) For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to \$92 ¹/₁₀₀ per \$1,000,000 of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)] for such fiscal year.

(5) FEE COLLECTIONS.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

(f) Reports by institutional investment managers

(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule, having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in subsection (d)(1) held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

(E) with respect to any transaction or series of transactions having a market value of at least \$500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in subsection (d)(1)—

(i) the name of the issuer and the title, class, and CUSIP number of the security;

(ii) the number of shares or principal amount of the security involved in the transaction;

(iii) whether the transaction was a purchase or sale;

(iv) the per share price or prices at which the transaction was effected;

(v) the date or dates of the transaction;

(vi) the date or dates of the settlement of the transaction;

(vii) the broker or dealer through whom the transaction was effected;

(viii) the market or markets in which the transaction was effected; and

(ix) such other related information as the Commission, by rule, may prescribe.

(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.

(3) The Commission, by rule, or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or

securities from any or all of the provisions of this subsection or the rules thereunder.

(4) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in subsection (d)(1), updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

(5) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

(6)(A) For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount.²

(g) Statement of equity security ownership

(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) such person's identity, residence, and citizenship; and

(B) the number and description of the shares in which such person has an interest and the nature of such interest.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as

the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.

(6) The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.

(h) Large trader reporting

(1) Identification requirements for large traders

For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this chapter, each large trader shall—

(A) provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

(B) identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

(2) Recordkeeping and reporting requirements for brokers and dealers

Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

(3) Aggregation rules

The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control.

(4) Examination of broker and dealer records

All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(5) Factors to be considered in Commission actions

In exercising its authority under this subsection, the Commission shall take into account—

- (A) existing reporting systems;
- (B) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and
- (C) the relationship between the United States and international securities markets.

(6) Exemptions

The Commission, by rule, regulation, or order, consistent with the purposes of this chapter, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

(7) Authority of Commission to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(8) Definitions

For purposes of this subsection—

(A) the term "large trader" means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

(B) the term "publicly traded security" means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

(C) the term "identifying activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated;

(D) the term "reporting activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

(E) the term "person" has the meaning given in section 78c(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank.

(i) Accuracy of financial reports

Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this chapter and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

(j) Off-balance sheet transactions

Not later than 180 days after July 30, 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

(k) Prohibition on personal loans to executives

(1) In general

It shall be unlawful for any issuer (as defined in section 7201 of this title), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on July 30, 2002, shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after July 30, 2002.

(2) Limitation

Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 1464 of title 12), consumer credit (as defined in section 1602 of this title), or any extension of credit under an open end credit plan (as defined in section 1602 of this title), or a charge card (as defined in section 1637(c)(4)(e) of this title), or any extension of credit by a broker or dealer registered under section 78o of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 78g of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

- (A) made or provided in the ordinary course of the consumer credit business of such issuer;
- (B) of a type that is generally made available by such issuer to the public; and
- (C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

(3) Rule of construction for certain loans

Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 375b of title 12.

(l) Real time issuer disclosures

Each issuer reporting under subsec. (a) or section 78o(d) of this title shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

(m) Public availability of security-based swap transaction data

(1) In general

(A) Definition of real-time public reporting

In this paragraph, the term "real-time public reporting" means to report data relating to a security-based swap transaction, including price and volume, as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

(B) Purpose

The purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) General rule

The Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 78c-3(a)(1) of this title (including those security-based swaps that are excepted from the requirement pursuant to section 78c-3(g) of this title), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in section 78c-3(a)(1) of this title, but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 78c-3(a)(6) of this title,³ the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to security-based swaps that are determined to be required to be cleared under section 78c-3(b) of this title but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) Registered entities and public reporting

The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

(E) Rulemaking required

With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) Timeliness of reporting

Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) Reporting of swaps to registered security-based swap data repositories

Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.

(H) Registration of clearing agencies

A clearing agency may register as a security-based swap data repository.

(2) Semiannual and annual public reporting of aggregate security-based swap data

(A) In general

In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

- (i) the trading and clearing in the major security-based swap categories; and
- (ii) the market participants and developments in new products.

(B) Use; consultation

In preparing a report under subparagraph (A), the Commission shall—

- (i) use information from security-based swap data repositories and clearing agencies; and
- (ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) Authority of Commission

The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(n) Security-based swap data repositories

(1) Registration requirement

It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.

(2) Inspection and examination

Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

(3) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

- (i) the requirements and core principles described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation.

(B) Reasonable discretion of security-based swap data repository

Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

(4) Standard setting

(A) Data identification

(i) In general

In accordance with clause (ii), the Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

(ii) Requirement

In carrying out clause (i), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

(B) Data collection and maintenance

The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

(C) Comparability

The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.

(5) Duties

A security-based swap data repository shall—

(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

(G) on a confidential basis pursuant to section 78x of this title, upon request, and after notifying the Commission of the request, make available security-based swap data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

(i) each appropriate prudential regulator;

(ii) the Financial Stability Oversight Council;

(iii) the Commodity Futures Trading Commission;

(iv) the Department of Justice; and

(v) any other person that the Commission determines to be appropriate, including—

(I) foreign financial supervisors (including foreign futures authorities);

(II) foreign central banks;

(III) foreign ministries; and

(IV) other foreign authorities.

(H) CONFIDENTIALITY AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G), the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 78x of this title relating to the information on security-based swap transactions that is provided.

(6) Designation of chief compliance officer

(A) In general

Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

(B) Duties

The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the security-based swap data repository;

(ii) review the compliance of the security-based swap data repository with respect to the requirements and core principles described in this subsection;

(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;

(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(v) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(I) compliance office review;

(II) look-back;

(III) internal or external audit finding;

(IV) self-reported error; or

(V) validated complaint; and

(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(C) Annual reports

(i) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(I) the compliance of the security-based swap data repository of the chief compliance officer with respect to this chapter (including regulations); and

(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

(ii) Requirements

A compliance report under clause (i) shall—

(I) accompany each appropriate financial report of the security-based swap data repository that is required to be furnished to the Commission pursuant to this section; and

(II) include a certification that, under penalty of law, the compliance report is accurate and complete.

(7) Core principles applicable to security-based swap data repositories

(A) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the swap data repository shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

(B) Governance arrangements

Each security-based swap data repository shall establish governance arrangements that are transparent—

(i) to fulfill public interest requirements; and

(ii) to support the objectives of the Federal Government, owners, and participants.

(C) Conflicts of interest

Each security-based swap data repository shall—

(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

(ii) establish a process for resolving any conflicts of interest described in clause (i).

(D) Additional duties developed by Commission

(i) In general

The Commission may develop 1 or more additional duties applicable to security-based swap data repositories.

(ii) Consideration of evolving standards

In developing additional duties under subparagraph (A),⁴ the Commission may take into consideration any evolving standard of the United States or the international community.

(iii) Additional duties for Commission designees

The Commission shall establish additional duties for any registrant described in subsection (m)(2)(C) in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the security-based swap data repository.

(8) Required registration for security-based swap data repositories

Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act [7 U.S.C. 1 et seq.] as a swap data repository.

(9) Rules

The Commission shall adopt rules governing persons that are registered under this subsection.

(o) Beneficial ownership

For purposes of this section and section 78p of this title, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.

(p) Disclosures relating to conflict minerals originating in the Democratic Republic of the Congo

(1) Regulations

(A) In general

Not later than 270 days after July 21, 2010, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person's first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ("DRC conflict free" is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent

private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

(B) Certification

The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

(C) Unreliable determination

If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A) (i).

(D) DRC conflict free

For purposes of this paragraph, a product may be labeled as "DRC conflict free" if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

(E) Information available to the public

Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

(2) Person described

A person is described in this paragraph if—

(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

(3) Revisions and waivers

The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

(4) Termination of disclosure requirements

The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than the date that is one day after the end of the 5-year period beginning on July 21, 2010, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

(5) Definitions

For purposes of this subsection, the terms "adjoining country", "appropriate congressional committees", "armed group", and "conflict mineral" have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(q) Disclosure of payments by resource extraction issuers

(1) Definitions

In this subsection—

(A) the term "commercial development of oil, natural gas, or minerals" includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or

minerals, or the acquisition of a license for any such activity, as determined by the Commission;

(B) the term "foreign government" means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

(C) the term "payment"—

(i) means a payment that is—

(I) made to further the commercial development of oil, natural gas, or minerals; and

(II) not de minimis; and

(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

(D) the term "resource extraction issuer" means an issuer that—

(i) is required to file an annual report with the Commission; and

(ii) engages in the commercial development of oil, natural gas, or minerals;

(E) the term "interactive data format" means an electronic data format in which pieces of information are identified using an interactive data standard; and

(F) the term "interactive data standard" means ⁵ standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

(2) Disclosure

(A) Information required

Not later than 270 days after July 21, 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

(ii) the type and total amount of such payments made to each government.

(B) Consultation in rulemaking

In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

(C) Interactive data format

The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

(D) Interactive data standard

(i) In general

The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

(ii) Electronic tags

The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

(I) the total amounts of the payments, by category;

(II) the currency used to make the payments;

(III) the financial period in which the payments were made;

- (IV) the business segment of the resource extraction issuer that made the payments;
- (V) the government that received the payments, and the country in which the government is located;
- (VI) the project of the resource extraction issuer to which the payments relate; and
- (VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

(E) International transparency efforts

To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

(F) Effective date

With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

(3) Public availability of information

(A) In general

To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

(B) Other information

Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

(4) Authorization of appropriations

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.

(r) Disclosure of certain activities relating to Iran

(1) In general

Each issuer required to file an annual or quarterly report under subsection (a) shall disclose in that report the information required by paragraph (2) if, during the period covered by the report, the issuer or any affiliate of the issuer—

(A) knowingly engaged in an activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(B) knowingly engaged in an activity described in subsection (c)(2) of section 8513 of title 22 or a transaction described in subsection (d)(1) of that section;

(C) knowingly engaged in an activity described in section 8514a(b)(2) of title 22; or

(D) knowingly conducted any transaction or dealing with—

(i) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13224 (66 Fed. Reg. 49079; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism);

(ii) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13382 (70 Fed. Reg. 38567; relating to blocking of property of weapons of mass destruction proliferators and their supporters); or

(iii) any person or entity identified under section 560.304 of title 31, Code of Federal Regulations (relating to the definition of the Government of Iran) without the specific authorization of a Federal department or agency.

(2) Information required

If an issuer or an affiliate of the issuer has engaged in any activity described in paragraph (1), the issuer shall disclose a detailed description of each such activity, including—

- (A) the nature and extent of the activity;
- (B) the gross revenues and net profits, if any, attributable to the activity; and
- (C) whether the issuer or the affiliate of the issuer (as the case may be) intends to continue the activity.

(3) Notice of disclosures

If an issuer reports under paragraph (1) that the issuer or an affiliate of the issuer has knowingly engaged in any activity described in that paragraph, the issuer shall separately file with the Commission, concurrently with the annual or quarterly report under subsection (a), a notice that the disclosure of that activity has been included in that annual or quarterly report that identifies the issuer and contains the information required by paragraph (2).

(4) Public disclosure of information

Upon receiving a notice under paragraph (3) that an annual or quarterly report includes a disclosure of an activity described in paragraph (1), the Commission shall promptly—

- (A) transmit the report to—
 - (i) the President;
 - (ii) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and
 - (iii) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) make the information provided in the disclosure and the notice available to the public by posting the information on the Internet website of the Commission.

(5) Investigations

Upon receiving a report under paragraph (4) that includes a disclosure of an activity described in paragraph (1) (other than an activity described in subparagraph (D)(iii) of that paragraph), the President shall—

(A) initiate an investigation into the possible imposition of sanctions under the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note), section 8513 or 8514a of title 22, an Executive order specified in clause (i) or (ii) of paragraph (1)(D), or any other provision of law relating to the imposition of sanctions with respect to Iran, as applicable; and

(B) not later than 180 days after initiating such an investigation, make a determination with respect to whether sanctions should be imposed with respect to the issuer or the affiliate of the issuer (as the case may be).

(6) Sunset

The provisions of this subsection shall terminate on the date that is 30 days after the date on which the President makes the certification described in section 8551(a) of title 22.

(June 6, 1934, ch. 404, title I, §13, 48 Stat. 894; Pub. L. 88–467, §4, Aug. 20, 1964, 78 Stat. 569; Pub. L. 90–439, §2, July 29, 1968, 82 Stat. 454; Pub. L. 91–567, §§1, 2, Dec. 22, 1970, 84 Stat. 1497; Pub. L. 94–29, §10, June 4, 1975, 89 Stat. 119; Pub. L. 94–210, title III, §308(b), Feb. 5, 1976, 90 Stat. 57; Pub. L. 95–213, title I, §102, title II, §§202, 203, Dec. 19, 1977, 91 Stat. 1494, 1498, 1499; Pub. L. 98–38, §2(a), June 6, 1983, 97 Stat. 205; Pub. L. 100–181, title III, §§315, 316, Dec. 4, 1987, 101 Stat. 1256; Pub. L. 100–241, §12(d), Feb. 3, 1988, 101 Stat. 1810; Pub. L. 100–418, title V, §5002, Aug. 23, 1988, 102 Stat. 1415; Pub. L. 101–432, §3, Oct. 16, 1990, 104 Stat. 964; Pub. L. 107–123, §5, Jan. 16, 2002, 115 Stat. 2395; Pub. L. 107–204, title I, §109(i), formerly §109(h), title IV, §§401(a), 402(a), 409, July 30, 2002, 116 Stat. 771, 785, 787, 791, renumbered §109(i), Pub. L. 111–203, title IX, §982(h)(3), July 21, 2010, 124 Stat. 1930; Pub. L. 111–203, title VII, §§763(i), 766(b), (c), (e), title IX, §§929R(a), 929X(a), 985(b)(4), 991(b)(2), title XV, §§1502(b), 1504, July 21, 2010, 124 Stat. 1779, 1799, 1866, 1870, 1933, 1952, 2213, 2220; Pub. L. 112–106, title I,

§102(b)(2), Apr. 5, 2012, 126 Stat. 309; Pub. L. 112–158, title II, §219(a), Aug. 10, 2012, 126 Stat. 1235; Pub. L. 114–94, div. G, title LXXXVI, §86001(c), Dec. 4, 2015, 129 Stat. 1798.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", and this chapter, referred to in subsecs. (b)(1), (h)(1), (2), (4), (6), (i), and (n)(6)(B)(v), (C)(i)(I), (7)(A), was in the original "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsecs. (a) and (d)(6)(A), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Investment Company Act of 1940, referred to in subsecs. (d)(1) and (e)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (f)(5), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

Section 7201 of this title, referred to in subsec. (k)(1), was in the original "section 2 of the Sarbanes-Oxley Act of 2002", Pub. L. 107–204, which enacted section 7201 of this title and amended section 78c of this title.

The Commodity Exchange Act, referred to in subsec. (n)(8), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (p)(5), is section 1502 of Pub. L. 111–203, which amended this section and enacted provisions set out as a note below.

Executive Order No. 13224, referred to in subsec. (r)(1)(D)(i), is Ex. Ord. No. 13224, Sept. 23, 2001, 66 F.R. 49079, which is listed in a table under section 1701 of Title 50, War and National Defense.

Executive Order No. 13382, referred to in subsec. (r)(1)(D)(ii), is Ex. Ord. No. 13382, June 28, 2005, 70 F.R. 38567, which is listed in a table under section 1701 of Title 50, War and National Defense.

AMENDMENTS

2015—Subsec. (n)(5)(G). Pub. L. 114–94, §86001(c)(1)(A), substituted "make available security-based swap" for "make available all" in introductory provisions.

Subsec. (n)(5)(G)(v)(IV). Pub. L. 114–94, §86001(c)(1)(B), added subcl. (IV)

Subsec. (n)(5)(H). Pub. L. 114–94, §86001(c)(2), added subpar. (H) and struck out former subpar. (H) which related to confidentiality and indemnification agreement.

2012—Subsec. (a). Pub. L. 112–106 inserted at end of concluding provisions "In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers."

Subsec. (r). Pub. L. 112–158 added subsec. (r).

2010—Subsec. (b)(1). Pub. L. 111–203, §985(b)(4), substituted "earnings statement" for "earning statement".

Subsec. (b)(2)(C). Pub. L. 111–203, §982(h)(3), amended Pub. L. 107–204, §109. See 2002 Amendment note below.

Subsec. (d)(1). Pub. L. 111–203, §929R(a)(1), in introductory provisions, inserted "or within such shorter time as the Commission may establish by rule" after "within ten days after such acquisition" and struck out "send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and" before "file with the Commission".

Pub. L. 111–203, §766(b)(1), in introductory provisions, inserted "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and" after "section 1629c(d)(6) of title 43,".

Subsec. (d)(2). Pub. L. 111–203, §929R(a)(2), struck out "in the statements to the issuer and the exchange, and" after "facts set forth" and "shall be transmitted to the issuer and the exchange and" after "an amendment".

Subsec. (e)(3). Pub. L. 111–203, §991(b)(2)(A), substituted "paragraph (4)" for "paragraphs (5) and (6)".

Subsec. (e)(4) to (6). Pub. L. 111–203, §991(b)(2)(B), (C), added pars. (4) to (6) and struck out former pars. (4) to (6) which related to offsetting collections, annual adjustment of rate, and final rate adjustment, respectively.

Subsec. (e)(8) to (10). Pub. L. 111–203, §991(b)(2)(D), struck out pars. (8) to (10) which related to review and effective date of adjusted rate, collection of fees upon lapse of appropriation, and publication of rate, respectively.

Subsec. (f)(1). Pub. L. 111–203, §766(c), which directed insertion of "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule," after "subsection (d)(1) of this section", was executed by making the insertion after "section 13(d)(1) of this title", which was translated to "subsection (d)(1) of this section", to reflect the probable intent of Congress.

Subsec. (f)(2) to (6). Pub. L. 111–203, §929X(a), added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

Subsec. (g)(1). Pub. L. 111–203, §929R(a)(3), struck out "shall send to the issuer of the security and" before "shall file" in introductory provisions.

Pub. L. 111–203, §766(b)(2), in introductory provisions, inserted "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule" after "subsection (d)(1) of this section".

Subsec. (g)(2). Pub. L. 111–203, §929R(a)(4), struck out "sent to the issuer and" after "the statement" and "shall be transmitted to the issuer and" after "an amendment".

Subsecs. (m), (n). Pub. L. 111–203, §763(i), added subsecs. (m) and (n).

Subsec. (o). Pub. L. 111–203, §766(e), added subsec. (o).

Subsec. (p). Pub. L. 111–203, §1502(b), added subsec. (p).

Subsec. (q). Pub. L. 111–203, §1504, added subsec. (q).

2002—Subsec. (b)(2)(C). Pub. L. 107–204, §109(i), formerly §109(h), renumbered §109(i) by Pub. L. 111–203, §982(h)(3), added subpar. (C).

Subsec. (e)(3). Pub. L. 107–123, §5(1), substituted "a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$92 per \$1,000,000 of the value of securities proposed to be purchased" for "a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased".

Subsec. (e)(4) to (10). Pub. L. 107–123, §5(2), added pars. (4) to (10).

Subsecs. (i), (j). Pub. L. 107–204, §401(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 107–204, §402(a), added subsec. (k).

Subsec. (l). Pub. L. 107–204, §409, added subsec. (l).

1990—Subsec. (h). Pub. L. 101–432 added subsec. (h).

1988—Subsec. (b)(4) to (7). Pub. L. 100–418 added pars. (4) to (7).

Subsec. (d)(1). Pub. L. 100–241 inserted "or any equity security issued by a Native Corporation pursuant to section 1629c(d)(6) of title 43".

1987—Subsec. (c). Pub. L. 100–181, §315, struck out "of" after "thereof".

Subsec. (h). Pub. L. 100–181, §316, struck out subsec. (h) which required Commission to report to Congress within thirty months of Dec. 19, 1977, with respect to effectiveness of ownership reporting requirements contained in this chapter and desirability and feasibility of reducing or otherwise modifying the 5 per centum threshold used in subsecs. (d)(1) and (g)(1) of this section.

1983—Subsec. (e)(3). Pub. L. 98–38 added par. (3).

1977—Subsec. (b). Pub. L. 95–213, §102, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 95–213, §202, inserted references to residence and citizenship of persons and to nature of beneficial ownership of persons in subpar. (A), and inserted references to background, identity, residence, and citizenship of associates of persons in subpar. (D).

Subsecs. (g), (h). Pub. L. 95–213, §203, added subsecs. (g) and (h).

1976—Subsec. (b). Pub. L. 94–210 substituted provisions relating to exceptions for inconsistent rules and regulations, for provisions relating to reporting requirements for carriers subject to the provisions of section 20 of title 49, or other carriers required to make reports of the same general character as those required under section 20 of title 49.

1975—Subsec. (f). Pub. L. 94–29 added subsec. (f).

1970—Subsec. (d)(1). Pub. L. 91–567, §1(a), included equity securities of insurance companies which would have been required to be registered except for the exemption contained in section 781(g)(2)(G) of this

title, and substituted "5 per centum" for "10 per centum".

Subsec. (d)(5), (6). Pub. L. 91-567, §1(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (e)(2). Pub. L. 91-567, §2, inserted provisions empowering the Commission to make rules and regulations implementing the paragraph in the public interest and for the protection of investors.

1968—Subsecs. (d), (e). Pub. L. 90-439 added subsecs. (d) and (e).

1964—Subsec. (a). Pub. L. 88-467 substituted provisions which require the issuer of a security registered pursuant to section 781 of this title to file reports with the Commission rather than with the exchange and to furnish the exchange with duplicate originals and prohibit the Commission from requiring the filing of any material contract wholly executed before July 1, 1962 for former provisions which required the issuer of a security registered on a national securities exchange to file certain reports with the exchange and to file duplicates with the Commission.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, see section 86001(d) of Pub. L. 114-94, set out as a note under section 7a-1 of Title 7, Agriculture.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-158, title II, §219(b), Aug. 10, 2012, 126 Stat. 1236, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to reports required to be filed with the Securities and Exchange Commission after the date that is 180 days after the date of the enactment of this Act [Aug. 10, 2012]."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 929R(a), 929X(a), 982(h)(3), 985(b)(4), 1502(b), and 1504 of 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.

Amendment by sections 763(i) and 766(b), (c), (e) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

Amendment by section 991(b)(2) of Pub. L. 111-203 effective Oct. 1, 2011, see section 991(b)(4) of Pub. L. 111-203, set out as a note under section 77f of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-123 effective Oct. 1, 2001, except that authorities provided by subsec. (e)(9) of this section to not apply until Oct. 1, 2002, see section 11 of Pub. L. 107-123, set out as a note under section 78ee of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-210 not applicable to any report by any person with respect to a fiscal year of such person which began before Feb. 5, 1976, see section 308(d)(2) of Pub. L. 94-210, set out as a note under section 80a-3 of this title.

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.

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.

IMPROVING ACCESS TO CAPITAL

Pub. L. 115–174, title V, §508, May 24, 2018, 132 Stat. 1364, provided that: "The Securities and Exchange Commission shall amend—

"(1) section 230.251 of title 17, Code of Federal Regulations, to remove the requirement that the issuer not be subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) [15 U.S.C. 78m, 78o(d)] immediately before the offering; and

"(2) section 230.257 of title 17, Code of Federal Regulations, with respect to an offering described in section 230.251(a)(2) of title 17, Code of Federal Regulations, to deem any issuer that is subject to section 13 or 15(d) of the Securities Exchange Act of 1934 as having met the periodic and current reporting requirements of section 230.257 of title 17, Code of Federal Regulations, if such issuer meets the reporting requirements of section 13 of the Securities Exchange Act of 1934."

SUMMARY PAGE FOR FORM 10–K

Pub. L. 114–94, div. G, title LXXII, §72001, Dec. 4, 2015, 129 Stat. 1784, provided that: "Not later than the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 4, 2015], the Securities and Exchange Commission shall issue regulations to permit issuers to submit a summary page on form 10–K (17 CFR 249.310), but only if each item on such summary page includes a cross-reference (by electronic link or otherwise) to the material contained in form 10–K to which such item relates."

ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE

Pub. L. 111–203, title IX, §939B, July 21, 2010, 124 Stat. 1887, provided that: "Not later than 90 days after the date of enactment of this subtitle [July 21, 2010], the Securities [and] Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii))."

CONFLICT MINERALS

Pub. L. 111–203, title XV, §1502, July 21, 2010, 124 Stat. 2213, as amended by Pub. L. 114–301, §3(b), Dec. 16, 2016, 130 Stat. 1515, provided that:

"(a) SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b).

"(b) [Amended this section.]

"(c) STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.—

"(1) STRATEGY.—

"(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 21, 2010], the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.

"(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

"(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

"(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

"(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

"(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

"(iii) A description of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations in the

Democratic Republic of the Congo.

"(2) MAP.—

"(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 21, 2010], the Secretary of State shall, in accordance with the recommendation of the United Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

"(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

"(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

"(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

"(III) local and international nongovernmental organizations;

"(ii) make such map available to the public; and

"(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

"(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the 'Conflict Minerals Map', and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as 'Conflict Zone Mines'.

"(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

"(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502 [amending this section and enacting this note], as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

"(d) REPORTS.—

"(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act [July 21, 2010] and annually thereafter through 2020, in 2022, and in 2024, the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

"(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act [July 21, 2010] and annually thereafter through 2020, in 2022, and in 2024, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that includes the following:

"(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)], as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

"(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

"(C)(i) A general review of persons described in clause (ii) and whether information is publicly available about—

"(I) the use of conflict minerals by such persons; and

"(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

"(ii) A person is described in this clause if—

"(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)(1)(A)], as added by subsection (b); and

"(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

"(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act [July 21, 2010], and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

"(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(p)].

"(B) Recommendations for the processes used to carry out such audits, including ways to—

"(i) improve the accuracy of such audits; and

"(ii) establish standards of best practices.

"(C) A listing of all known conflict mineral processing facilities worldwide.

"(e) DEFINITIONS.—For purposes of this section:

"(1) ADJOINING COUNTRY.—The term 'adjoining country', with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

"(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(3) ARMED GROUP.—The term 'armed group' means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country.

"(4) CONFLICT MINERAL.—The term 'conflict mineral' means—

"(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

"(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

"(5) UNDER THE CONTROL OF ARMED GROUPS.—The term 'under the control of armed groups' means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

"(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

"(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

"(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country."

CONSULTATION

Pub. L. 106–102, title II, §241, Nov. 12, 1999, 113 Stat. 1407, provided that:

"(a) IN GENERAL.—The Securities and Exchange Commission shall consult and coordinate comments with the appropriate Federal banking agency before taking any action or rendering any opinion with respect to the manner in which any insured depository institution or depository institution holding company reports loan loss reserves in its financial statement, including the amount of any such loan loss reserve.

"(b) DEFINITIONS.—For purposes of subsection (a), the terms 'insured depository institution', 'depository institution holding company', and 'appropriate Federal banking agency' have the same meaning as given in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]."

ADJUSTMENT OF REGISTRATION FEE RATE

By order dated Aug. 23, 2019, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$129.80 per \$1,000,000, effective Oct. 1, 2019, see 84 F.R. 45601.

By order dated Aug. 24, 2018, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$121.20 per \$1,000,000, effective Oct. 1, 2018, see 83 F.R. 44101.

By order dated Aug. 24, 2017, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$124.50 per \$1,000,000, effective Oct. 1, 2017, see 82 F.R. 41080.

By order dated Aug. 30, 2016, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$115.90 per \$1,000,000, effective Oct. 1, 2016, see 81 F.R. 61283.

By order dated Aug. 26, 2015, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$100.70 per \$1,000,000, effective Oct. 1, 2015, see 80 F.R. 52824.

By order dated Aug. 29, 2014, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$116.20 per \$1,000,000, effective Oct. 1, 2014, see 79 F.R. 52771.

By order dated Aug. 30, 2013, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$128.80 per \$1,000,000, effective Oct. 1, 2013, see 78 F.R. 54934.

By order dated Aug. 31, 2012, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$136.40 per \$1,000,000, effective Oct. 1, 2012, see 77 F.R. 55240.

By order dated Aug. 31, 2011, the Securities and Exchange Commission adjusted the fee rates applicable under subsec. (e) of this section to \$114.60 per \$1,000,000, effective Oct. 1, 2011, see 76 F.R. 55139.

ASSIGNMENT OF FUNCTION RELATING TO GRANTING OF AUTHORITY FOR ISSUANCE OF CERTAIN DIRECTIVES

Memorandum of President of the United States, May 5, 2006, 71 F.R. 27943, provided:

Memorandum for the Director of National Intelligence

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 13(b)(3)(A) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m(b)(3)(A)). In performing such function, you should consult the heads of departments and agencies, as appropriate.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

¹ *See Adjustment of Registration Fee Rate notes below.*

² *So in original. Probably should be "account."*

³ *So in original. Section 78c-3(a) of this title does not contain a par. (6).*

⁴ *So in original. Probably should be "clause (i)."*

⁵ *So in original. The word "a" probably should appear.*



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 270.12b-1 Distribution of shares by registered open-end management investment company.

(a)

- (1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act (15 U.S.C. 80a-10(d))) to act as a distributor of securities of which it is the issuer, except through an underwriter;
- (2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature;

(b) A registered, open-end management investment company ("Company") may act as a distributor of securities of which it is the issuer: *Provided*, That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing: *And further provided*, That:

- (1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company, if adopted after any public offering of the company's voting securities or the sale of such securities to persons who are not affiliated persons of the company, affiliated persons of such persons, promoters of the company, or affiliated persons of such promoters;
- (2) Such plan, together with any related agreements, has been approved by a vote of the board of directors of such company, and of the directors who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements;
- (3) Such plan or agreement provides, in substance:
 - (i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2) of this section;
 - (ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and
 - (iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company;
 - (iv) In the case of an agreement related to a plan:
 - (A) That it may be terminated at any time, without the payment of any penalty, by vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in

the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

- (B) For its automatic termination in the event of its assignment;
- (4) Such plan provides that it may not be amended to increase materially the amount to be spent for distribution without shareholder approval and that all material amendments of the plan must be approved in the manner described in paragraph (b)(2) of this section; and
- (5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;
- (c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if its board of directors satisfies the fund governance standards as defined in § 270.0-1(a)(7);
- (d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of this section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, and minutes describing the factors considered and the basis for the decision to use company assets for distribution must be made and preserved in accordance with paragraph (f) of this section;

Note:

For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.

- (e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b) (15 U.S.C. 80a-35 (a) and (b)) of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders;
- (f) A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place;
- (g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this rule provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f-3(f)(2)(iii).
- (h) Notwithstanding any other provision of this section, a company may not:
 - (1) Compensate a broker or dealer for any promotion or sale of shares issued by that company by directing to the broker or dealer:
 - (i) The company's portfolio securities transactions; or

- (ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the company's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and
- (2) Direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the company, unless the company (or its investment adviser):
- (i) Is in compliance with the provisions of paragraph (h)(1) of this section with respect to that broker or dealer; and
 - (ii) Has implemented, and the company's board of directors (including a majority of directors who are not interested persons of the company) has approved, policies and procedures reasonably designed to prevent:
 - (A) The persons responsible for selecting brokers and dealers to effect the company's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the company or any other registered investment company; and
 - (B) The company, and any investment adviser and principal underwriter of the company, from entering into any agreement (whether oral or written) or other understanding under which the company directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (h)(1)(ii) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

[45 FR 73905, Nov. 7, 1980, as amended at 60 FR 11885, Mar. 2, 1995; 61 FR 49011, Sept. 17, 1996; 62 FR 51765, Oct. 3, 1997; 66 FR 3758, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004; 69 FR 54733, Sept. 9, 2004; 78 FR 79299, Dec. 30, 2013]



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 239.15A Form N-1A, registration statement of open-end management investment companies.

Form N-1A shall be used for the registration under the Securities Act of 1933 of securities of open-end management investment companies other than separate accounts of insurance companies registered under the Investment Company Act of 1940 (on form N-1) (§ 270.11 of this chapter). This form is also to be used for the registration statement of such companies pursuant to section 8(b) of the Investment Company Act of 1940 (§ 270.11A of this chapter). This form is not applicable for small business investment companies which register pursuant to §§ 239.24 and 274.5 of this chapter.

[48 FR 37940, Aug. 22, 1983]

EDITORIAL NOTE

Editorial Note: For FEDERAL REGISTER citations affecting Form N-1A, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2A - SECURITIES AND TRUST INDENTURES

SUBCHAPTER I - DOMESTIC SECURITIES

Sec. 77r - Exemption from State regulation of securities offerings

From the U.S. Government Publishing Office, www.gpo.gov

§77r. Exemption from State regulation of securities offerings

(a) Scope of exemption

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o-3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities

For purposes of this section, the following are covered securities:

(1) Exclusive Federal registration of nationally traded securities

A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2) Exclusive Federal registration of investment companies

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

(3) Sales to qualified purchasers

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) Exemption in connection with certain exempt offerings

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

(A) paragraph (1) or (3) of section 77d ¹ of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;

(B) section 77d(4) ¹ of this title;

(C) section 77d(6) ¹ of this title;

(D) a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is

—
(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 77d(2) ¹ of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2) ¹ of this title that are in effect on September 1, 1996; or

(G) section 77d(a)(7) of this title.

(c) Preservation of authority

(1) Fraud authority

Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions ²

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to ³ a transaction described under section 77d(6) ¹ of this title, with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) Preservation of filing requirements

(A) Notice filings permitted

Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) Preservation of fees

(i) In general

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

(ii) Schedule

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) Availability of preemption contingent on payment of fees

(i) In general

During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) Delays

For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) Fees not permitted on listed securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) ⁴ Fees not permitted on crowd-funded securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) Enforcement of requirements

Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) Offering document

The term "offering document"—

(A) has the meaning given the term "prospectus" in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) Prepared by or on behalf of the issuer

Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3) State

The term "State" has the same meaning as in section 78c of this title.

(4) Senior security

The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

(May 27, 1933, ch. 38, title I, §18, 48 Stat. 85; Pub. L. 104–290, title I, §102(a), Oct. 11, 1996, 110 Stat. 3417; Pub. L. 105–353, title III, §301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub. L. 111–203, title IX, §985(a)(2), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title III, §305(a), (b) (2), (c), (d)(2), title IV, §401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325; Pub. L. 114–94, div. G, title LXXVI, §76001(b), Dec. 4, 2015, 129 Stat. 1789; Pub. L. 115–174, title V, §501, May 24, 2018, 132 Stat. 1361.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Section 77d(1), (2), (3), (4), and (6) of this title, referred to in subsecs. (b)(4)(A) to (C), (E) and (c)(1)(B), were redesignated section 77d(a)(1), (2), (3), (4), and (6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

AMENDMENTS

2018—Subsec. (b)(1)(A). Pub. L. 115–174, §501(1), (4), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);".

Subsec. (b)(1)(B). Pub. L. 115–174, §501(4), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 115–174, §501(2), inserted "a security designated as qualified for trading in the national market system pursuant to section 78k–1(a)(2) of this title that is" before "listed" and struck out "that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A)" after "(or tier or segment thereof)".

Subsec. (b)(1)(C). Pub. L. 115–174, §501(4), redesignated subpar. (C) as (B).

Pub. L. 115–174, §501(3), struck out "or (B)" after "described in subparagraph (A)".

2015—Subsec. (b)(4)(E). Pub. L. 114–94, §76001(b)(1), which directed amendment of subsec. (b)(4) by redesignating "the second subparagraph (D)" as (E), was executed by making the redesignation for the subpar. (D) relating to section 77c(a) of this title to reflect the probable intent of Congress. Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 114–94, §76001(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(4)(G). Pub. L. 114–94, §76001(b)(2)–(4), added subpar. (G).

2012—Subsec. (b)(4)(C). Pub. L. 112–106, §305(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(4)(D). Pub. L. 112–106, §401(b), added subpar. (D) relating to section 77c(b)(2) of this title.

Pub. L. 112–106, §305(a)(1), redesignated subpar. (C), relating to section 77c(a) of this title, as (D). Former subpar (D) redesignated (E).

Subsec. (b)(4)(E). Pub. L. 112–106, §305(a)(1), redesignated subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 112–106, §305(b)(2), substituted ", in connection with securities or securities transactions" for "with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." and added subpars. (A) and (B).

Subsec. (c)(1)(A)(ii). Pub. L. 112–106, §305(d)(2), which directed amendment of subsec. (c)(1) by substituting ", dealer, or funding portal" for "or dealer", was executed by making the substitution in subpar. (A)(ii) as added by Pub. L. 112–106, §305(b)(2).

Subsec. (c)(2)(F). Pub. L. 112–106, §305(c), added subpar. (F).

2010—Subsec. (b)(1)(C). Pub. L. 111–203, §985(a)(2)(A), substituted "(C) a security" for "(C) is a security".

Subsec. (c)(2)(B)(i). Pub. L. 111–203, §985(a)(2)(B), substituted "State or" for "State, or".

1998—Subsec. (b)(1)(A). Pub. L. 105–353, §301(a)(4)(A), inserted ", or authorized for listing," after "Exchange, or listed".

Subsec. (b)(4)(C). Pub. L. 105–353, §302, substituted "paragraph (4), (10), or (11)" for "paragraph (4) or (11)".

Subsec. (c)(2)(B)(i), (C)(i). Pub. L. 105–353, §301(a)(4)(B), (C), made technical amendments to references in original act which appear in text as references to October 11, 1996.

Subsec. (d)(1)(A). Pub. L. 105–353, §301(a)(4)(D), substituted "section 77b(a)(10)" for "section 77b(10)" and "subparagraphs (a) and (b)" for "subparagraphs (A) and (B)".

Subsec. (d)(2). Pub. L. 105–353, §301(a)(4)(E), made technical amendment to reference in original act which appears in text as reference to October 11, 1996.

Subsec. (d)(4). Pub. L. 105–353, §301(a)(4)(F), substituted "The term" for "For purposes of this paragraph, the term".

1996—Pub. L. 104–290 substituted "Exemption from State regulation of securities offerings" for "State control of securities" as section catchline and amended text generally. Prior to amendment, text read as follows: "Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person."

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.

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.

CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY

Pub. L. 112–106, title III, §305(b)(1), Apr. 5, 2012, 126 Stat. 322, provided that: The amendments made by subsection (a) [amending this section] relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of [the] Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) [probably means "section 4(a)(6)"] of that Act [15 U.S.C. 77d(a)(6)]."

STUDY AND REPORT ON UNIFORMITY OF STATE REGULATORY REQUIREMENTS

Pub. L. 104–290, title I, §102(b), Oct. 11, 1996, 110 Stat. 3420, provided that: "The Commission shall conduct a study, after consultation with States, issuers, brokers, and dealers, on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933 [15 U.S.C. 77r], as amended by paragraph (1) of this subsection). Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of such study."

¹ *See References in Text note below.*

² *So in original. The comma after "enforcement actions" probably should be a hyphen and the words "in connection with securities or securities transactions" probably should be part of subpar. (A).*

³ *So in original. Probably should be "with".*

⁴ *So in original. No subpar. (E) has been enacted.*

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2B - SECURITIES EXCHANGES

Sec. 78o-3 - Registered securities associations

From the U.S. Government Publishing Office, www.gpo.gov

§78o-3. Registered securities associations

(a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b), or as an affiliated securities association pursuant to subsection (d), under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determinations by Commission requisite to registration of applicant as national securities association

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of

the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

(9) The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(10) The requirements of subsection (c), insofar as these may be applicable, are satisfied.

(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(A) the right of dissenting limited partners to one of the following:

(i) an appraisal and compensation;

(ii) retention of a security under substantially the same terms and conditions as the original issue;

(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;

(B) the right not to have their voting power unfairly reduced or abridged;

(C) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period in which the offer is outstanding.

(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the

Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

- (A) the right of dissenting limited partners to one of the following:
 - (i) an appraisal and compensation;
 - (ii) retention of a security under substantially the same terms and conditions as the original issue;
 - (iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;
 - (iv) the use of a committee that is independent, as determined in accordance with rules prescribed by the association, of the general partner or sponsor, that has been approved by a majority of the outstanding securities of each of the participating partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or
 - (v) other comparable rights that are prescribed by rule by the association and that are designed to protect dissenting limited partners;
- (B) the right not to have their voting power unfairly reduced or abridged;
- (C) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and
- (D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the association during the period during which the offer is outstanding.

(14) The rules of the association include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof, which rules require—

- (A) the broker or dealer performing brokerage services to clearly and conspicuously disclose to potential investors—
 - (i) that the securities offered are not being offered or provided by the broker or dealer on behalf of the Federal Government, and that its offer is not sanctioned, recommended, or encouraged by the Federal Government; and
 - (ii) the identity of the registered broker-dealer offering the securities;
- (B) such broker or dealer to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation of a security to a member of the Armed Forces or a dependent thereof; and
- (C) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless such person is an associated person of a registered broker or dealer and is qualified pursuant to the rules of a self-regulatory organization.

(15) The rules of the association provide that the association shall—

- (A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 78o-4(b)(2)(E) of this title, so that the Municipal Securities Rulemaking Board may—

- (i) assist in such enforcement actions and examinations; and
- (ii) evaluate the ongoing effectiveness of the rules of the Board.

(c) National association rules; provision for registration of affiliated securities association

The Commission may permit or require the rules of an association applying for registration pursuant to subsection (b), to provide for the admission of an association registered as an affiliated securities association pursuant to subsection (d), to participation in said applicant association as an affiliate thereof, under terms permitting such powers and responsibilities to such affiliate, and under such other appropriate terms and conditions, as may be provided by the rules of said applicant association, if such rules appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this section. The duties and powers of the Commission with respect to any national securities association or any affiliated securities association shall in no way be limited by reason of any such affiliation.

(d) Registration as affiliated association; prerequisites; association rules

An applicant association shall not be registered as an affiliated securities association unless it appears to the Commission that—

- (1) such association, notwithstanding that it does not satisfy the requirements set forth in paragraph (1) of subsection (b), will, forthwith upon the registration thereof, be admitted to affiliation with an association registered as a national securities association pursuant to subsection (b), in the manner and under the terms and conditions provided by the rules of said national securities association in accordance with subsection (c); and
- (2) such association and its rules satisfy the requirements set forth in paragraphs (2) to (10), inclusive, and paragraph (12),¹ of subsection (b); except that in the case of any such association any restrictions upon membership therein of the type authorized by paragraph (3) of subsection (b) shall not be less stringent than in the case of the national securities association with which such association is to be affiliated.

(e) Dealings with nonmember professionals

(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(2) For the purposes of this subsection, the term "nonmember professional" shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from granting to any member of any registered securities association or any such municipal securities dealer any dealer's discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: *Provided, however,* That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of the Municipal Securities Rulemaking Board adopted pursuant to section 78o-4(b)(2)(K) of this title.

(f) Transactions in municipal securities

Nothing in subsection (b)(6) or (b)(11) of this section shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.

(g) Denial of membership

(1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(2) A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the association.

(B) A registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

(C) A registered securities association may bar any person from becoming associated with a member if such person does not agree (i) to supply the association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and (ii) to permit examination of its books and records to verify the accuracy of any information so supplied.

(D) Nothing in subparagraph (A), (B), or (C) of this paragraph shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in municipal securities.

(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

(h) Discipline of registered securities association members and persons associated with members; summary proceedings

(1) In any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant

to paragraph (3) of this subsection) the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the association to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reason therefor.

(2) In any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A registered securities association may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (C) limit or prohibit any person with respect to access to services offered by the association if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(i) Obligation to maintain registration, disciplinary, and other data

(1) Maintenance of system to respond to inquiries

A registered securities association shall—

(A) establish and maintain a system for collecting and retaining registration information;

(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding—

(i) registration information on its members and their associated persons; and

(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

(C) adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).

(2) Recovery of costs

A registered securities association may charge persons making inquiries described in paragraph (1)(B), other than individual investors, reasonable fees for responses to such inquiries.

(3) Process for disputed information

Each registered securities association shall adopt rules establishing an administrative process for disputing the accuracy of information provided in response to inquiries under this subsection in consultation with any registered national securities exchange providing information pursuant to paragraph (1)(B)(ii).

(4) Limitation on liability

A registered securities association, or an exchange reporting information to such an association, shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(5) Definition

For purposes of this subsection, the term "registration information" means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law, or exchange or association rule, and the source and status of such information.

(j) Registration for sales of private securities offerings

A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 77c(b), 77d(2),¹ or 77d(6)¹ of this title and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding November 12, 1999, engaged in effecting such sales.

(k) Limited purpose national securities association

(1) Regulation of members with respect to security futures products

A futures association registered under section 21 of title 7 shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to section 78o(b)(11) of this title.

(2) Requirements for registration

Such a securities association shall—

(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security futures products and to comply, and (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security futures products, the rules and regulations thereunder, and its rules;

(B) have rules that—

(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to subsection (a) that are applicable to security futures products; and

(ii) are not designed to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association;

(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security futures products, the rules or regulations thereunder, or the rules of the association, by

expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security futures products and are tested for their knowledge of securities and security futures products.

(3) Exemption from rule change submission

Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for, advertising of, or standards of training, experience, competence, or other qualifications for security futures products for persons who effect transactions in security futures products, or rules effectuating the association's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;

(B) the association shall file pursuant to sections 78s(b)(1) and 78s(b)(2) of this title proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(C) the association shall file pursuant to section 78s(b)(1) of this title proposed rule changes that have been abrogated by the Commission pursuant to section 78s(b)(7)(C) of this title.

(4) Other exemptions

Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security futures products, be required to comply, with the following provisions of this chapter and the rules thereunder:

(A) Section 78h of this title.

(B) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

(C) Subsections (d), (f), and (k) ¹ of section 78q of this title.

(D) Subsections (a), (f), and (h) of section 78s of this title.

(l) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 78o(b) of this title (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 6f(a) of title 7 (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities association of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered pursuant to section 78f(g) of this title involving security futures products.

(m) Procedures and rules for security future products

A national securities association registered pursuant to subsection (a) shall, not later than 8 months after December 21, 2000, implement the procedures specified in section 78f(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 78f(h)(5) of this title.

(June 6, 1934, ch. 404, title I, §15A, as added June 25, 1938, ch. 677, §1, 52 Stat. 1070; amended Pub. L. 88–467, §7, Aug. 20, 1964, 78 Stat. 574; Pub. L. 94–29, §12, June 4, 1975, 89 Stat. 127; Pub. L. 99–571, title I, §102(g), Oct. 28, 1986, 100 Stat. 3218; Pub. L. 101–429, title V, §509, Oct. 15, 1990, 104 Stat. 957; Pub. L. 103–202, title I, §106(b)(1), title III, §303(a), (c), Dec. 17, 1993, 107 Stat. 2350, 2364, 2366; Pub. L. 106–102, title II, §203, Nov. 12, 1999, 113 Stat. 1391; Pub. L. 106–554, §1(a)(5) [title II, §§203(c), 206(j), (k)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–422, 2763A–

433; Pub. L. 109–290, §§5, 6, Sept. 29, 2006, 120 Stat. 1319, 1320; Pub. L. 111–203, title IX, §975(f), July 21, 2010, 124 Stat. 1923.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (6), (7), (9), (h)(1)(B), (k)(2)(B)(ii), (4), and (l), was in the original "this title". See References in Text note set out under section 78a of this title.

Paragraph (12), of subsection (b) of this section, referred to in subsec. (d)(2), was omitted in the general amendment of subsec. (b) by Pub. L. 94–29, see par. (11) of subsec. (b). A new par. (12) was added by Pub. L. 103–302, §303(a).

Sections 77d(2) and 77d(6) of this title, referred to in subsec. (j), were redesignated sections 77d(a)(2) and 77d(a)(6), respectively, of this title by Pub. L. 112–106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

Subsection (k) of section 78q of this title, referred to in subsec. (k)(4)(C), was redesignated subsec. (j) by Pub. L. 111–203, title VI, §617(a)(2), July 21, 2010, 124 Stat. 1616.

AMENDMENTS

2010—Subsec. (b)(15). Pub. L. 111–203 added par. (15).

2006—Subsec. (b)(14). Pub. L. 109–290, §5, added par. (14).

Subsec. (i). Pub. L. 109–290, §6, inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: "A registered securities association shall, within one year from October 15, 1990, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. Such association may charge persons, other than individual investors, reasonable fees for written responses to such inquiries. Such an association shall not have any liability to any person for any actions taken or omitted in good faith under this paragraph."

2000—Subsec. (k). Pub. L. 106–554, §1(a)(5) [title II, §203(c)], added subsec. (k).

Subsec. (l). Pub. L. 106–554, §1(a)(5) [title II, §206(j)], added subsec. (l).

Subsec. (m). Pub. L. 106–554, §1(a)(5) [title II, §206(k)(1)], added subsec. (m).

1999—Subsec. (j). Pub. L. 106–102 added subsec. (j).

1993—Subsec. (b)(12). Pub. L. 103–202, §303(a), added par. (12).

Subsec. (b)(13). Pub. L. 103–202, §303(c), added par. (13).

Subsec. (f). Pub. L. 103–202, §106(b)(1)(A), redesignated par. (3) as entire subsec. (f) and struck out pars. (1) and (2) which read as follows:

"(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.

"(2) A registered securities association may adopt and implement rules applicable to members of such association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this chapter and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this chapter and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of registered brokers and dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising."

Subsec. (g)(3)(D). Pub. L. 103–202, §106(b)(1)(B)(i), substituted "transactions in municipal securities" for "transactions in exempted securities".

Subsec. (g)(4), (5). Pub. L. 103–202, §106(b)(1)(B)(ii), (iii), redesignated par. (5) as (4) and struck out former par. (4) which allowed a registered securities association to deny membership to, condition the membership of, or to otherwise bar association with, the association, under circumstances where a government securities broker or dealer or other person violated financial responsibility rules adopted under section 78o–5(b)(1)(A) of this title, or where it appeared likely that such person or entity had or would engage in conduct which would subject such person or entity to sanctions under section 78o–5(c) of this title.

1990—Subsec. (i). Pub. L. 101–429 added subsec. (i).

1986—Subsec. (f). Pub. L. 99–571, §102(g)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security."

Subsec. (g)(3)(D). Pub. L. 99–571, §102(g)(2)(A), added subpar. (D).

Subsec. (g)(4), (5). Pub. L. 99–571, §102(g)(2)(B), (C), added par. (4) and redesignated former par. (4) as (5).

1975—Subsec. (a). Pub. L. 94–29, §12(2), struck out "with the Commission" after "registered", inserted reference to section 78s(a) of this title, substituted provisions covering an application for registration in the form prescribed by Commission rule containing the rules of the association and such other information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors for provisions covering a statement in the form prescribed by the Commission setting forth specified information and accompanied by specified documents, and struck out provision that registration not be construed as a waiver of constitutional rights or as a waiver of the right to contest the validity of Commission rules or regulations.

Subsec. (b). Pub. L. 94–29, §12(2), amended subsec. (b) generally, to conform its provisions concerning the registration and regulation of national and affiliated securities associations to those covering the registration and regulation of national securities exchanges contained in section 78f of this title and inserted provisions necessary to accommodate the creation of the Municipal Securities Rulemaking Board and to implement its purposes.

Subsec. (e). Pub. L. 94–29, §12(3), redesignated subsec. (i) as (e) and in subsec. (e) as so redesignated substituted "nonmember professional" for "nonmember broker or dealer" in par. (1), substituted "term 'nonmember professional' shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills" for "term 'nonmember broker or dealer' shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, or commercial bills" and added cl. (B) in par. (2), and, in par. (3), designated existing provisions as cl. (A) and added cl. (B). Former subsec. (e), covering the grant and denial of registration and the revocation of affiliated association registration, was struck out. See section 78s of this title.

Subsec. (f). Pub. L. 94–29, §12(3), redesignated subsec. (m) as (f). Former subsec. (f), covering withdrawal from registration, was struck out. See section 78s of this title.

Subsec. (g). Pub. L. 94–29, §12(3), (4), added subsec. (g). Former subsec. (g), covering review by the Commission of adverse actions against association members and stays of such actions, was struck out. See section 78s of this title.

Subsec. (h). Pub. L. 94–29, §12(3), (4), added subsec. (h). Former subsec. (h), covering the Commission's action upon findings, was struck out. See section 78s of this title.

Subsec. (i). Pub. L. 94–29, §12(3), redesignated subsec. (i) as (e) and amended subsec. (e) as so redesignated.

Subsecs. (j) to (l). Pub. L. 94–29, §12(3), struck out subsecs. (j) to (l) which covered the filing of changes or additions to association rules and current information, the abrogation and alteration of association rules and supplements to association rules, the suspension of an association or its members, the revocation of registration, the expulsion of members, and the removal of officers or directors. See section 78s of this title.

Subsec. (m). Pub. L. 94–29, §12(3), redesignated subsec. (m) as (f).

Subsec. (n). Pub. L. 94–29, §12(3), struck out subsec. (n) which directed that provisions of this section prevail in the event of any conflict between this section and any other law of the United States in force on June 25, 1938.

1964—Subsec. (b)(1), (2). Pub. L. 88–467, §7(a)(1), substituted a period for the semicolon at end of pars. (1) and (2).

Subsec. (b)(3). Pub. L. 88–467, §7(a)(1), (2), substituted a period for the semicolon at end of par. (3), struck out "of" before "any means", substituted "paragraph (4) or (5) of this subsection, or a rule of the association permitted under this paragraph. The rules" for "paragraph (4) of this subsection: *Provided*, That the rules", and inserted provision authorizing a registered securities association to adopt rules under which it might exclude from membership persons who had been suspended or expelled from a national securities exchange or who were barred or suspended from being associated with all brokers or dealers who are members of such an exchange for violation of exchange rules.

Subsec. (b)(4). Pub. L. 88–467, §7(a)(1), (3), substituted a period for the semicolon at end of par. (4), deleted from text preceding cl. (A) the language "or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", inserted in cl. (A) "or has been and is barred or suspended from being associated with all brokers or dealers which are members of such exchange", inserted in cl. (B) provision for suspension for

period not exceeding twelve months or barring or suspending the broker or dealer from being associated with a broker or dealer, inserted at the beginning of cl. (C) "whether prior or subsequent to becoming a broker or dealer," (derived from former cl. (1) of this paragraph) and added to cl. (C) provision conferring jurisdiction upon the Commission, an exchange, or a registered securities association to determine whether an individual is the cause of disciplinary action taken by them against a broker or a dealer, and added cl. (D).

Subsec. (b)(5). Pub. L. 88-467, §7(a)(4), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (8). Pub. L. 88-467, §7(a)(1), (4), substituted periods for semicolons at end of paragraphs, and redesignated former pars. (5) to (7) as (6) to (8), respectively. Former pars. (6) to (8) redesignated (7) to (9), respectively.

Subsec. (b)(9). Pub. L. 88-467, §7(a)(1), (4), (5), substituted a period for the semicolon at the end, redesignated former par. (8) as (9), and inserted "and persons associated with its members" and "or being suspended or barred from being associated with all members," respectively. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 88-467, §7(a)(4), (6), redesignated former par. (9) as (10), and inserted in paragraph preceding cl. (A) "and persons associated with members", "or the barring of any person from being associated with a member", "or other persons", and "or person", substituted a period for a comma at end of cls. (A) and (B) and a period for ", and" at end of cl. (C), inserted in cl. (A) "or other person" in two places and in concluding sentence "or whether any person shall be barred from being associated with a member", "or person", "or bar" in two places, and substituted a period for "; and", respectively. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 88-467, §7(a)(4), redesignated former par. (10) as (11).

Subsec. (b)(12). Pub. L. 88-467, §7(a)(7), added par. (12).

Pub. L. 88-467, §7(a)(7), inserted effective date provisions for application of subsec. (b) prior to its amendment and since its amendment with July 1, 1964 as the guiding date.

Subsec. (d)(2). Pub. L. 88-467, §7(b), substituted "(10)" for "(9)" and inserted "and paragraph (12)," after ", inclusive,".

Subsec. (g). Pub. L. 88-467, §7(c), provided that disciplinary action taken by a registered securities association against a person associated with a member will be reviewable by the Commission, shortened the period for review by an aggrieved person from sixty days or within such longer period as the Commission may determine to thirty days or within such longer period as the Commission may determine, authorized the Commission, after notice and opportunity for hearing on the question of stay to order no stay of action of a registered securities association pending the Commission's decision on review, and authorized the Commission to limit the hearing on the question of stay to affidavits and oral arguments.

Subsec. (h). Pub. L. 88-467, §7(d), made the procedures and the Commission's authority in reviewing disciplinary action by a registered securities association against members and in reviewing association action in denying membership also applicable to Commission review of disciplinary action against persons associated with members and to the barring by an association of any person from being associated with a member.

Subsec. (k)(2). Pub. L. 88-467, §7(e), inserted ", or with such modifications of such alteration or supplement as it deems necessary" after "in the manner theretofore requested", redesignated cls. (1) to (4) as (A) to (D), respectively, and inserted in cl. (A) "or the barring from being associated with a member" and "or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof".

Subsec. (l). Pub. L. 88-467, §7(f), substituted a period for a semicolon at end of par. (1) and inserted in par. (2) preceding cl. (A) ", or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111-203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106-102, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 303(a), (c) of Pub. L. 103-202 effective 12 months after Dec. 17, 1993, with provisions for rulemaking authority and review of filings prior to effective date, see section 304(a) of Pub. L. 103-202, set out as a note under section 78f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective 180 days after 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.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 106(b)(1) of Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

Amendment by section 303(a), (c) of Pub. L. 103–202 not to limit authority of Securities and Exchange Commission, a registered securities association or a national securities exchange under any provision of this chapter, or preclude the Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103–202, set out in an Effective Date of 1993 Amendment note under section 78f 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.

[¹ See References in Text note below.](#)



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 275.206(4)-2 Custody of funds or securities of clients by investment advisers.

(a) **Safekeeping required.** If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b-6(4)) for you to have custody of client funds or securities unless:

- (1) **Qualified custodian.** A qualified custodian maintains those funds and securities:
 - (i) In a separate account for each client under that client's name; or
 - (ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

- (2) **Notice to clients.** If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If you send account statements to a client to which you are required to provide this notice, include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from the adviser.

206(4) 2(a)(3) (3) **Account statements to clients.** You have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

Copy Citation
Copy URL

- (4) **Independent verification.** The client funds and securities of which you have custody are verified by actual examination at least once during each calendar year, except as provided below, by an independent public accountant, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if you maintain client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

- (i) File a certificate on Form ADV-E (17 CFR 279.8) with the Commission within 120 days of the time chosen by the accountant in paragraph (a)(4) of this section, stating that it has examined the funds and securities and describing the nature and extent of the examination;
- (ii) Upon finding any material discrepancies during the course of the examination, notify the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations; and

- (iii) Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file within four business days Form ADV-E accompanied by a statement that includes:
 - (A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant; and
 - (B) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.
 - (5) **Special rule for limited partnerships and limited liability companies.** If you or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (a)(3) of this section must be sent to each limited partner (or member or other beneficial owner).
 - (6) **Investment advisers acting as qualified custodians.** If you maintain, or if you have custody because a related person maintains, client funds or securities pursuant to this section as a qualified custodian in connection with advisory services you provide to clients:
 - (i) The independent public accountant you retain to perform the independent verification required by paragraph (a)(4) of this section must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and
 - (ii) You must obtain, or receive from your related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent public accountant:
 - (A) The internal control report must include an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either you or a related person on behalf of your advisory clients, during the year;
 - (B) The independent public accountant must verify that the funds and securities are reconciled to a custodian other than you or your related person; and
 - (C) The independent public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.
 - (7) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(2) and (a)(3) of this section.
- (b) **Exceptions.**
- (1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(1)) (“mutual fund”), you may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this section.
 - (2) **Certain privately offered securities.**

- (i) You are not required to comply with paragraph (a)(1) of this section with respect to securities that are:
 - (A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
 - (B) Uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and
 - (C) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
 - (ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or a limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this section.
- (3) **Fee deduction.** Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if:
- (i) you have custody of the funds and securities solely as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee; and
 - (ii) if the qualified custodian is a related person, you can rely on paragraph (b)(6) of this section.
- (4) **Limited partnerships subject to annual audit.** You are not required to comply with paragraphs (a)(2) and (a)(3) of this section and you shall be deemed to have complied with paragraph (a)(4) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in rule 1-02(d) of Regulation S-X (17 CFR 210.1-02(d))):
- (i) At least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year;
 - (ii) By an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and
 - (iii) Upon liquidation and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) promptly after the completion of such audit.
- (5) **Registered investment companies.** You are not required to comply with this section (17 CFR 275.206(4)-2) with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64).
- (6) **Certain Related Persons.** Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client funds and securities if:
- (i) you have custody under this rule solely because a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients; and
 - (ii) your related person is operationally independent of you.

- (c) **Delivery to Related Person.** Sending an account statement under paragraph (a)(5) of this section or distributing audited financial statements under paragraph (b)(4) of this section shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are your related persons.
- (d) **Definitions.** For the purposes of this section:
- (1) **Control** means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Control includes:
 - (i) Each of your firm's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control your firm;
 - (ii) A person is presumed to control a corporation if the person:
 - (A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or
 - (B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;
 - (iii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;
 - (iv) A person is presumed to control a limited liability company if the person:
 - (A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
 - (B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or
 - (C) Is an elected manager of the limited liability company; or
 - (v) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.
 - (2) **Custody** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. You have custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients. Custody includes:
 - (i) Possession of client funds or securities (but not of checks drawn by clients and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;
 - (ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and
 - (iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.
 - (3) **Independent public accountant** means a public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

- (4) **Independent representative** means a person that:
- (i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);
 - (ii) Does not control, is not controlled by, and is not under common control with you; and
 - (iii) Does not have, and has not had within the past two years, a material business relationship with you.
- (5) **Operationally independent:** for purposes of paragraph (b)(6) of this section, a related person is presumed not to be operationally independent unless each of the following conditions is met and no other circumstances can reasonably be expected to compromise the operational independence of the related person:
- (i) Client assets in the custody of the related person are not subject to claims of the adviser's creditors;
 - (ii) advisory personnel do not have custody or possession of, or direct or indirect access to client assets of which the related person has custody, or the power to control the disposition of such client assets to third parties for the benefit of the adviser or its related persons, or otherwise have the opportunity to misappropriate such client assets;
 - (iii) advisory personnel and personnel of the related person who have access to advisory client assets are not under common supervision; and
 - (iv) advisory personnel do not hold any position with the related person or share premises with the related person.
- (6) **Qualified custodian** means:
- (i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b-2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);
 - (ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;
 - (iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
 - (iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.
- (7) **Related person** means any person, directly or indirectly, controlling or controlled by you, and any person that is under common control with you.

7 U.S.C.

United States Code, 2019 Edition

Title 7 - AGRICULTURE

CHAPTER 1 - COMMODITY EXCHANGES

From the U.S. Government Publishing Office, www.gpo.gov

CHAPTER 1—COMMODITY EXCHANGES

- Sec.
1. Short title.
 - 1a. Definitions.
 - 1b. Requirements of Secretary of the Treasury regarding exemption of foreign exchange swaps and foreign exchange forwards from definition of the term "swap".
 2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce.
 - 2a to 4a. Transferred.
 5. Findings and purpose.
 6. Regulation of futures trading and foreign transactions.
 - 6a. Excessive speculation.
 - 6b. Contracts designed to defraud or mislead.
 - 6b–1. Enforcement authority.
 - 6c. Prohibited transactions.
 - 6d. Dealing by unregistered futures commission merchants or introducing brokers prohibited; duties in handling customer receipts; conflict-of-interest systems and procedures; Chief Compliance Officer; rules to avoid duplicative regulations; swap requirements; portfolio margining accounts.
 - 6e. Dealings by unregistered floor trader or broker prohibited.
 - 6f. Registration and financial requirements; risk assessment.
 - 6g. Reporting and recordkeeping.
 - 6h. False self-representation as registered entity member prohibited.
 - 6i. Reports of deals equal to or in excess of trading limits; books and records; cash and controlled transactions.
 - 6j. Restrictions on dual trading in security futures products on designated contract markets and registered derivatives transaction execution facilities.
 - 6k. Registration of associates of futures commission merchants, commodity pool operators, and commodity trading advisors; required disclosure of disqualifications; exemptions for associated persons.
 - 6l. Commodity trading advisors and commodity pool operators; Congressional finding.
 - 6m. Use of mails or other means or instrumentalities of interstate commerce by commodity trading advisors and commodity pool operators; relation to other law.
 - 6n. Registration of commodity trading advisors and commodity pool operators; application; expiration and renewal; record keeping and reports; disclosure; statements of account.
 - 6o. Fraud and misrepresentation by commodity trading advisors, commodity pool operators, and associated persons.
 - 6o–1. Transferred.
 - 6p. Standards and examinations.
 - 6q. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.
 - 6r. Reporting and recordkeeping for uncleared swaps.
 - 6s. Registration and regulation of swap dealers and major swap participants.
 - 6t. Large swap trader reporting.

7. Designation of boards of trade as contract markets.
- 7a. Repealed.
- 7a-1. Derivatives clearing organizations.
- 7a-2. Common provisions applicable to registered entities.
- 7a-3. Repealed.
- 7b. Suspension or revocation of designation as registered entity.
- 7b-1. Designation of securities exchanges and associations as contract markets.
- 7b-2. Privacy.
- 7b-3. Swap execution facilities.
8. Application for designation as contract market or derivatives transaction execution facility; time; suspension or revocation of designation; hearing; review by court of appeals.
9. Prohibition regarding manipulation and false information.
- 9a. Assessment of money penalties.
- 9b. Rules prohibiting deceptive and other abusive telemarketing acts or practices.
- 9c. Notice of investigations and enforcement actions.
10. Repealed.
- 10a. Cooperative associations and corporations, exclusion from board of trade; rules of board inapplicable to payment of compensation by association.
11. Vacation on request of designation or registration as "registered entity"; redesignation or reregistration.
12. Public disclosure.
- 12-1 to 12-3. Omitted.
- 12a. Registration of commodity dealers and associated persons; regulation of registered entities.
- 12b. Trading ban violations; prohibition.
- 12c. Disciplinary actions.
- 12d. Commission action for noncompliance with export sales reporting requirements.
- 12e. Repealed.
13. Violations generally; punishment; costs of prosecution.
- 13-1. Violations, prohibition against dealings in motion picture box office receipts or onion futures; punishment.
- 13a. Nonenforcement of rules of government or other violations; cease and desist orders; fines and penalties; imprisonment; misdemeanor; separate offenses.
- 13a-1. Enjoining or restraining violations.
- 13a-2. Jurisdiction of States.
- 13b. Manipulations or other violations; cease and desist orders against persons other than registered entities; punishment.
- 13c. Responsibility as principal; minor violations.
14. Repealed.
- 15, 15a. Omitted or Repealed.
- 15b. Cotton futures contracts.
16. Commission operations.
- 16a. Service fees and National Futures Association study.
17. Separability.
- 17a. Separability of 1936 amendment.
- 17b. Separability of 1968 amendment.
18. Complaints against registered persons.
19. Consideration of costs and benefits and antitrust laws.
20. Market reports.
21. Registered futures associations.
22. Research and information programs; reports to Congress.
23. Standardized contracts for certain commodities.
24. Customer property with respect to commodity broker debtors; definitions.

- 24a. Swap data repositories.
- 25. Private rights of action.
- 26. Commodity whistleblower incentives and protection.
- 27. Definitions.
- 27a. Exclusion of identified banking product.
- 27b. Repealed.
- 27c. Exclusion of certain other identified banking products.
- 27d. Administration of the predominance test.
- 27e. Repealed.
- 27f. Contract enforcement.

§1. Short title

This chapter may be cited as the "Commodity Exchange Act."
(Sept. 21, 1922, ch. 369, §1, 42 Stat. 998; June 15, 1936, ch. 545, §1, 49 Stat. 1491.)

PRIOR PROVISIONS

This chapter superseded act Aug. 24, 1921, ch. 86, 42 Stat. 187, known as "The Future Trading Act," which act was declared unconstitutional, at least in part, in *Hill v. Wallace*, Ill. 1922, 42 S.Ct. 453, 259 U.S. 44, 66 L.Ed. 822. Section 3 of that act was found unconstitutional as imposing a penalty in *Trusler v. Crooks*, Mo. 1926, 46 S.Ct. 165, 269 U.S. 475, 70 L.Ed. 365.

AMENDMENTS

1936—Act June 15, 1936, substituted "Commodity Exchange Act" for "The Grain Futures Act".

EFFECTIVE DATE OF 1936 AMENDMENT

Act June 15, 1936, ch. 545, §13, 49 Stat. 1501, provided that: "All provisions of this Act [see Tables for classification] authorizing the registration of futures commission merchants and floor brokers, the fixing of fees and charges therefor, the promulgation of rules, regulations and orders, and the holding of hearings precedent to the promulgation of rules, regulations, and orders shall be effective immediately. All other provisions of this Act shall take effect ninety days after the enactment of this Act [June 15, 1936]."

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–1, title III, §301, Jan. 12, 2015, 129 Stat. 28, provided that: "This title [amending section 6s of this title and section 78o–10 of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 6s of this title] may be cited as the 'Business Risk Mitigation and Price Stabilization Act of 2015'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–234, title XIII, §13001, May 22, 2008, 122 Stat. 1427, and Pub. L. 110–246, §4(a), title XIII, §13001, June 18, 2008, 122 Stat. 1664, 2189, provided that: "This title [amending sections 1a, 2, 6a, 6b, 6f, 6g, 6i, 6k, 6o–1, 6q, 7a, 7a–2, 7b, 8, 9, 12, 13, 13a, 13a–1, 16, 18, 21, and 25 of this title and enacting provisions set out as notes under section 2 of this title] may be cited as the 'CFTC Reauthorization Act of 2008'."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(5) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–365, provided that: "This Act [H.R. 5660, as enacted by section 1(a)(5) of Pub. L. 106–554, enacting sections 5, 6o–1, 7 to 7a–3, 7b–1, 7b–2, 9c, and 27 to 27f of this title, sections 781 to 784 of Title 11, Bankruptcy, sections 339a, 4421, and 4422 of Title 12, Banks and Banking, and sections 77b–1 and 78c–1 of Title 15, Commerce and Trade, amending sections 1a, 2, 2a, 4, 4a, 6 to 6m, 6p, 7a–2, 7b, 8 to 9a, 10a, 11, 12, 12a to 12c, 13, 13a to 13b, 16, 18 to 21, and 25 of this title, sections 101, 103, 109, and 761 of Title 11, sections 624 and 4402 of Title 12, and sections 77b, 77c, 77l, 77q, 78c, 78f, 78g, 78i, 78j, 78k–1, 78l, 78o, 78o–3, 78p, 78q, 78q–1, 78s, 78t, 78u, 78u–1, 78bb, 78ee, 78ccc, 78lll, 80a–2, 80b–2, and 80b–3 of Title 15, repealing sections 5, 7, 7a, and 12e of this title,

and enacting provisions set out as notes under this section, section 2 of this title, and section 78c of Title 15] may be cited as the 'Commodity Futures Modernization Act of 2000'."

Pub. L. 106–554, §1(a)(5) [title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A–457, provided that: "This title [title IV of H.R. 5660, as enacted by section 1(a)(5) of Pub. L. 106–554, enacting sections 27 to 27f of this title] may be cited as the 'Legal Certainty for Bank Products Act of 2000'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–9, §1, Apr. 21, 1995, 109 Stat. 154, provided that: "This Act [amending section 16 of this title] may be cited as the 'CFTC Reauthorization Act of 1995'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–546, §1(a), Oct. 28, 1992, 106 Stat. 3590, provided that: "This Act [enacting sections 1a and 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title] may be cited as the 'Futures Trading Practices Act of 1992'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–641, §1, Nov. 10, 1986, 100 Stat. 3556, provided that: "This Act [enacting section 2271a of this title, amending sections 2a, 6b, 6c, 7a, 13, 13a–1, 15, 16, 21, 23, 74, 87b, 1444, 1445b–3, and 1445c–2 of this title, sections 590h and 3831 of Title 16, Conservation, sections 606, 609, 621, 671, and 676 of Title 21, Food and Drugs, repealing section 14 of this title, and enacting provisions set out as notes under sections 20, 71, 76, 87b, and 2271a of this title and sections 601, 606, 609, 621, 671, and 676 of Title 21] may be cited as the 'Futures Trading Act of 1986'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97–444, §1, Jan. 11, 1983, 96 Stat. 2294, provided: "That this Act [enacting sections 2a, 12d, 25, and 26 of this title, amending sections 2, 4, 4a, 5, 6, 6a, 6c, 6d, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7a, 8, 9, 12, 12a, 13, 13a–1, 13a–2, 13c, 16, 16a, 18, 20, 21, 23, and 612c–3 of this title, and enacting provisions set out as a note under section 2 of this title] may be cited as the 'Futures Trading Act of 1982'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–405, §1, Sept. 30, 1978, 92 Stat. 865, provided: "That this Act [enacting sections 13a–2, 16a, and 23 of this title, amending sections 2, 4a, 6c, 6d, 6f, 6g, 6k, 6m, 6n, 6o, 7a, 8, 12, 12a, 12c, 13, 13a, 15, 16, 18, and 21 of this title and section 6001 of Title 18, Crimes and Criminal Procedure, repealing section 15a of this title, omitting sections 12–1 to 12–3 of this title, and enacting provisions set out as notes under sections 2 and 20 of this title] may be cited as the 'Futures Trading Act of 1978'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–463, §1, Oct. 23, 1974, 88 Stat. 1389, provided: "That this Act [enacting sections 4a, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 9a, 12–2, 13–3, 12c, 13a–1, 15a, 18, 19, 20, 21, and 22 of this title, amending sections 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 11, 12, 12–1, 12a, 12b, 13, 13a, 13b, 13c, 15, and 16 of this title and sections 5314, 5315, 5316, and 5108 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 2, 4a, and 6a of this title] may be cited as the 'Commodity Futures Trading Commission Act of 1974'."

SAVINGS PROVISIONS FOR 2000 AMENDMENT

Pub. L. 106–554, §1(a)(5) [title III, §304], Dec. 21, 2000, 114 Stat. 2763, 2763A–457, provided that: "Nothing in this Act [see Short Title of 2000 Amendment note above] or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a security for any purpose under the securities laws. Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a futures contract or commodity option for any purpose under the Commodity Exchange Act [7 U.S.C. 1 et seq.]."

CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(5) [title I, §122], Dec. 21, 2000, 114 Stat. 2763, 2763A–405, provided that: "Except as expressly provided in this Act [see Short Title of 2000 Amendment note above] or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission."

PURPOSES OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(5) [§2], Dec. 21, 2000, 114 Stat. 2763, 2763A–366, provided that:

"The purposes of this Act [see Short Title of 2000 Amendment note above] are—

- "(1) to reauthorize the appropriation for the Commodity Futures Trading Commission;
- "(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act [7 U.S.C. 1 et seq.];
- "(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;
- "(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;
- "(5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;
- "(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;
- "(7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and
- "(8) to enhance the competitive position of United States financial institutions and financial markets."

REPORT TO CONGRESS

Pub. L. 106–554, §1(a)(5) [title I, §125], Dec. 21, 2000, 114 Stat. 2763, 2763A–411, provided that:

"(a) The Commodity Futures Trading Commission (in this section referred to as the 'Commission') shall undertake and complete a study of the Commodity Exchange Act [7 U.S.C. 1 et seq.] (in this section referred to as 'the Act') and the Commission's rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000]. The study shall identify—

- "(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission's rules and regulations thereunder;
- "(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;
- "(3) the extent to which the Commission believes it can effect the changes identified in paragraph (1) of this subsection through its exemptive authority under section 4(c) of the Act [7 U.S.C. 6(c)]; and
- "(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

"(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

"(c) The Commission shall transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the results of its study, which shall include an analysis of comments received."

§1a. Definitions

As used in this chapter:

(1) Alternative trading system

The term "alternative trading system" means an organization, association, or group of persons that—

- (A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(b)] (except paragraph (11) thereof);
- (B) performs the functions commonly performed by an exchange (as defined in section 3(a) (1) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(1)]);
- (C) does not—
 - (i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on the alternative trading system; or
 - (ii) discipline subscribers other than by exclusion from trading; and

(D) is exempt from the definition of the term "exchange" under such section 3(a)(1) [15 U.S.C. 78c(a)(1)] by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.

(2) Appropriate Federal banking agency

The term "appropriate Federal banking agency"—

(A) has the meaning given the term in section 1813 of title 12;

(B) means the Board in the case of a noninsured State bank; and

(C) is the Farm Credit Administration for farm credit system institutions.

(3) Associated person of a security-based swap dealer or major security-based swap participant

The term "associated person of a security-based swap dealer or major security-based swap participant" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(4) Associated person of a swap dealer or major swap participant

(A) In general

The term "associated person of a swap dealer or major swap participant" means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

(i) the solicitation or acceptance of swaps; or

(ii) the supervision of any person or persons so engaged.

(B) Exclusion

Other than for purposes of section 6s(b)(6) of this title, the term "associated person of a swap dealer or major swap participant" does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

(5) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(6) Board of trade

The term "board of trade" means any organized exchange or other trading facility.

(7) Cleared swap

The term "cleared swap" means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.

(8) Commission

The term "Commission" means the Commodity Futures Trading Commission established under section 2(a)(2) of this title.

(9) Commodity

The term "commodity" means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by section 13–1 of this title) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.

(10) Commodity pool

(A) In general

The term "commodity pool" means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

- (i) commodity for future delivery, security futures product, or swap;
- (ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;
- (iii) commodity option authorized under section 6c of this title; or
- (iv) leverage transaction authorized under section 23 of this title.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "commodity pool" any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(11) Commodity pool operator

(A) In general

The term "commodity pool operator" means any person—

(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

- (I) commodity for future delivery, security futures product, or swap;
- (II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;
- (III) commodity option authorized under section 6c of this title; or
- (IV) leverage transaction authorized under section 23 of this title; or

(ii) who is registered with the Commission as a commodity pool operator.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "commodity pool operator" any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(12) Commodity trading advisor

(A) In general

Except as otherwise provided in this paragraph, the term "commodity trading advisor" means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

- (I) any contract of sale of a commodity for future delivery, security futures product, or swap;
- (II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title ¹
- (III) any commodity option authorized under section 6c of this title; or
- (IV) any leverage transaction authorized under section 23 of this title;

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i);

(iii) is registered with the Commission as a commodity trading advisor; or

(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(B) Exclusions

Subject to subparagraph (C), the term "commodity trading advisor" does not include—

- (i) any bank or trust company or any person acting as an employee thereof;
- (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher;
- (iii) any floor broker or futures commission merchant;
- (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;
- (v) the fiduciary of any defined benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);
- (vi) any contract market or derivatives transaction execution facility; and
- (vii) such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.

(C) Incidental services

Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

(D) Advisors

The Commission, by rule or regulation, may include within the term "commodity trading advisor", any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.

(13) Contract of sale

The term "contract of sale" includes sales, agreements of sale, and agreements to sell.

(14) Cooperative association of producers

The term "cooperative association of producers" means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with sections 291 and 292 of this title, including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with this chapter.

(15) Derivatives clearing organization

(A) In general

The term "derivatives clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

- (i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;
- (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or
- (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(B) Exclusions

The term "derivatives clearing organization" does not include an entity, facility, system, or organization solely because it arranges or provides for—

- (i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

- (ii) settlement or netting of cash payments through an interbank payment system; or
- (iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(16) Electronic trading facility

The term "electronic trading facility" means a trading facility that—

- (A) operates by means of an electronic or telecommunications network; and
- (B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

(17) Eligible commercial entity

The term "eligible commercial entity" means, with respect to an agreement, contract or transaction in a commodity—

(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (18)(A) that, in connection with its business—

- (i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;
- (ii) incurs risks, in addition to price risk, related to the commodity; or
- (iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

(ii) either—

(I) in the case of a collective investment vehicle whose participants include persons other than—

(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 CFR 4.7(a));

(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (17 CFR 230.501(a)), with total assets of \$2,000,000; or

(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(51)(A)];

in each case as in effect on December 21, 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, \$1,000,000,000 in total assets; or

(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, \$100,000,000 in total assets; or

(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

(18) Eligible contract participant

The term "eligible contract participant" means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

- (I) has total assets exceeding \$5,000,000; and
- (II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2(c)(2)(B)(vi) of this title and section 2(c)(2)(C)(vii) of this title, the term "eligible contract participant" shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

- (I) that has total assets exceeding \$10,000,000;
- (II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or
- (III) that—
 - (aa) has a net worth exceeding \$1,000,000; and
 - (bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

- (I) that has total assets exceeding \$5,000,000; or
- (II) the investment decisions of which are made by—
 - (aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this chapter;
 - (bb) a foreign person performing a similar role or function subject as such to foreign regulation;
 - (cc) a financial institution; or
 - (dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii) of this title;

(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be

an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

(III) an investment bank holding company (as defined in section 17(i)² of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));³

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) \$10,000,000; or

(II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], a commodity trading advisor subject to regulation under this chapter, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

(19) Excluded commodity

The term "excluded commodity" means—

(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;

(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or

(II) based solely on one or more commodities that have no cash market;

(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

(II) associated with a financial, commercial, or economic consequence.

(20) Exempt commodity

The term "exempt commodity" means a commodity that is not an excluded commodity or an agricultural commodity.

(21) Financial institution

The term "financial institution" means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as "an agreement corporation";

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an "Edge Act corporation";

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 1752 of title 12);

(E) a depository institution (as defined in section 1813 of title 12);

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 3101 of title 12);

(G) any financial holding company (as defined in section 1841 of title 12);

(H) a trust company; or

(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).

(22) Floor broker

(A) In general

The term "floor broker" means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

(I) any commodity for future delivery, security futures product, or swap; or

(II) any commodity option authorized under section 6c of this title; or

(ii) who is registered with the Commission as a floor broker.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "floor broker" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(23) Floor trader

(A) In general

The term "floor trader" means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account—

(I) any commodity for future delivery, security futures product, or swap; or

(II) any commodity option authorized under section 6c of this title; or

(ii) who is registered with the Commission as a floor trader.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "floor trader" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(24) Foreign exchange forward

The term "foreign exchange forward" means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

(25) Foreign exchange swap

The term "foreign exchange swap" means a transaction that solely involves—

(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.

(26) Foreign futures authority

The term "foreign futures authority" means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

(27) Future delivery

The term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery.

(28) Futures commission merchant

(A) In general

The term "futures commission merchant" means an individual, association, partnership, corporation, or trust—

(i) that—

(I) is—

(aa) engaged in soliciting or in accepting orders for—

(AA) the purchase or sale of a commodity for future delivery;

(BB) a security futures product;

(CC) a swap;

(DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(EE) any commodity option authorized under section 6c of this title; or

(FF) any leverage transaction authorized under section 23 of this title; or

(bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title; and

(II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) that is registered with the Commission as a futures commission merchant.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "futures commission merchant" any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this chapter, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(29) Hybrid instrument

The term "hybrid instrument" means a security having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities.

(30) Interstate commerce

The term "interstate commerce" means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

(31) Introducing broker

(A) In general

The term "introducing broker" means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

(i) who—

(I) is engaged in soliciting or in accepting orders for—

(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(cc) any commodity option authorized under section 6c of this title; or

(dd) any leverage transaction authorized under section 23 of this title; and

(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) who is registered with the Commission as an introducing broker.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "introducing broker" any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this chapter, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(32) Major security-based swap participant

The term "major security-based swap participant" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(33) Major swap participant

(A) In general

The term "major swap participant" means any person who is not a swap dealer, and—

(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

(I) positions held for hedging or mitigating commercial risk; and

(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or

financial markets; or

(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.

(B) Definition of substantial position

For purposes of subparagraph (A), the Commission shall define by rule or regulation the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) Scope of designation

For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

(D) Exclusions

The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(34) Member of a registered entity; member of a derivatives transaction execution facility

The term "member" means, with respect to a registered entity or derivatives transaction execution facility, an individual, association, partnership, corporation, or trust—

(A) owning or holding membership in, or admitted to membership representation on, the registered entity or derivatives transaction execution facility; or

(B) having trading privileges on the registered entity or derivatives transaction execution facility.

A participant in an alternative trading system that is designated as a contract market pursuant to section 7b-1 of this title is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

(35) Narrow-based security index

(A) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(B) Notwithstanding subparagraph (A), an index is not a narrow-based security index if—

- (i)(I) it has at least 9 component securities;
- (II) no component security comprises more than 30 percent of the index's weighting; and
- (III) each component security is—
 - (aa) registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 781];
 - (bb) one of 750 securities with the largest market capitalization; and
 - (cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before December 21, 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

(v) no more than 18 months have passed since December 21, 2000, and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before December 21, 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

(C) Within 1 year after December 21, 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

(E) For purposes of subparagraphs (A) and (B)—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(36) Option

The term "option" means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty".

(37) Organized exchange

The term "organized exchange" means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

- (i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and
- (ii) include disciplinary sanctions other than the exclusion of participants from trading.

(38) Person

The term "person" imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(39) Prudential regulator

The term "prudential regulator" means—

(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- (i) a State-chartered bank that is a member of the Federal Reserve System;
- (ii) a State-chartered branch or agency of a foreign bank;
- (iii) any foreign bank which does not operate an insured branch;
- (iv) any organization operating under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or having an agreement with the Board under section 225 of the Federal Reserve Act ⁴;
- (v) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1965 ⁴ (12 U.S.C. 1841)), any foreign bank (as defined in section 3101(7) of title 12) that is treated as a bank holding company under section 3106(a) of title 12, and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered with the Commission as a swap dealer or major swap participant under this chapter or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant);
- (vi) after the transfer date (as defined in section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5411]), any savings and loan holding company (as defined in section 1467a of title 12) and any subsidiary of such company (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered as a swap dealer or major swap participant with the Commission under this chapter or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant); or
- (vii) any organization operating under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- (i) a national bank;
- (ii) a federally chartered branch or agency of a foreign bank; or
- (iii) any Federal savings association;

(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- (i) a State-chartered bank that is not a member of the Federal Reserve System; or
- (ii) any State savings association;

(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 4502 of title 12).

(40) Registered entity

The term "registered entity" means—

- (A) a board of trade designated as a contract market under section 7 of this title;
- (B) a derivatives clearing organization registered under section 7a–1 of this title;
- (C) a board of trade designated as a contract market under section 7b–1 of this title;
- (D) a swap execution facility registered under section 7b–3 of this title;
- (E) a swap data repository registered under section 24a of this title; and
- (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

(41) Security

The term "security" means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(42) Security-based swap

The term "security-based swap" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(43) Security-based swap dealer

The term "security-based swap dealer" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(44) Security future

The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] as in effect on January 11, 1983). The term "security future" does not include any agreement, contract, or transaction excluded from this chapter under section 2(c), 2(d), 2(f), or 2(g) of this title (as in effect on December 21, 2000) or sections 27 to 27f of this title.

(45) Security futures product

The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(46) Significant price discovery contract

The term "significant price discovery contract" means an agreement, contract, or transaction subject to section 2(h)(5) of this title.

(47) Swap

(A) In general

Except as provided in subparagraph (B), the term "swap" means any agreement, contract, or transaction—

- (i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;
- (ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;
- (iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the

transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

- (I) an interest rate swap;
- (II) a rate floor;
- (III) a rate cap;
- (IV) a rate collar;
- (V) a cross-currency rate swap;
- (VI) a basis swap;
- (VII) a currency swap;
- (VIII) a foreign exchange swap;
- (IX) a total return swap;
- (X) an equity index swap;
- (XI) an equity swap;
- (XII) a debt index swap;
- (XIII) a debt swap;
- (XIV) a credit spread;
- (XV) a credit default swap;
- (XVI) a credit swap;
- (XVII) a weather swap;
- (XVIII) an energy swap;
- (XIX) a metal swap;
- (XX) an agricultural swap;
- (XXI) an emissions swap; and
- (XXII) a commodity swap;

(iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;

(v) including any security-based swap agreement which meets the definition of "swap agreement" as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

(B) Exclusions

The term "swap" does not include—

(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 23 of this title, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

- (I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and
- (II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

(viii) any agreement, contract, or transaction that is—

(I) based on a security; and

(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11)) ⁵ by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

(C) Rule of construction regarding master agreements

(i) In general

Except as provided in clause (ii), the term "swap" includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

(ii) Exception

For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

(D) Mixed swap

The term "security-based swap" includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68) (A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

(E) Treatment of foreign exchange swaps and forwards

(i) In general

Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination under section 1b of this title that either foreign exchange swaps or foreign exchange forwards or both—

(I) should be not be regulated as swaps under this chapter; and

(II) are not structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of that Act [15 U.S.C. 8321(b)].

(ii) Congressional notice; effectiveness

The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

(iii) Reporting

Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 6r of this title within such time period as the Commission may by rule or regulation prescribe.

(iv) Business standards

Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 6s(h) of this title.

(v) Secretary

For purposes of this subparagraph, the term "Secretary" means the Secretary of the Treasury.

(F) Exception for certain foreign exchange swaps and forwards

(i) Registered entities

Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of this chapter or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

(ii) Retail transactions

Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this chapter or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2) of this title.

(48) Swap data repository

The term "swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

(49) Swap dealer

(A) In general

The term "swap dealer" means any person who—

- (i) holds itself out as a dealer in swaps;
- (ii) makes a market in swaps;
- (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or
- (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a

loan with that customer.

(B) Inclusion

A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

(C) Exception

The term "swap dealer" does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(D) De minimis exception

The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

(50) Swap execution facility

The term "swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

- (A) facilitates the execution of swaps between persons; and
- (B) is not a designated contract market.

(51) Trading facility

(A) In general

The term "trading facility" means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—

- (i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or
- (ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.

(B) Exclusions

The term "trading facility" does not include—

- (i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;
- (ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms "government securities dealer", "government securities broker", and "government securities" are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or
- (iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term "trading facility" for the purposes of this chapter without any prior specific approval, certification, or other action by the Commission.

(C) Special rule

A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.

(Sept. 21, 1922, ch. 369, §1a, as added Pub. L. 102–546, title IV, §404(a), Oct. 28, 1992, 106 Stat. 3625; amended Pub. L. 106–554, §1(a)(5) [title I, §§101, 123(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–366, 2763A–405; Pub. L. 110–234, title XIII, §§13105(j), 13201(a), 13203(a), (b), May 22, 2008, 122 Stat. 1435, 1439; Pub. L. 110–246, §4(a), title XIII, §§13105(j), 13201(a), 13203(a), (b), June 18, 2008, 122 Stat. 1664, 2197, 2201; Pub. L. 111–203, title VII, §§721(a), 741(b)(10), July 21, 2010, 124 Stat. 1658, 1732.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in pars. (12)(B)(v) and (18)(A)(vi), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Securities Act of 1933, referred to in pars. (17)(B)(ii)(I)(bb) and (47)(B)(iii)(I), (v)(I), (vi), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (18)(A)(iii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (18)(A)(vi)(II)(aa), (B)(ii), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (18)(A)(viii)(I) and (47)(B)(iii)(II), (v)(II), (vi), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Subsec. (i) of section 17 of the Securities Exchange Act of 1934, referred to in par. (18)(A)(viii)(III), was struck out and subsec. (j) was redesignated (i) by Pub. L. 111–203, title VI, §617(a), July 21, 2010, 124 Stat. 1616.

Section 25A of the Federal Reserve Act, referred to in pars. (21)(B) and (39)(A)(iv), (vii), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 225 of the Federal Reserve Act, referred to in par. (39)(A)(iv), probably should be a reference to section 25 of the Federal Reserve Act, which is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking.

Section 2 of the Bank Holding Company Act of 1965, referred to in par. (39)(A)(v), probably should be a reference to section 2 of the Bank Holding Company Act of 1956, act May 9, 1956, ch. 240, 70 Stat. 133, which is classified to section 1841 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in par. (39)(A)(vii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking.

The Farm Credit Act of 1971, referred to in par. (39)(D), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

Section 206A of the Gramm-Leach-Bliley Act, referred to in par. (47)(A)(v), is section 206A of Pub. L. 106–102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in par. (47)(E)(i)(II), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, which enacted chapter 53 (§5301 et seq.) of Title 12, Banks and Banking, and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

The Wall Street Transparency and Accountability Act of 2010, referred to in par. (47)(F)(i), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Pub. L. 111–203, §721(a)(1), redesignated pars. (2), (3), and (4), (5) to (17), (18) to (23), (24) to (28), (29), (30), (31) to (33), and (34) as (6), (8), and (9), (11) to (23), (26) to (31), (34) to (38), (40), (41), (44) to (46), and (51), respectively.

Pars. (2), (3). Pub. L. 111–203, §721(a)(2), added pars. (2) and (3). Former pars. (2) and (3) redesignated (6) and (8), respectively.

Par. (4). Pub. L. 111–203, §721(a)(4), which directed amendment of par. (9), as redesignated by Pub. L. 111–203, §721(a)(1), by substituting "except onions (as provided by section 13–1 of this title) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in." for "except onions as provided in section 13–1 of this title, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.", was executed by making the substitution in par. (4). Amendment was executed before amendment by Pub. L. 111–203, §721(a)(1), to reflect the probable intent of Congress, notwithstanding effective date provisions in sections 721(f) and 754 of Pub. L. 111–203. See Effective Date of 2010 Amendment notes below.

Pub. L. 111–203, §721(a)(2), added par. (4). Former par. (4) redesignated (9).

Par. (5). Pub. L. 111–203, §721(a)(2), added par. (5). Former par. (5) redesignated (11).

Par. (7). Pub. L. 111–203, §721(a)(3), added par. (7). Former par. (7) redesignated (13).

Par. (10). Pub. L. 111–203, §721(a)(5), added par. (10). Former par. (10) redesignated (16).

Par. (11). Pub. L. 111–203, §721(a)(6), added par. (11) and struck out former par. (11). Prior to amendment, text read as follows: "The term 'commodity pool operator' means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order."

Par. (12)(A)(i)(I). Pub. L. 111–203, §721(a)(7)(A)(i), substituted ", security futures product, or swap" for "made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility".

Par. (12)(A)(i)(II) to (IV). Pub. L. 111–203, §721(a)(7)(A)(ii), (iii), added subcl. (II) and redesignated former subcls. (II) and (III) as (III) and (IV), respectively.

Par. (12)(A)(iii), (iv). Pub. L. 111–203, §721(a)(7)(A)(iv), (B), (C), added cls. (iii) and (iv).

Par. (17)(A). Pub. L. 111–203, §721(a)(8), substituted "paragraph (18)(A)" for "paragraph (12)(A)" in introductory provisions.

Par. (18)(A)(iv)(II). Pub. L. 111–203, §741(b)(10), which directed amendment of par. (19)(A)(iv)(II) by inserting before semicolon at end "provided, however, that for purposes of section 2(c)(2)(B)(vi) of this title and section 2(c)(2)(C)(vii) of this title, the term 'eligible contract participant' shall not include a commodity pool in which any participant is not otherwise an eligible contract participant", was executed by making the insertion in par. (18)(A)(iv)(II) to reflect the probable intent of Congress.

Par. (18)(A)(vii). Pub. L. 111–203, §721(a)(9)(A)(i), substituted "paragraph (17)(A)" for "paragraph (11)(A)" and "\$50,000,000" for "\$25,000,000" in concluding provisions.

Par. (18)(A)(xi). Pub. L. 111–203, §721(a)(9)(A)(ii), substituted "amounts invested on a discretionary basis, the aggregate of which is" for "total assets in an amount" in introductory provisions.

Par. (22). Pub. L. 111–203, §721(a)(10), added par. (22) and struck out former par. (22). Prior to amendment, text read as follows: "The term 'floor broker' means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the

meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility."

Par. (23). Pub. L. 111–203, §721(a)(11), added par. (23) and struck out former par. (23). Prior to amendment, text read as follows: "The term 'floor trader' means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility."

Pars. (24), (25). Pub. L. 111–203, §721(a)(12), added pars. (24) and (25). Former pars. (24) and (25) redesignated (34) and (35), respectively.

Par. (28). Pub. L. 111–203, §721(a)(13), added par. (28) and struck out former par. (28) which defined "futures commission merchant".

Par. (30)(B). Pub. L. 111–203, §721(a)(14), substituted "State" for "state".

Par. (31). Pub. L. 111–203, §721(a)(15), added par. (31) and struck out former par. (31). Prior to amendment, text read as follows: "The term 'introducing broker' means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom."

Pars. (32), (33). Pub. L. 111–203, §721(a)(16), added pars. (32) and (33). Former pars. (32) and (33) redesignated (45) and (46), respectively.

Par. (39). Pub. L. 111–203, §721(a)(17), added par. (39).

Par. (40)(B) to (F). Pub. L. 111–203, §721(a)(18), added subpars. (D) and (E), redesignated former subpars. (C), (D), and (E) as (B), (C), and (F), respectively, and struck out former subpar. (B) which read as follows: "a derivatives transaction execution facility registered under section 7a of this title;"

Pars. (42), (43). Pub. L. 111–203, §721(a)(19), added pars. (42) and (43).

Par. (46). Pub. L. 111–203, §721(a)(20), substituted "subject to section 2(h)(5) of this title" for "subject to section 2(h)(7) of this title".

Pars. (47) to (50). Pub. L. 111–203, §721(a)(21), added pars. (47) to (50).

Par. (51)(A)(i). Pub. L. 111–203, §721(a)(22), substituted "participants" for "partipants".

2008—Par. (12)(A)(x). Pub. L. 110–246, §13203(a), inserted "(other than an electronic trading facility with respect to a significant price discovery contract)" after "registered entity".

Par. (29)(E). Pub. L. 110–246, §13203(b), added subpar. (E).

Par. (33). Pub. L. 110–246, §13201(a), added par. (33). Former par. (33) redesignated (34).

Par. (33)(A). Pub. L. 110–246, §13105(j), substituted "transactions—" for "transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system." in introductory provisions and added cls. (i) and (ii).

Par. (34). Pub. L. 110–246, §13201(a)(1), redesignated par. (33) as (34).

2000—Par. (1). Pub. L. 106–554, §1(a)(5) [title I, §101(2)], added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 106–554, §1(a)(5) [title I, §101(3)], added par. (2) and struck out heading and text of former par. (2). Text read as follows: "The term 'board of trade' means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment."

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pars. (3), (4). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Par. (5). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market".

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (4) as (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market" in subpars. (A)(i)(I) and (B)(vi).

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (16).

Pars. (9) to (15). Pub. L. 106–554, §1(a)(5) [title I, §101(4)], added pars. (9) to (15). Former pars. (9) to (12) and (13) to (15) redesignated (17) to (20) and (22) to (24), respectively.

Par. (16). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (8) as (16). Former par. (16) redesignated (28).

Par. (17). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (9) as (17).

Pars. (18), (19). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated pars. (10) and (11) as (18) and (19), respectively.

Par. (20). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (12) as (20).

Par. (20)(A). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market".

Par. (21). Pub. L. 106–554, §1(a)(5) [title I, §101(5)], added par. (21).

Par. (22). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (13) as (22).

Par. (23). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market".

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (14) as (23).

Par. (24). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(B)], substituted "registered entity" for "contract market" wherever appearing in heading and text and inserted concluding provisions.

Pub. L. 106–554, §1(a)(5) [title I, §101(6)], added par. (24) and struck out heading and text of former par. (24). Text read as follows: "The term 'member of a contract market' means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon."

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (15) as (24).

Pars. (25) to (27). Pub. L. 106–554, §1(a)(5) [title I, §101(6)], added pars. (25) to (27).

Par. (28). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (16) as (28).

Pars. (29) to (33). Pub. L. 106–554, §1(a)(5) [title I, §101(7)], added pars. (29) to (33).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title VII, §721(f), July 21, 2010, 124 Stat. 1672, provided that: "Notwithstanding any other provision of this Act [see Tables for classification], the amendments made by subsection (a)(4) [amending this section] shall take effect on June 1, 2010."

Pub. L. 111–203, title VII, §754, July 21, 2010, 124 Stat. 1754, provided that: "Unless otherwise provided in this title [see Tables for classification], the provisions of this subtitle [subtitle A (§§711–754) of title VII of Pub. L. 111–203, see Tables for classification] shall take effect on the later of 360 days after the date of the enactment of this subtitle [July 21, 2010] or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by sections 13201(a) and 13203(a), (b) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 102–546, title IV, §403, Oct. 28, 1992, 106 Stat. 3625, provided that: "Except as otherwise specifically provided in this Act [enacting this section and section 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title], this Act and the amendments made by this Act shall become effective on the date of enactment of this Act [Oct. 28, 1992]."

OTHER AUTHORITY

Pub. L. 111–203, title VII, §743, July 21, 2010, 124 Stat. 1735, provided that: "Unless otherwise provided by the amendments made by this subtitle [subtitle A (§§711–754) of title VII of Pub. L. 111–203, see Tables for classification], the amendments made by this subtitle do not divest any appropriate Federal banking

agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law."

[For definitions of "appropriate Federal banking agency" and "State" as used in section 743 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

¹ *So in original. Probably should be followed by a semicolon.*

² *See References in Text note below.*

³ *So in original. The semicolon probably should be preceded by an additional closing parenthesis.*

⁴ *See References in Text note below.*

⁵ *So in original. A third closing parenthesis probably should appear.*

§1b. Requirements of Secretary of the Treasury regarding exemption of foreign exchange swaps and foreign exchange forwards from definition of the term "swap"

(a) Required considerations

In determining whether to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term "swap", the Secretary of the Treasury (referred to in this section as the "Secretary") shall consider—

(1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

(2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this chapter for other classes of swaps;

(3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

(4) the extent of adequate payment and settlement systems; and

(5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.

(b) Determination

If the Secretary makes a determination to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term "swap", the Secretary shall submit to the appropriate committees of Congress a determination that contains—

(1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and

(2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status.

(c) Effect of determination

A determination by the Secretary under subsection (b) shall not exempt any foreign exchange swaps and foreign exchange forwards traded on a designated contract market or swap execution facility from any applicable antifraud and antimanipulation provision under this chapter.¹

(Sept. 21, 1922, ch. 369, §1b, as added Pub. L. 111–203, title VII, §722(h), July 21, 2010, 124 Stat. 1674.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this title", and was translated as reading "this Act", meaning act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to this chapter, to reflect the probable intent of Congress, because act Sept. 21, 1922, does not contain titles.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

[¹ See References in Text note below.](#)

§2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce

(a) Jurisdiction of Commission; Commodity Futures Trading Commission

(1) Jurisdiction of Commission

(A) In general

The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and subparagraphs (C), (D), and (I) of this paragraph and subsections (c) and (f), with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), and transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 7 of this title or a swap execution facility pursuant to section 7b–3 of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

(B) Liability of principal for act of agent

The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(C) Designation of boards of trade as contract markets; contracts for future delivery; security futures products; filing with Board of Governors of Federal Reserve System; judicial review

Notwithstanding any other provision of law—

(i)(I) Except as provided in subclause (II), this chapter shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 77b(1) ¹ of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)] on January 11, 1983), including any group or index of such securities, or any interest therein or based on the value thereof.

(II) This chapter shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 7a-2(c) of this title of, a put, call, or other option on 1 or more securities (as defined in section 77b(a)(1) of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)] on January 11, 1983), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78mm(a)(1)] with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.

(ii) This chapter shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however,* That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 77c of title 15 or section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(56)] and section 1a of this title subject to all rules and regulations applicable to security futures products under this chapter and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)].

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under or ² section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)(I) Notwithstanding any other provision of this chapter, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)].

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 12a(9) of this title to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III,³ under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(D) Jurisdiction and authority of Securities and Exchange Commission over security futures; requirements for security futures trading; periodic or special examinations by Commission representatives

(i) Notwithstanding any other provision of this chapter, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)], section 77b(a)(16) of title 15, section 80a-2(a)(52) of title 15, and section 80b-2(a)(27) of title 15, options on security futures, and persons effecting transactions in security futures and options thereon, and this chapter shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), contracts, and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this title: *Provided, however,* That, except as provided in clause (vi) of this subparagraph, no board of trade shall be

designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l].

(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 [15 U.S.C. 78q-1] for the payment and delivery of the securities underlying the security futures product.

(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)], or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

(VI) The security futures product is subject to a prohibition against dual trading in section 6j of this title and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78k(a)] and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and the rules and regulations thereunder.

(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has in place such procedures.

(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the

Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such audit trails.

(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such coordinated trading halts.

(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)], except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

(I) the transaction is conducted on or subject to the rules of a board of trade that—

(aa) has been designated by the Commission as a contract market in such security futures product; or

(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this chapter, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after December 21, 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this chapter and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and

desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(III) For purposes of this clause, the term "compliance date" means the later of—

(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] and any national securities associations registered pursuant to section 15A(a) of such Act [15 U.S.C. 78o-3(a)]; or

(bb) 2 years after the date on which trading in any security futures product commences under this chapter.

(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).

(E) Obligation to address security futures products traded on foreign exchanges

(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.

(F) Security futures products traded on foreign boards of trade

(i) Nothing in this chapter is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

(ii) Nothing in this chapter is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.

(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements as defined pursuant to section 3(a)(78) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(78)], and security-based swaps.

(ii) In addition to the authority of the Securities and Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

(H) Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to this chapter made by such Act) with respect to, any security other than a security-based swap.

(I)(i) Nothing in this chapter shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 796(21) of title 16) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

(I) not executed, traded, or cleared on a registered entity or trading facility; or

(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading

facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections ⁴ 796(27) and (28) of title 16).

(2) Establishment of Commodity Futures Trading Commission; composition; terms of Commissioners

(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this chapter; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.

Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) Vacancies

A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) Executive Director

The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6) Powers and Functions of Chairman

(A) Except as otherwise provided in this paragraph and in paragraphs (4) and (5) of this subsection, the executive and administrative functions of the Commission, including functions of

the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determination as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7) Appointment and compensation

(A) In general

The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out the functions of the Commission under this chapter.

(B) Rates of pay

Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to chapter 51 or subchapter III of chapter 53 of title 5.

(C) Comparability

(i) In general

The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are provided by any agency referred to in section 1833b(a) of title 12 or could be provided by such an agency under applicable provisions of law (including rules and regulations).

(ii) Consultation

In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to in section 1833b(a) of title 12.

(8) Conflict of interest

No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this chapter during his term of office, nor shall he participate, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the Commission.

(9) Liaison with Department of Agriculture; communications with Department of the Treasury, Federal Reserve Board, and Securities and Exchange Commission; application by a board of trade for designation as a contract market for future delivery of securities

(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively

such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation or registration as a contract market or derivatives transaction execution facility involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate or register a board of trade as a contract market or derivatives transaction execution facility based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title) with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, registration, suspension, revocation, or action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(10) Transmittal of budget requests and legislative recommendations to congressional committees

(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any

dissenting, concurring, or separate opinion by any Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.

(11) Seal

The Commission shall have an official seal, which shall be judicially noticed.

(12) Rules and regulations

The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(13) Public availability of swap transaction data

(A) Definition of real-time public reporting

In this paragraph, the term "real-time public reporting" means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

(B) Purpose

The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) General rule

The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

- (i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(1) (including those swaps that are excepted from the requirement pursuant to subsection (h)(7)), the Commission shall require real-time public reporting for such transactions.
- (ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(1), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.
- (iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.
- (iv) With respect to swaps that are determined to be required to be cleared under subsection (h)(2) but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) Registered entities and public reporting

The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

(E) Rulemaking required

With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

- (i) to ensure such information does not identify the participants;
- (ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;
- (iii) to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and
- (iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) Timeliness of reporting

Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) Reporting of swaps to registered swap data repositories

Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.

(14) Semiannual and annual public reporting of aggregate swap data

(A) In general

In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

- (i) the trading and clearing in the major swap categories; and
- (ii) the market participants and developments in new products.

(B) Use; consultation

In preparing a report under subparagraph (A), the Commission shall—

- (i) use information from swap data repositories and derivatives clearing organizations; and
- (ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) Authority of the Commission

The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(15) Energy and Environmental Markets Advisory Committee

(A) Establishment

(i) In general

An Energy and Environmental Markets Advisory Committee is hereby established.

(ii) Membership

The Committee shall have 9 members.

(iii) Activities

The Committee's objectives and scope of activities shall be—

- (I) to conduct public meetings;
- (II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and
- (III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

(B) Requirements

(i) In general

The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

(ii) Members

Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

(C) Appointment

The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

(D) Reimbursement

Members shall be entitled to per diem and travel expense reimbursement by the Commission.

(E) FACA

The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(b) Transaction in interstate commerce

For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State, with the expectation that they will end their transit, after purchase, in another, including in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(c) Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities

(1) In general

Except as provided in paragraph (2), nothing in this chapter (other than section, ⁵ 7a-1, ⁵ or 16(e) (2)(B) of this title) governs or applies to an agreement, contract, or transaction in—

- (A) foreign currency;
- (B) government securities;
- (C) security warrants;
- (D) security rights;
- (E) resales of installment loan contracts;
- (F) repurchase transactions in an excluded commodity; or
- (G) mortgages or mortgage purchase commitments.

(2) Commission jurisdiction

(A) Agreements, contracts, and transactions traded on an organized exchange

This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

- (i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange;
- (ii) a swap; or
- (iii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)].

(B) Agreements, contracts, and transactions in retail foreign currency

(i) This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

- (I) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); and
- (II) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—
 - (aa) a United States financial institution;
 - (bb)(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5); or

(BB) an associated person of a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) concerning the financial or securities activities of which the broker or dealer makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

(cc)(AA) a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this title, is registered under this chapter, is not a person described in item (bb) of this subclause, and maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph; or

(BB) an affiliated person of a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this title, is registered under this chapter, and is not a person described in item (bb) of this subclause, if the affiliated person maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is not a person described in such item (bb), and the futures commission merchant makes and keeps records under section 6f(c)(2)(B) of this title concerning the futures and other financial activities of the affiliated person;

(dd) a financial holding company (as defined in section 1841 of title 12); or

(ff) ⁶ a retail foreign exchange dealer that maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is registered in such capacity with the Commission, subject to such terms and conditions as the Commission shall prescribe, and is a member of a futures association registered under section 21 of this title.

(ii) The dollar amount that applies for purposes of this clause is—

(I) \$10,000,000, beginning 120 days after the date of the enactment of this clause;

(II) \$15,000,000, beginning 240 days after such date of enactment; and

(III) \$20,000,000, beginning 360 days after such date of enactment.

(iii) Notwithstanding items (cc) and (gg) of clause (i)(II) of this subparagraph, agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vi), shall be subject to subsection (a)(1)(B) of this section and sections 6(b), 6b, 6c(b), 6o, 9, and 13b of this title (except to the extent that sections 9 and 13b of this title prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 13a-1, 13a-2, 12(a), 13c(a), and 13c(b) of this title if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or retail foreign exchange dealer, or an affiliated person of a futures commission merchant registered under this chapter that is not also a person described in any of item (aa), (bb), (ee), ¹ or (ff) of clause (i)(II) of this subparagraph.

(iv)(I) Notwithstanding items (cc) and (gg) ¹ of clause (i)(II), a person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), ¹ or (ff) of clause (i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), ¹ or (ff) of clause (i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),¹ or (ff) of clause (i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee),¹ or (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) Notwithstanding items (cc) and (gg) ¹ of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in any of item (aa) through (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(v) Notwithstanding items (cc) and (gg) ¹ of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with agreements, contracts, or transactions described in clause (i) which are offered, or entered into, by a person described in item (cc) or (gg) ¹ of clause (i)(II).

(vi) This chapter applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—

(aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (ee),¹ or (ff) of subparagraph (B)(i)(II)); and

(bb) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(II) Subclause (I) of this clause shall not apply to—

(aa) a security that is not a security futures product; or

(bb) a contract of sale that—

(AA) results in actual delivery within 2 days; or

(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(ii)(I) Agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vii), shall be subject to subsection (a)(1)(B) of this section and sections 6(b), 6b, 6c(b), 6o, 9, and 13b of this title (except to the

extent that sections 9 and 13b of this title prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 13a–1, 13a–2, 12(a), 13c(a), and 13c(b) of this title.

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee),¹ or (ff) of subparagraph (B)(i)(II);
or

(bb) any such person's associated persons.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of or to accomplish any of the purposes of this chapter in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph if the agreements, contracts, or transactions are offered, or entered into, by a person that is not described in item (aa) through (ff) of subparagraph (B)(i)(II).

(iii)(I) A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),¹ or (ff) of subparagraph (B)(i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),¹ or (ff) of subparagraph (B)(i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),¹ or (ff) of subparagraph (B)(i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in item (aa), (bb), (ee),¹ or (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in item (aa) through (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(iv) Sections 6(b) and 6b of this title shall apply to any agreement, contract, or transaction described in clause (i) of this subparagraph as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this chapter over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

(vi) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this chapter with respect to security futures products and persons effecting transactions in security futures products.

(vii) This chapter applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(D) Retail commodity transactions

(i) Applicability

Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(ii) Exceptions

This subparagraph shall not apply to—

(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs [7](#) (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

(II) any security;

(III) a contract of sale that—

(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

(V) an identified banking product, as defined in section 27(b) of this title.

(iii) Enforcement

Sections 6(a), 6(b), and 6b of this title apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

(iv) Eligible commercial entity

For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.

(E) Prohibition

(i) Definition of Federal regulatory agency

In this subparagraph, the term "Federal regulatory agency" means—

(I) the Commission;

(II) the Securities and Exchange Commission;

- (III) an appropriate Federal banking agency;
- (IV) the National Credit Union Association; and
- (V) the Farm Credit Administration.

(ii) Prohibition

(I) In general

Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

(II) Effective date

With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to July 21, 2010, subclause (I) shall take effect 90 days after July 21, 2010.

(iii) Requirements of rules and regulations

(I) In general

The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

- (aa) disclosure;
- (bb) recordkeeping;
- (cc) capital and margin;
- (dd) reporting;
- (ee) business conduct;
- (ff) documentation; and
- (gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

(II) Treatment

The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.

(d) Swaps

Nothing in this chapter (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a) (1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 6(c), 6a, 6b, and 6b–1 of this title, subsections (a), (b), and (g) of section 6c of this title, sections 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 6t, 7, 7a–1, 7a–2, 7b, and 7b–3 of this title, sections 9 and 13b of this title, sections 13a–1, 13a–2, 12, 12a, and 13 of this title, subsections (e)(2), (f), and (h) of section 16 of this title, subsections (a) and (b) of section 13c of this title, sections 21, 24, 24a, and 25(a)(4) of this title, and any other provision of this chapter that is applicable to registered entities or Commission registrants) governs or applies to a swap.

(e) Limitation on participation

It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 7 of this title.

(f) Exclusion for qualifying hybrid instruments

(1) In general

Nothing in this chapter (other than section 16(e)(2)(B) of this title) governs or is applicable to a hybrid instrument that is predominantly a security.

(2) Predominance

A hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this chapter.

(3) Mark-to-market margining requirements

For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(g) Application of commodity futures laws

(1) No provision of this chapter shall be construed as implying or creating any presumption that—

(A) any agreement, contract, or transaction that is excluded from this chapter under subsection (c), (d), (e), (f), or (g) of this section or title IV of the Commodity Futures Modernization Act of 2000 [7 U.S.C. 27 to 27f], or exempted under subsection (h) of this section or section 6(c) of this title; or

(B) any agreement, contract, or transaction, not otherwise subject to this chapter, that is not so excluded or exempted,

is or would otherwise be subject to this chapter.

(2) No provision of, or amendment made by, the Commodity Futures Modernization Act of 2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 7a–1 of this title.

(h) Clearing requirement

(1) In general

(A) Standard for clearing

It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this chapter or a derivatives clearing organization that is exempt from registration under this chapter if the swap is required to be cleared.

(B) Open access

The rules of a derivatives clearing organization described in subparagraph (A) shall—

(i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

(ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

(2) Commission review

(A) Commission-initiated review

(i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

(B) Swap submissions

(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of July 21, 2010, shall be considered submitted to the Commission.

(iii) The Commission shall—

(I) make available to the public submissions received under clauses (i) and (ii);

(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

(C) Deadline

The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

(D) Determination

(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 7a-1(c)(2) of this title.

(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

(IV) The effect on competition, including appropriate fees and charges applied to clearing.

(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(E) Rules

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

(3) Stay of clearing requirement

(A) In general

After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

(B) Deadline

The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

(C) Determination

Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

(D) Rules

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

(4) Prevention of evasion

(A) In general

The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this chapter.

(B) Duty of Commission to investigate and take certain actions

To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

(i) investigate the relevant facts and circumstances;

(ii) within 30 days issue a public report containing the results of the investigation; and

(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(C) Effect on authority

Nothing in this paragraph—

(i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and

(ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.

(5) Reporting transition rules

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(A) Swaps entered into before July 21, 2010, shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

(B) Swaps entered into on or after July 21, 2010, shall be reported to a registered swap data repository or the Commission no later than the later of—

(i) 90 days after such effective date; or

(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

(6) Clearing transition rules

(A) Swaps entered into before July 21, 2010, are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

(7) Exceptions

(A) In general

The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

(i) is not a financial entity;

(ii) is using swaps to hedge or mitigate commercial risk; and

(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

(B) Option to clear

The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

(C) Financial entity definition

(i) In general

For the purposes of this paragraph, the term "financial entity" means—

(I) a swap dealer;

(II) a security-based swap dealer;

(III) a major swap participant;

(IV) a major security-based swap participant;

(V) a commodity pool;

(VI) a private fund as defined in section 80b-2(a) of title 15;

(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 1002 of title 29;

(VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 1843(k) of title 12.

(ii) Exclusion

The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

(I) depository institutions with total assets of \$10,000,000,000 or less;

(II) farm credit system institutions with total assets of \$10,000,000,000 or less; or

(III) credit unions with total assets of \$10,000,000,000 or less.

(iii) Limitation

Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from

financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(D) Treatment of affiliates

(i) In general

An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

- (I) enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;
- (II) is directly and wholly-owned by another affiliate qualified for the exception under this subparagraph or an entity that is not a financial entity;
- (III) is not indirectly majority-owned by a financial entity;
- (IV) is not ultimately owned by a parent company that is a financial entity; and
- (V) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12).

(ii) Limitation on qualifying affiliates

The exception in clause (i) shall not apply if the affiliate is—

- (I) a swap dealer;
- (II) a security-based swap dealer;
- (III) a major swap participant;
- (IV) a major security-based swap participant;
- (V) a commodity pool;
- (VI) a bank holding company;
- (VII) a private fund, as defined in section 80b-2(a) of title 15;
- (VIII) an employee benefit plan or government § plan, as defined in paragraphs (3) and (32) of section 1002 of title 29;
- (IX) an insured depository institution;
- (X) a farm credit system institution;
- (XI) a credit union;
- (XII) a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12); or
- (XIII) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

(iii) Limitation on affiliates' affiliates

Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in clause (i) shall not apply with respect to an affiliate if the affiliate is itself affiliated with—

- (I) a major security-based swap participant;
- (II) a security-based swap dealer;
- (III) a major swap participant; or
- (IV) a swap dealer.

(iv) Conditions on transactions

With respect to an affiliate that qualifies for the exception in clause (i)—

- (I) the affiliate may not enter into any swap other than for the purpose of hedging or mitigating commercial risk; and

(II) neither the affiliate nor any person affiliated with the affiliate that is not a financial entity may enter into a swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under clause (i).

(v) Transition rule for affiliates

An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 6s(e) of this title and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on July 21, 2010.

(vi) Risk management program

Any swap entered into by an affiliate that qualifies for the exception in clause (i) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the swap and to identify each of the affiliates on whose behalf a swap was entered into.

(E) Election of counterparty

(i) Swaps required to be cleared

With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(ii) Swaps not required to be cleared

With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

(I) may elect to require clearing of the swap; and

(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(F) Abuse of exception

The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

(8) Trade execution

(A) In general

With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

(i) execute the transaction on a board of trade designated as a contract market under section 7 of this title; or

(ii) execute the transaction on a swap execution facility registered under 7b-3⁹ of this title or a swap execution facility that is exempt from registration under section 7b-3(f) of this title.

(B) Exception

The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).

(i) Applicability

The provisions of this chapter relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this chapter that was enacted by the Wall Street Transparency and Accountability Act of 2010.

(j) Committee approval by Board

Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o[d]) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.

(Sept. 21, 1922, ch. 369, §2, 42 Stat. 998; June 15, 1936, ch. 545, §§2, 3, 49 Stat. 1491; Apr. 7, 1938, ch. 108, 52 Stat. 205; Oct. 9, 1940, ch. 786, §1, 54 Stat. 1059; Aug. 28, 1954, ch. 1041, title VII, §710(a), 68 Stat. 913; July 26, 1955, ch. 382, §1, 69 Stat. 375; Pub. L. 90–258, §1, Feb. 19, 1968, 82 Stat. 26; Pub. L. 90–418, July 23, 1968, 82 Stat. 413; Pub. L. 93–463, title I, §101(a), title II, §§201, 202, Oct. 23, 1974, 88 Stat. 1389, 1395; Pub. L. 95–405, §2, Sept. 30, 1978, 92 Stat. 865; Pub. L. 97–444, title I, §101, title II, §§201, 202, Jan. 11, 1983, 96 Stat. 2294, 2297, 2298; Pub. L. 99–641, title I, §110(1), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102–546, title II, §§209(b)(1), 215, 226, title IV, §404(b), title V, §501, Oct. 28, 1992, 106 Stat. 3606, 3611, 3618, 3628; Pub. L. 106–554, §1(a) (5) [title I, §§102–105(b), 106, 107, 123(a)(2), title II, §251(a), (b), (i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A–376 to 2763A–379, 2763A–382, 2763A–405, 2763A–436, 2763A–441, 2763A–445; Pub. L. 107–171, title X, §10702(a), May 13, 2002, 116 Stat. 516; Pub. L. 110–234, title XIII, §§13101(a), 13201(b), 13203(c)–(f), May 22, 2008, 122 Stat. 1427, 1436, 1439; Pub. L. 110–246, §4(a), title XIII, §§13101(a), 13201(b), 13203(c)–(f), June 18, 2008, 122 Stat. 1664, 2189, 2198, 2201; Pub. L. 111–203, title VII, §§717(a), 721(e)(1), 722(a), (c)–(e), 723(a), (b), 727, 734(b)(1), 741(b)(8), (9), 742(a), (c), 751, July 21, 2010, 124 Stat. 1651, 1671–1673, 1675, 1681, 1696, 1718, 1731–1733, 1749; Pub. L. 114–113, div. O, title VII, §705(a), Dec. 18, 2015, 129 Stat. 3025.)

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in subsecs. (a)(1)(A), (G)(i), (H) and (i), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15 and Tables.

Section 77b(1) of title 15, referred to in subsec. (a)(1)(C)(i)(I), was redesignated section 77b(a)(1) of title 15 by Pub. L. 104–290, title I, §106(a)(1), Oct. 11, 1996, 110 Stat. 3424.

The Securities Exchange Act of 1934, referred to in subsec. (a)(1)(D)(i)(VI), (iii)(II), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a)(15)(E), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of this clause and such date of enactment, referred to in subsec. (c)(2)(B)(ii), are the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Item (ee) of subsec. (c)(2)(B)(i)(II), referred to in subsec. (c)(2)(B)(iii), (iv)(I), (II)(aa), (C)(i)(I)(aa), (ii)(II)(aa), (iii)(I), (II)(aa), was redesignated item (dd) by Pub. L. 111–203, title VII, §742(c)(1)(C), July 21, 2010, 124 Stat. 1733.

Item (gg) of subsec. (c)(2)(B)(i)(II), referred to in subsec. (c)(2)(B)(iii), (iv)(I), (III), (v), was redesignated item (ff) by Pub. L. 111–203, title VII, §742(c)(1)(C), July 21, 2010, 124 Stat. 1733.

The Commodity Futures Modernization Act of 2000, referred to in subsec. (g)(1)(A), (2), is H.R. 5660, as enacted by Pub. L. 106–554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–365. Title IV of the Act, known as the Legal Certainty for Bank Products Act of 2000, is classified to sections 27 to 27f of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of this title, and Tables.

For the effective date of this subsection and such effective date, referred to in subsec. (h)(5)(A), (B)(i), see Effective Date of 2010 Amendment note below.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Subsec. (a)(1)(B) of this section was formerly classified to section 4 of this title. Subsec. (a)(1)(C) of this section was formerly classified to section 2a of this title. Subsec. (a)(2) to (11) of this section was formerly classified to section 4a of this title. Subsec. (b) of this section was formerly classified to section 3 of this title.

AMENDMENTS

2015—Subsec. (h)(7)(D). Pub. L. 114–113 added cls. (i) to (iv) and (vi), redesignated former cl. (iii) as (v), and struck out former cls. (i) and (ii) which related to application of exception to affiliates and prohibition relating to certain affiliates, respectively.

2010—Subsec. (a)(1)(A). Pub. L. 111–203, §734(b)(1)(A), which directed amendment of subpar. (A) by striking "or 7a", could not be executed because of prior amendment by Pub. L. 111–203, §722(a)(1). See below.

Pub. L. 111–203, §722(a)(1), inserted "the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and" after "otherwise provided in" and substituted "(C), (D), and (I)" for "(C) and (D)", "(c) and (f)" for "(c) through (i) of this section", "swaps or contracts of sale" for "contracts of sale", and "pursuant to section 7 of this title or a swap execution facility pursuant to section 7b–3 of this title" for "or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title".

Subsec. (a)(1)(C)(i). Pub. L. 111–203, §717(a), designated existing provisions as subcl. (I), substituted "Except as provided in subclause (II), this" for "This", and added subcl. (II).

Subsec. (a)(1)(G), (H). Pub. L. 111–203, §722(a)(2), added subpars. (G) and (H).

Subsec. (a)(1)(I). Pub. L. 111–203, §722(e), added subpar. (I).

Subsec. (a)(13), (14). Pub. L. 111–203, §727, added pars. (13) and (14).

Subsec. (a)(15). Pub. L. 111–203, §751, added par. (15).

Subsec. (c)(1). Pub. L. 111–203, §742(a)(1), substituted ", 7a–1, or 16(e)(2)(B) of this title)" for "7a (to the extent provided in section 7a(g) of this title), 7a–1, 7a–3, or 16(e)(2)(B) of this title)".

Subsec. (c)(2)(A)(ii), (iii). Pub. L. 111–203, §722(c), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (c)(2)(B). Pub. L. 111–203, §741(b)(8)(A), struck out "(dd)," before "(ee)," wherever appearing.

Subsec. (c)(2)(B)(i)(II)(aa). Pub. L. 111–203, §742(c)(1)(A), inserted "United States" before "financial institution".

Subsec. (c)(2)(B)(i)(II)(cc). Pub. L. 111–203, §721(e)(1)(A), substituted "section 1a" for "section 1a(20)" in two places.

Subsec. (c)(2)(B)(i)(II)(dd). Pub. L. 111–203, §742(c)(1)(B)–(D), redesignated item (ee) as (dd), substituted "; or" for semicolon at end, and struck out former item (dd) which read as follows: "an insurance company described in section 1a(18)(A)(ii) of this title, or a regulated subsidiary or affiliate of such an insurance company;".

Pub. L. 111–203, §721(e)(1)(B), substituted "section 1a(18)(A)(ii)" for "section 1a(12)(A)(ii)".

Subsec. (c)(2)(B)(i)(II)(ee) to (gg). Pub. L. 111–203, §742(c)(1)(B), (C), redesignated items (ee) and (gg) as (dd) and (ff), respectively, and struck out former item (ff) which read as follows: "an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i))); or".

Subsec. (c)(2)(B)(iii). Pub. L. 111–203, §741(b)(8)(B), inserted ", and accounts or pooled investment vehicles described in clause (vi)," before "shall be subject to".

Subsec. (c)(2)(B)(vi). Pub. L. 111–203, §741(b)(8)(C), added cl. (vi).

Subsec. (c)(2)(C). Pub. L. 111–203, §741(b)(9)(A), struck out "(dd)," before "(ee)," wherever appearing.

Subsec. (c)(2)(C)(ii)(I). Pub. L. 111–203, §741(b)(9)(B), inserted ", and accounts or pooled investment vehicles described in clause (vii)," before "shall be subject to".

Subsec. (c)(2)(C)(vii). Pub. L. 111–203, §741(b)(9)(C), added cl. (vii).

Subsec. (c)(2)(D). Pub. L. 111–203, §742(a)(2), added subpar. (D).

Subsec. (c)(2)(E). Pub. L. 111–203, §742(c)(2), added subpar. (E).

Subsecs. (d), (e). Pub. L. 111–203, §723(a)(1)(A), (2), added subsecs. (d) and (e) and struck out former subsecs. (d) and (e) which related to excluded derivative transactions and excluded electronic trading facilities, respectively.

Subsec. (g). Pub. L. 111–203, §723(a)(1), redesignated subsec. (i) as (g) and struck out former subsec. (g) which related to excluded swap transactions.

Subsec. (g)(2). Pub. L. 111–203, §734(b)(1)(B), substituted "section 7a–1 of this title" for "section 7a of this title (to the extent provided in section 7a(g) of this title), 7a–1 of this title, or 7a–3 of this title".

Subsec. (h). Pub. L. 111–203, §723(a)(1)(A), (3), added subsec. (h) and struck out former subsec. (h) which related to legal certainty for certain transactions in exempt commodities.

Subsec. (i). Pub. L. 111–203, §723(a)(1)(B), which directed redesignation of subsec. (i) as (g), was executed by redesignating the subsec. (i) added by Pub. L. 106–554, §1(a)(5) [title I, §107], relating to application of commodity futures laws, as (g), to reflect the probable intent of Congress. Another subsec. (i), relating to applicability of certain swaps provisions, was added by Pub. L. 111–203, §722(d). See below.

Pub. L. 111–203, §722(d), added subsec. (i) relating to applicability of certain swaps provisions.

Subsec. (j). Pub. L. 111–203, §723(b), added subsec. (j).

2008—Subsec. (a)(1)(A). Pub. L. 110–246, §13203(c), inserted "(including significant price discovery contracts)" after "future delivery".

Subsec. (c)(2)(B), (C). Pub. L. 110–246, §13101(a), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which related to: in subpar. (B), applicability of chapter to an agreement, contract, or transaction in foreign currency that was a contract of sale of a commodity for future delivery or an option on such a contract and was offered to, or entered into with, a person who was not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person was a financial institution, a registered broker or dealer or a registered futures commission merchant, an associated person of a registered broker or dealer or an affiliated person of a registered futures commission merchant, an insurance company or a regulated subsidiary or affiliate of such an insurance company, a financial holding company, or an investment bank holding company; and, in subpar. (C), applicability of sections 6b, 6c(b), 9, 12(a), 13a–1, 13a–2, 13b, and 15 of this title to agreements, contracts, or transactions described in former subpar. (B).

Subsec. (h)(3). Pub. L. 110–246, §13203(d), substituted "paragraphs (4) and (7)" for "paragraph (4)" in introductory provisions.

Subsec. (h)(4)(B). Pub. L. 110–246, §13203(e)(1), inserted "and, for a significant price discovery contract, requiring large trader reporting," after "proscribing fraud".

Subsec. (h)(4)(D), (E). Pub. L. 110–246, §13203(e)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: "such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility."

Subsec. (h)(5)(B)(iii)(I). Pub. L. 110–246, §13203(f), inserted "or to make the determination described in subparagraph (B) of paragraph (7)" after "paragraph (4)".

Subsec. (h)(7). Pub. L. 110–246, §13201(b), added par. (7).

2002—Subsec. (a)(7) to (12). Pub. L. 107–171 added par. (7) and redesignated former pars. (7) to (11) as (8) to (12), respectively.

2000—Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(A)], inserted section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(A)], inserted headings for subsec. (a) and par. (1).

Subsec. (a)(1)(A). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(II)], substituted "contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title" for "contract market designated pursuant to section 7 of this title".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(I)], which directed substitution of "subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section" for "subparagraph (B) of this subparagraph", was executed by making the substitution for "subparagraph (B) of this paragraph" to reflect the probable intent of Congress.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(A)], inserted heading and struck out "(i)" before "The Commission shall have".

Subsec. (a)(1)(A)(ii). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(III)], struck out cl. (ii) which read as follows: "Nothing in this chapter shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade."

Subsec. (a)(1)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(IV)], redesignated subsec. (a)(1)(A)(iii) as subsec. (a)(1)(B) and inserted heading. Former subsec. (a)(1)(B) redesignated (a)(1)(C).

Subsec. (a)(1)(C). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(I)], redesignated subpar. (B) as (C).

Subsec. (a)(1)(C)(i). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(iii)], substituted "or the derivatives transaction execution facility, and the applicable contract, meet" for "making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets" in introductory provisions.

Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(ii)], which directed insertion of ", and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery," after "contracts) for future delivery", was executed by making the insertion in the proviso in introductory provisions to reflect the probable intent of Congress.

Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(i)], inserted "or register a derivatives transaction execution facility that trades or executes," after "contract market in," in introductory provisions.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii)(III). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(iv)], added subcl. (III) and struck out former subcl. (III) which read as follows: "Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure."

Subsec. (a)(1)(C)(iii). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(B), (C)], added cl. (iii) and struck out former cl. (iii) which read as follows: "Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph."

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(iv). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(C), (D)], redesignated cl. (v) as (iv) and struck out former cl. (iv) which related to consultation by the Commission with, and the authority of, the Securities and Exchange Commission with respect to approval of any application by a Board of Trade for designation as a contract market with respect to any contract of sale (or option of such contract) for future delivery of a group or index of securities.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(v). Pub. L. 106–554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v), added subcls. (I) to (V), and struck out former subcls. (I) to (IV) which required any contract market in a stock index futures contract (or option thereon) to file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin for the stock index futures contract (or option thereon), authorized the Board to request any contract market to set the margins at certain levels, authorized the Board to delegate its authority under this clause to the Commission, and preserved the authority of the Commission to raise temporary emergency margin levels.

Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(D)], redesignated cl. (v) as (iv).

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(II), (III)], struck out "section 77c of title 15" after "exempted security under", inserted "or subparagraph (D)" after "subparagraph", and adjusted margins.

Subsec. (a)(1)(C)(vi). Pub. L. 106–554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v).

Pub. L. 106–554, §1(a)(5) [title II, §251(b)(1)], redesignated subcl. (V) as (VI).

Subsec. (a)(1)(D). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(2)], added subpar. (D).

Subsec. (a)(1)(E). Pub. L. 106–554, §1(a)(5) [title II, §251(i)], added subpar. (E).

Subsec. (a)(1)(F). Pub. L. 106–554, §1(a)(5) [title II, §251(j)], added subpar. (F).

Subsec. (a)(2) to (6). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(7). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(C), (E)], substituted "registered entity" for "contract market" and adjusted margins.

Subsec. (a)(8). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(8)(B)(ii). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(D)(iii)], in last sentence, substituted "designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title)" for "designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 12a(9) of this title" and "designation, registration, suspension, revocation, or action" for "designation, suspension, revocation, or emergency action".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(D)(ii)], substituted "designate or register a board of trade as a contract market or derivatives transaction execution facility" for "designate a board of trade as a contract market" in second sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(D)(i)], substituted "designation or registration as a contract market or derivatives transaction execution facility" for "designation as a contract market" in first sentence.

Subsec. (a)(9). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (c). Pub. L. 106–554, §1(a)(5) [title I, §102], added subsec. (c).

Subsec. (d). Pub. L. 106–554, §1(a)(5) [title I, §103], added subsec. (d).

Subsec. (e). Pub. L. 106–554, §1(a)(5) [title I, §104], added subsec. (e).

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title I, §105(a)], added subsec. (f).

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title I, §105(b)], added subsec. (g).

Subsec. (h). Pub. L. 106–554, §1(a)(5) [title I, §106], added subsec. (h).

Subsec. (i). Pub. L. 106–554, §1(a)(5) [title I, §107], added subsec. (i).

1992—Subsec. (a)(1)(A). Pub. L. 102–546, §404(b)(2)–(7), redesignated cls. (i) and (ii) of former third sentence as subcls. (I) and (II), respectively, designated former fifth sentence as cl. (ii), designated former eighth sentence as cl. (iii), and struck out former sixth, seventh, and ninth through last sentences, which included definitions of "future delivery", "board of trade", "interstate commerce", "cooperative association of producers", "member of a contract market", "futures commission merchant", "introducing broker", "floor broker", "the Commission", "commodity trading advisor", and "commodity pool operator". See section 1a of this title.

Pub. L. 102–546, §404(b)(1), which directed the substitution of "(i) The Commission" for the words "For the purposes" and all that followed through "; *Provided*, That the Commission", was executed by making the substitution for the first and second sentences and the third sentence through the words ": *Provided*, That the Commission", to reflect the probable intent of Congress. Prior to amendment, the first, second, and third sentences included definitions of "contract of sale", "person", and "commodity". See section 1a of this title.

Subsec. (a)(1)(B)(iv)(I). Pub. L. 102–546, §209(b)(1)(A), made technical amendment to reference to section 9 of this title appearing in penultimate sentence to reflect change in reference to corresponding section of original act.

Subsec. (a)(1)(B)(iv)(II). Pub. L. 102–546, §209(b)(1)(B), substituted "section 8(b)" for "section 8".

Subsec. (a)(1)(B)(vi). Pub. L. 102–546, §501, added cl. (vi).

Subsec. (a)(2)(A). Pub. L. 102–546, §215, substituted second and third sentences for "The Commission shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall seek to establish and maintain a balanced Commission, including, but not limited to, persons of demonstrated knowledge in futures trading or its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights and interests covered by this chapter."

Subsec. (a)(9)(C). Pub. L. 102–546, §226, added subpar. (C).

1986—Subsec. (a)(1)(B)(iv)(I). Pub. L. 99–641 substituted "Securities and Exchange Commission" for "Securities Exchange Commission" before "otherwise agree".

1983—Subsec. (a)(1). Pub. L. 97–444, §101, designated existing provisions as subpar. (A), inserted in third sentence, first proviso, ", except to the extent otherwise provided in subparagraph (B) of this paragraph," after "exclusive jurisdiction", and added subpar. (B).

Subsec. (a)(1)(A). Pub. L. 97–444, §201, inserted definition of "introducing broker" and, in revising definition of "commodity trading advisor", included any person advising others through electronic media; substituted provision respecting advising others "as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 6c of this title, or any leverage transaction authorized

under section 23 of this title, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing" for provision respecting advising others "as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities"; excluded in item (i) any person acting as an employee of any bank or trust company; substituted in cl. (ii) "news reporter, news columnist, or news editor of the print or electronic media" for "newspaper reporter, newspaper columnist, newspaper editor"; substituted in cl. (iv) "the publisher or producer of any print or electronic data of general and regular dissemination, including its employees" for "the publisher of any bona fide newspaper magazine, or business or financial publication of general and regular circulation including their employees"; inserted item (v); redesignated as items (vi) and (vii) former items (v) and (vi); and authorized Commission to effectuate purposes of definition by rule or regulation by including within definition any person advising as to the value of commodities or issuing reports or analyses concerning commodities.

Subsec. (a)(7). Pub. L. 97-444, §202, struck out "(A)" after "(7)" and struck out subpar. (B) which prohibited any representative activities before the Commission for a one year period upon termination of employment occurring on a day more than four months after Sept. 30, 1978, of any Commissioner or employee of the Commission having a GS-16 or higher classified position excepted from the competitive service because of its confidential or policymaking character.

1978—Subsec. (a)(1). Pub. L. 95-405, §2(1), substituted "section 23 of this title" for "section 15a of this title".

Subsec. (a)(2). Pub. L. 95-405, §2(2)-(5), designated existing provisions as subpar. (A) and substituted "five Commissioners" for "a chairman and four other Commissioners", "(i)" for "(A)", and "(ii)" for "(B)", and added subpar. (B).

Subsec. (a)(5). Pub. L. 95-405, §2(6), struck out ", by and with the advice and consent of the Senate," after "by the Commission".

Subsec. (a)(6)(A). Pub. L. 95-405, §2(7), inserted "according to budget categories, plans, programs, and priorities established and approved by the Commission," after "expenditure of funds,".

Subsec. (a)(6)(B). Pub. L. 95-405, §2(8), substituted ", plans, priorities, and budgets approved by the Commission" for "of the Commission".

Subsec. (a)(7). Pub. L. 95-405, §2(9), (10), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(8). Pub. L. 95-405, §2(11)-(13), designated existing provisions as subpar. (A), substituted "maintain" for "establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining", and added subpar. (B).

Subsec. (a)(9)(A), (B). Pub. L. 95-405, §2(14), (15), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

1974—Subsec. (a). Pub. L. 93-463, §101(a), designated existing provisions as par. (1), substituted "Commodity Futures Trading Commission established under paragraph (2) of this subsection" for "Commodity Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, or an official or employee of each of the executive departments concerned, designated by the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, respectively; and the Secretary of Agriculture or his designee shall serve as Chairman", and added pars. (2) to (11).

Subsec. (a)(1). Pub. L. 93-463, §§201, 202, struck out "onions," after "eggs," in definition of "commodity" and inserted provisions to that definition to include as commodities all other goods and articles, except onions as provided in section 13-1 of this title, and all services, rights, and interests in which contracts for the future delivery are presently or in the future dealt in, and inserted definitions for "commodity trading advisor" and "commodity pool operator".

1968—Subsec. (a). Pub. L. 90-418 extended definition of "commodity" in third sentence to include frozen concentrated orange juice.

Pub. L. 90-258, §1(c), provided in last sentence for representation on the Commission of Secretary of Agriculture, Secretary of Commerce, and Attorney General by an official or employee designated from executive department concerned and for service of Secretary of Agriculture or his designee as Chairman.

Pub. L. 90-258, §1(b), substituted in definition of "floor broker" in penultimate sentence "purchase or sell for any other person" for "engage in executing for others any order for the purchase or sale of" and struck out provision for receipt or acceptance of any commission or other compensation for services as a floor broker.

Pub. L. 90–258, §1(a), extended definition of "commodity" in third sentence to include livestock and livestock products.

1955—Subsec. (a). Act July 26, 1955, extended "commodity" to onions.

1954—Subsec. (a). Act Aug. 28, 1954, extended "commodity" to wool.

1940—Subsec. (a). Act Oct. 9, 1940, extended "commodity" to fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans and soybean meal.

1938—Subsec. (a). Act Apr. 7, 1938, extended "commodity" to wool tops.

1936—Subsec. (a). Act June 15, 1936, substituted "commodity", "any commodity", or "commodities", as the case may require, for "grain" wherever appearing, and "any cash commodity" for "cash grain", substituted sentence defining "commodity" for sentence defining "grain", and inserted definitions of "cooperative association of producers", "member of a contract market", "futures commission merchant", "floor broker", and "the commission."

Subsec. (b). Act June 15, 1936, §2, substituted "commodity" and "commodities", as the case may require, for "grain" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Pub. L. 110–234, title XIII, §13101(b), May 22, 2008, 122 Stat. 1432, and Pub. L. 110–246, §4(a), title XIII, §13101(b), June 18, 2008, 122 Stat. 1664, 2194, provided that: "The following provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended by subsection (a) of this section [amending this section], shall be effective 120 days after the date of the enactment of this Act [June 18, 2008] or at such other time as the Commodity Futures Trading Commission shall determine:

"(1) Subparagraphs (B)(i)(II)(gg), (B)(iv), and (C)(iii) of section 2(c)(2) [7 U.S.C. 2(c)(2)].

"(2) The provisions of section 2(c)(2)(B)(i)(II)(cc) [7 U.S.C. 2(c)(2)(B)(i)(II)(cc)] that set forth adjusted net capital requirements, and the provisions of such section that require a futures commission merchant to be primarily or substantially engaged in certain business activities."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

Pub. L. 110–234, title XIII, §13204, May 22, 2008, 122 Stat. 1441, and Pub. L. 110–246, §4(a), title XIII, §13204, June 18, 2008, 122 Stat. 1664, 2203, provided that:

"(a) **IN GENERAL.**—Except as provided in this section, this subtitle [subtitle B (§§13201–13204) of title XIII of Pub. L. 110–246, amending this section and sections 1a, 6a, 6g, 6i, 7a, 7a–2, 7b, 8, and 25 of this title] shall become effective on the date of enactment of this Act [June 18, 2008].

"(b) **SIGNIFICANT PRICE DISCOVERY STANDARDS RULEMAKING.**—

"(1) The Commodity Futures Trading Commission shall—

"(A) not later than 180 days after the date of the enactment of this Act [June 18, 2008], issue a proposed rule regarding the implementation of section 2(h)(7) of the Commodity Exchange Act [7 U.S.C. 2(h)(7)]; and

"(B) not later than 270 days after the date of enactment of this Act [June 18, 2008], issue a final rule regarding the implementation.

"(2) In its rulemaking pursuant to paragraph (1) of this subsection, the Commission shall include the standards, terms, and conditions under which an electronic trading facility will have the responsibility to notify the Commission that an agreement, contract, or transaction conducted in reliance on the exemption provided in section 2(h)(3) of the Commodity Exchange Act [7 U.S.C. 2(h)(3)] may perform a price discovery function.

"(c) **SIGNIFICANT PRICE DISCOVERY DETERMINATIONS.**—With respect to any electronic trading facility operating on the effective date of the final rule issued pursuant to subsection (b)(1), the Commission shall complete a review of the agreements, contracts, and transactions of the facility not later than 180 days after

that effective date to determine whether any such agreement, contract, or transaction performs a significant price discovery function."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–444, title II, §239, Jan. 11, 1983, 96 Stat. 2327, provided that: "This Act [see Short Title of 1983 Amendment note set out under section 1 of this title] shall be effective upon the date of enactment of this Act [Jan. 11, 1983], except that sections 207, 212, and 231 of this Act [amending sections 6d, 6k, and 18 of this title] shall be effective one hundred and twenty days after the date of enactment of this Act, or such earlier date as the Commodity Futures Trading Commission shall prescribe by regulation."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–405, §28, Sept. 30, 1978, 92 Stat. 878, provided that: "Except as otherwise provided in this Act, the provisions of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] shall become effective October 1, 1978."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–463, title IV, §418, Oct. 23, 1974, 88 Stat. 1415, provided that:

"(a) Except as otherwise provided specifically in this Act [see Short Title of 1974 Amendment note set out under section 1 of this title], the effective date of this Act shall be the 180th day after enactment [Oct. 23, 1974]. The Commission referred to in section 101 [Commodity Futures Trading Commission] is hereby established effective immediately on enactment of this Act. Sections 102 and 410 [amending sections 5108, 5314, 5315, and 5316 of Title 5, Government Organization and Employees] shall be effective immediately on enactment of this Act. Activities necessary to implement the changes effected by this Act may be carried out after the date of enactment and before as well as after the 180th day thereafter. Activities to be carried out after the date of enactment and before the 180th day thereafter may include, but are not limited to the following: Designation of boards of trade as contract markets, registration of futures commission merchants, floor brokers, and other persons required to be registered under the Act [this chapter], approval or modification of bylaws, rules, regulations, and resolutions of contract markets, and issuance of regulations, effective on or after the 180th day after enactment; appointment and compensation of the members of the Commission; hiring and compensation of staff; and conducting of investigations and hearings. Nothing in this Act shall limit the authority of the Secretary of Agriculture or the Commodity Exchange Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended, prior to the 180th day after enactment of this Act.

"(b) Funds appropriated for the administration of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], may be used to implement this Act immediately after the date of enactment of this Act [Oct. 23, 1974]."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–258, §28, Feb. 19, 1968, 82 Stat. 34, provided that: "This Act [enacting sections 12b, 13b, 13c, and 17b of this title and amending this section and sections 6a, 6b, 6d, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 12, 12–1, 12a, 13, and 13a of this title] shall become effective one hundred and twenty days after enactment [Feb. 19, 1968]."

EFFECTIVE DATE OF 1955 AMENDMENT

Act July 26, 1955, ch. 382, §2, 69 Stat. 375, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [July 26, 1955]."

EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 28, 1954, ch. 1041, title VII, §710(b), 68 Stat. 913, which provided that the amendment of this section by act Aug. 28, 1954, was effective 60 days after Aug. 28, 1954, was repealed by Pub. L. 103–130, §3(a), Nov. 1, 1993, 107 Stat. 1369, eff. Dec. 31, 1995.

EFFECTIVE DATE OF 1940 AMENDMENT

Act Oct. 9, 1940, ch. 786, §2, 54 Stat. 1059, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [Oct. 9, 1940]."

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

SEPARABILITY OF 1974 AMENDMENT

Pub. L. 93–463, title IV, §413, Oct. 23, 1974, 88 Stat. 1414, provided that: "If any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby."

GRANDFATHER PROVISIONS

Pub. L. 111–203, title VII, §723(c), July 21, 2010, 124 Stat. 1682, provided that:

"(1) **LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.**—Not later than 60 days after the date of enactment of this Act [July 21, 2010], a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

"(2) **CONSIDERATION; AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION.**—The Commodity Futures Trading Commission—

"(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and

"(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

"(3) **AGRICULTURAL SWAPS.**—

"(A) **IN GENERAL.**—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

"(B) **EXCEPTION.**—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

"(4) **REQUIRED REPORTING.**—If the exception described in section 2(h)(8)(B) of the Commodity Exchange Act [7 U.S.C. 2(h)(8)(B)] applies, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to section 2(h)(8)(B) of the Commodity Exchange Act."

[For definition of "swap" as used in section 723(c) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

PORTFOLIO MARGINING AND SECURITY INDEX ISSUES

Pub. L. 110–234, title XIII, §13106, May 22, 2008, 122 Stat. 1435, and Pub. L. 110–246, §4(a), title XIII, §13106, June 18, 2008, 122 Stat. 1664, 2197, provided that:

"(a) The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission shall work to ensure that the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or both, as appropriate, have taken the actions required under subsection (b).

"(b) The SEC, the CFTC, or both, as appropriate, shall take action under their existing authorities to permit

"(1) by September 30, 2009, risk-based portfolio margining for security options and security futures products (as defined in section 1a(32) [now 1a(45)] of the Commodity Exchange Act [7 U.S.C. 1a(32), now 1a(45)]); and

"(2) by June 30, 2009, the trading of futures on certain security indexes by resolving issues related to foreign security indexes."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

STUDY REGARDING RETAIL SWAPS

Pub. L. 106–554, §1(a)(5) [title I, §105(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–379, required the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission to conduct a study of issues involving the offering of swap agreements to persons other than eligible contract participants and, before the end of the 1-year period

beginning on Dec. 21, 2000, submit a report on findings and conclusions of the study and recommendations for any necessary legislative action to Congress.

EDUCATIONAL EVENTS AND SYMPOSIA

Pub. L. 106–78, title VI, Oct. 22, 1999, 113 Stat. 1160, provided in part: "That for fiscal year 2000 and thereafter, the Commission [Commodity Futures Trading Commission] is authorized to charge reasonable fees to attendees of Commission sponsored educational events and symposia to cover the Commission's costs of providing those events and symposia, and notwithstanding 31 U.S.C. 3302, said fees shall be credited to this account, to be available without further appropriation."

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–277, div. A, §101(a) [title VI], Oct. 21, 1998, 112 Stat. 2681, 2681–24.

Pub. L. 105–86, title VI, Nov. 18, 1997, 111 Stat. 2104.

Pub. L. 104–180, title VI, Aug. 6, 1996, 110 Stat. 1596.

Pub. L. 104–37, title VI, Oct. 21, 1995, 109 Stat. 327.

Pub. L. 103–330, title VI, Sept. 30, 1994, 108 Stat. 2466.

NON-ABATEMENT OF PENDING PROCEEDINGS

Pub. L. 93–463, title IV, §412, Oct. 23, 1974, 88 Stat. 1414, provided that: "Pending proceedings under existing law shall not be abated by reason of any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], in effect prior to the effective date of this Act [see Effective Date of 1974 Amendment note above]."

¹ [See References in Text note below.](#)

² [So in original. The word "or" probably should not appear.](#)

³ [So in original. Probably should be subclause "\(III\)".](#)

⁴ [So in original. Probably should be "section".](#)

⁵ [So in original.](#)

⁶ [So in original. No item \(ee\) has been enacted.](#)

⁷ [So in original. Probably should be "subparagraph".](#)

⁸ [So in original. Probably should be "governmental".](#)

⁹ [So in original. Probably should be preceded by "section".](#)

§§2a to 4a. Transferred

CODIFICATION

Section 2a, act Sept. 21, 1922, ch. 369, §2(a)(1)(C), formerly §2(a)(1)(B), as added Pub. L. 97–444, title I, §101(a)(3), Jan. 11, 1983, 96 Stat. 2294, as amended and renumbered, which related to designation of boards of trade as contract markets and approval by and jurisdiction of Commodity Futures Trading Commission and Securities and Exchange Commission, was transferred to section 2(a)(1)(C) of this title.

Section 3, act Sept. 21, 1922, ch. 369, §2(b), 42 Stat. 998, as amended, which related to transactions in interstate commerce, was transferred to section 2(b) of this title.

Section 4, act Sept. 21, 1922, ch. 369, §2(a)(1)(B), formerly §2(a), 42 Stat. 998, as amended and renumbered, which related to liability of principal for act of agent, was transferred to section 2(a)(1)(B) of this title.

Section 4a, act Sept. 21, 1922, ch. 369, §2(a)(2)–(11), as added Pub. L. 93–463, title I, §101(a)(3), Oct. 23, 1974, 88 Stat. 1389, as amended, which related to the Commodity Futures Trading Commission, was transferred to section 2(a)(2) to (11) of this title.

§5. Findings and purpose

(a) Findings

The transactions subject to this chapter are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) Purpose

It is the purpose of this chapter to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

(Sept. 21, 1922, ch. 369, §3, as added Pub. L. 106–554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A–383.)

PRIOR PROVISIONS

A prior section 5, acts Sept. 21, 1922, ch. 369, §3, 42 Stat. 999; June 15, 1936, ch. 545, §2, 49 Stat. 1491; Pub. L. 97–444, title II, §203, Jan. 11, 1983, 96 Stat. 2298, stated legislative findings, prior to repeal by Pub. L. 106–554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A–383.

§6. Regulation of futures trading and foreign transactions

(a) Restriction on futures trading

Unless exempted by the Commission pursuant to subsection (c) or by subsection (e), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

(2) such contract is executed or consummated by or through a contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery:

Provided, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

(b) Regulation of foreign transactions by United States persons

(1) Foreign boards of trade

(A) Registration

The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, "direct access" refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. In adopting such rules and regulations, the commission ¹ shall consider—

(i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and

(ii) any previous commission ¹ findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

(B) Linked contracts

The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 6a of this title, price distortion, or disruption of delivery or the cash settlement process;

(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

(aa) the information that the foreign board of trade will make publicly available;

(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 6a of this title, price distortion, or disruption of delivery or the cash settlement process; and

(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position

information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

(C) Existing foreign boards of trade

Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to July 21, 2010, the Commission granted direct access permission until the date that is 180 days after July 21, 2010.

(2) Persons located in the United States

(A) In general

The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions.

(B) Different requirements

Rules and regulations described in subparagraph (A) may impose different requirements for such persons depending upon the particular foreign board of trade, exchange, or market involved.

(C) Prohibition

Except as provided in paragraphs (1) and (2), no rule or regulation may be adopted by the Commission under this subsection that—

- (i) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market; or
- (ii) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market.

(c) Public interest exemptions

(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this chapter (except subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, ² except that—

(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

- (i) with respect to—
 - (I) paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a of this title, and

sections 2(a)(13), 2(c)(1)(D), 6a(a), 6a(b), 6d(c), 6d(d), 6r, 6s, 7a-1(a), 7a-1(b), 7(d), 7(g), 7(h),³ 7a-1(c), 7a-1(i), 12(e),⁴ and 24a of this title; and

(II) section 206(e)⁵ of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note); and

(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title⁶ if the Commissions determine that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this chapter; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this chapter.

(3) For purposes of this subsection, the term "appropriate person" shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this chapter.

(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or a commodity trading advisor subject to regulation under this chapter.

(H) Any governmental entity (including the United States, any state,⁷ or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this chapter acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

(4) During the pendency of an application for an order granting an exemption under paragraph (1), the Commission may limit the public availability of any information received from the applicant if

the applicant submits a written request to limit disclosure contemporaneous with the application, and the Commission determines that—

- (A) the information sought to be restricted constitutes a trade secret; or
- (B) public disclosure of the information would result in material competitive harm to the applicant.

(5) The Commission may—

(A) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) with respect to classes of hybrid instruments that are predominantly securities or depository instruments, to the extent that such instruments may be regarded as subject to the provisions of this chapter; or

(B) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this chapter.

Any exemption pursuant to this paragraph shall be subject to such terms and conditions as the Commission shall determine to be appropriate pursuant to paragraph (1).

(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this chapter, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this chapter an agreement, contract, or transaction that is entered into—

(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) between entities described in section 824(f) of title 16.

(d) Effect of exemption on investigative authority of Commission

The granting of an exemption under this section shall not affect the authority of the Commission under any other provision of this chapter to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this chapter or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements.

(e) Liability of registered persons trading on a foreign board of trade

(1) In general

A person registered with the Commission, or exempt from registration by the Commission, under this chapter may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

- (i) legally organized under the laws of a foreign country;
- (ii) authorized to act as a board of trade by a foreign futures authority; and
- (iii) subject to regulation by the foreign futures authority; and

(B) has not been determined by the Commission to be operating in violation of subsection (a).

(2) Rule of construction

Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).

(Sept. 21, 1922, ch. 369, §4, 42 Stat. 999; June 15, 1936, ch. 545, §§2, 4, 49 Stat. 1491, 1492; Pub. L. 93–463, title I, §103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §204, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102–546, title V, §502(a), Oct. 28, 1992, 106 Stat. 3629; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–406; Pub. L. 111–203, title VII, §§721(d), 722(f), 738(a), (b), July 21, 2010, 124 Stat. 1671, 1674, 1726, 1728.)

REFERENCES IN TEXT

Subtitle A of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c)(1)(A), is subtitle A (§§721–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641. For complete classification of subtitle A to the Code, see Tables.

Section 12(e) of this title, referred to in subsec. (c)(1)(A)(i)(I), was in the original a reference to section "8e" and has been translated as if the reference had been to section "8(e)" to reflect the probable intent of Congress. Section 8e of act Sept. 21, 1922, which was formerly classified to section 12e of this title, was repealed by Pub. L. 106–554, §1(a)(5) [title I, §123(a)(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (c)(1)(A)(ii), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376. Section 721(c) of the Act is classified to section 8321(b) of Title 15, Commerce and Trade. Section 742 of the Act amended section 2 of this title and provisions set out as a note under section 78c of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

The Investment Company Act of 1940, referred to in subsec. (c)(3)(D), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(G), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (c)(3)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §738(b)(1), inserted "or by subsection (e)" after "Unless exempted by the Commission pursuant to subsection (c)" in introductory provisions.

Subsec. (b). Pub. L. 111–203, §738(a)(1)–(3), designated existing provisions as par. (2), designated the first to third sentences as subpars. (A) to (C), respectively, redesignated former pars. (1) and (2) as cls. (i) and (ii), respectively, of subpar. (C), inserted headings, in subpar. (B), substituted "Rules and regulations described in subparagraph (A)" for "Such rules and regulations", in the introductory provisions of subpar. (C), substituted "Except as provided in paragraphs (1) and (2), no rule or regulation" for "No rule or regulation" and "that—" for "that", and, in subpar. (C)(i), substituted "market; or" for "market, or".

Subsec. (b)(1). Pub. L. 111–203, §738(a)(4), added par. (1).

Subsec. (c)(1). Pub. L. 111–203, §721(d), substituted "except that—" for "except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest." and added subpars. (A) and (B).

Subsec. (c)(6). Pub. L. 111–203, §722(f), added par. (6).

Subsec. (e). Pub. L. 111–203, §738(b)(2), added subsec. (e).

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(A)(i)], substituted "designated or registered by the Commission as a contract market or derivatives transaction execution facility for" for "designated by the Commission as a 'contract market' for".

Subsec. (a)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(A)(ii)], struck out "member of such" after "by or through a".

Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(A)(iii)], inserted "or derivatives transaction execution facility" after "contract market".

Subsec. (c)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(B)(i)], substituted "designated or registered as a contract market or derivatives transaction execution facility" for "designated as a contract market" and "subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities

and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title" for "section 2a of this title".

Subsec. (c)(2)(B)(ii). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(B)(ii)], inserted "or derivatives transaction execution facility" after "contract market".

1992—Subsec. (a). Pub. L. 102–546, §502(a)(1), substituted "Unless exempted by the Commission pursuant to subsection (c) of this section, it shall be unlawful" for "It shall be unlawful".

Subsecs. (c), (d). Pub. L. 102–546, §502(a)(2), added subsecs. (c) and (d).

1983—Pub. L. 97–444 amended section generally, combining into subsec. (a) existing provisions of this section together with provisions formerly contained in section 6h(1) of this title, relating to the conduct of offices or places of business anywhere in the United States or its territories that are used for dealing in commodities for future delivery unless such dealings are executed or consummated by or through a member of a contract market, and adding subsec. (b).

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

1936—Act June 15, 1936, §2, substituted "commodity" for "grain" wherever appearing.

Act June 15, 1936, §4, struck out par. (a) and combined par. (b) with first par.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

¹ *So in original. Probably should be "Commission".*

² *So in original. A closing parenthesis probably should precede the comma.*

³ *So in original. Section 7 of this title does not contain subsecs. (g) and (h).*

⁴ *See References in Text note below.*

⁵ *So in original. Section 206 of the Act does not contain a subsec. (e).*

⁶ *So in original. The closing parenthesis probably should not appear.*

⁷ *So in original. Probably should be capitalized.*

§6a. Excessive speculation

(a) Burden on interstate commerce; trading or position limits

(1) In general

Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or swaps that perform or affect a significant price discovery function with respect to registered entities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity, as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as "spreads" or "straddles" or "arbitrage" or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word "arbitrage" in domestic markets shall be defined to mean the same as "spread" or "straddle". The Commission is authorized to define the term "international arbitrage".

(2) Establishment of limitations

(A) In general

In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

(B) Timing

(i) Exempt commodities

For exempt commodities, the limits required under subparagraph (A) shall be established within 180 days after July 21, 2010.

(ii) Agricultural commodities

For agricultural commodities, the limits required under subparagraph (A) shall be established within 270 days after July 21, 2010.

(C) Goal

In establishing the limits required under subparagraph (A), the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

(3) Specific limitations

In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

(B) to the maximum extent practicable, in its discretion—

(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

(ii) to deter and prevent market manipulation, squeezes, and corners;

(iii) to ensure sufficient market liquidity for bona fide hedgers; and

(iv) to ensure that the price discovery function of the underlying market is not disrupted.

(4) Significant price discovery function

In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

(A) Price linkage

The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

(B) Arbitrage

The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

(C) Material price reference

The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

(D) Material liquidity

The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

(E) Other material factors

Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

(5) Economically equivalent contracts

(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

(ii) establish the limits simultaneously with limits established under paragraph (2).

(6) Aggregate position limits

The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

(A) contracts listed by designated contract markets;

(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

(7) Exemptions

The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

(b) Prohibition on trading or positions in excess of limits fixed by Commission

The Commission shall, in such rule, regulation, or order, fix a reasonable time (not to exceed ten days) after the promulgation of the rule, regulation, or order; after which, and until such rule, regulation, or order is suspended, modified, or revoked, it shall be unlawful for any person—

(1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets, or swap execution facility or facilities with respect to a significant price discovery contract, to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or swap execution facility with respect to a significant price discovery contract in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

(c) Applicability to bona fide hedging transactions or positions

(1) No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this chapter. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983.

(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

(iii) arises from the potential change in the value of—

(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

- (II) liabilities that a person owns or anticipates incurring; or
- (III) services that a person provides, purchases, or anticipates providing or purchasing; or

(B) reduces risks attendant to a position resulting from a swap that—

- (i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or
- (ii) meets the requirements of subparagraph (A).

(d) Persons subject to regulation; applicability to transactions made by or on behalf of United States

This section shall apply to a person that is registered as a futures commission merchant, an introducing broker, or a floor broker under authority of this chapter only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

(e) Rulemaking power and penalties for violation

Nothing in this section shall prohibit or impair the adoption by any contract market, derivatives transaction execution facility, or by any other board of trade licensed, designated, or registered by the Commission or by any electronic trading facility of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market or derivatives transaction execution facility or on an electronic trading facility, or under options on such contracts or commodities traded on or subject to the rules of such contract market, derivatives transaction execution facility, or electronic trading facility or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 6c of this title for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such contract market, derivatives transaction execution facility, or electronic trading facility or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this chapter for any person to violate any bylaw, rule, regulation, or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission or electronic trading facility with respect to a significant price discovery contract fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission or certified by a registered entity pursuant to section 7a-2(c)(1) of this title: *Provided*, That the provisions of section 13(a)(5) of this title shall apply only to those who knowingly violate such limits.

(Sept. 21, 1922, ch. 369, §4a, as added June 15, 1936, ch. 545, §5, 49 Stat. 1492; amended July 24, 1956, ch. 690, §1, 70 Stat. 630; Pub. L. 90-258, §§2-4, Feb. 19, 1968, 82 Stat. 26, 27; Pub. L. 93-463, title IV, §§403, 404, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 94-16, §4, Apr. 16, 1975, 89 Stat. 78; Pub. L. 97-444, title II, §205, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102-546, title IV, §402(1)(A), (2), Oct. 28, 1992, 106 Stat. 3624; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407; Pub. L. 110-234, title XIII, §§13105(a), 13203(g), May 22, 2008, 122 Stat. 1434, 1439; Pub. L. 110-246, §4(a), title XIII, §§13105(a), 13203(g), June 18, 2008, 122 Stat. 1664, 2196, 2201; Pub. L. 111-203, title VII, §737(a)-(c), July 21, 2010, 124 Stat. 1722, 1725.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §737(a)(1)-(3), designated existing provisions as par. (1), inserted heading, substituted "swaps that perform or affect a significant price discovery function with respect to registered entities" for "on electronic trading facilities with respect to a significant price discovery contract", inserted ", including any group or class of traders," after "held by any person", and substituted "swaps traded

on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity," for "on an electronic trading facility with respect to a significant price discovery contract,".

Subsec. (a)(2) to (7). Pub. L. 111–203, §737(a)(4), added pars. (2) to (7).

Subsec. (b)(1). Pub. L. 111–203, §737(b)(1), substituted "or swap execution facility or facilities" for "or derivatives transaction execution facility or facilities or electronic trading facility".

Subsec. (b)(2). Pub. L. 111–203, §737(b)(2), which directed substitution of "or swap execution facility" for "or derivatives transaction execution facility or facilities or electronic trading facility", was executed by making the substitution for "or derivatives transaction execution facility or electronic trading facility" to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 111–203, §737(c), designated existing provisions as par. (1) and added par. (2).

2008—Subsec. (a). Pub. L. 110–246, §13203(g)(1), inserted ", or on electronic trading facilities with respect to a significant price discovery contract" after "execution facilities" in first sentence and ", or on an electronic trading facility with respect to a significant price discovery contract," after "execution facility" in second sentence.

Subsec. (b)(1). Pub. L. 110–246, §13203(g)(2)(A), inserted "or electronic trading facility with respect to a significant price discovery contract" after "facility or facilities".

Subsec. (b)(2). Pub. L. 110–246, §13203(g)(2)(B), inserted "or electronic trading facility with respect to a significant price discovery contract" after "execution facility".

Subsec. (e). Pub. L. 110–246, §13203(g)(3), in first sentence, inserted "or by any electronic trading facility" after "registered by the Commission", inserted "or on an electronic trading facility" after "derivatives transaction execution facility" the second place it appeared, and inserted "or electronic trading facility" before "or such board of trade" in two places, and, in second sentence, inserted "or electronic trading facility with respect to a significant price discovery contract" after "registered by the Commission".

Pub. L. 110–246, §13105(a), inserted "or certified by a registered entity pursuant to section 7a–2(c)(1) of this title" after "approved by the Commission" and substituted "section 13(a)(5)" for "section 13(c)".

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(A)], inserted "or derivatives transaction execution facilities" after "contract markets" in first sentence and "or derivatives transaction execution facility" after "contract market" in second sentence.

Subsec. (b)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(B)(i)], inserted ", or derivatives transaction execution facility or facilities," after "markets".

Subsec. (b)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(B)(ii)], inserted "or derivatives transaction execution facility" after "contract market".

Subsec. (e). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(C)], substituted "contract market, derivatives transaction execution facility, or" for "contract market or" wherever appearing, "licensed, designated, or registered" for "licensed or designated" in two places, and "contract market or derivatives transaction execution facility, or" for "contract market, or".

1992—Subsec. (a). Pub. L. 102–546, §402(1)(A), (2)(A), (C), redesignated par. (1) as subsec. (a), substituted "Commission" for "commission" wherever appearing except in last sentence, and substituted "paragraphs (1) and (2) of subsection (b) of this section" for "subparagraphs (A) and (B) of paragraph (2)".

Subsec. (b). Pub. L. 102–546, §402(1)(A), (2)(C), (D), redesignated par. (2) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively, and substituted "Commission" for "commission" wherever appearing.

Subsec. (c). Pub. L. 102–546, §402(2)(B), (C), redesignated par. (3) as subsec. (c) and substituted "subsection (a)" for "paragraph (1)".

Subsecs. (d), (e). Pub. L. 102–546, §402(2)(C), redesignated pars. (4) and (5) as subsecs. (d) and (e), respectively.

1983—Par. (1). Pub. L. 97–444, §205(1), (2), substituted "by rule, regulation, or order, proclaim" for "by order, proclaim" and inserted "or for different number of days remaining until the last day of trading in a contract," after "delivery months".

Par. (2). Pub. L. 97–444, §205(1), (3), substituted "after the promulgation of the rule, regulation, or order" for "after the order's promulgation" in provisions before subpar. (A) and substituted "rule, regulation, or order" for "order" in provisions before subpar. (A) and in subpars. (A) and (B).

Par. (3). Pub. L. 97–444, §205(4), substituted "No rule, regulation, or order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the

purposes of this chapter" for "No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this chapter" and inserted "Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983."

Par. (4). Pub. L. 97-444, §205(5), substituted "a futures commission merchant, an introducing broker, or a floor broker" for "a futures commission merchant or as floor broker".

Par. (5). Pub. L. 97-444, §205(6), added par. (5).

1975—Par. (3). Pub. L. 94-16 substituted "one hundred and eighty days" for "ninety days".

1974—Par. (1). Pub. L. 93-463, §403, inserted "or 'arbitrage' " after "or 'straddles' ", inserted definition of "arbitrage", and authorized Commission to define "international arbitrage".

Par. (3). Pub. L. 93-463, §404, directed Commission to define "bona fide hedging transactions or positions" within 90 days after the effective date of the Commodity Futures Trading Commission Act of 1974 and struck out provisions which enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position.

1968—Par. (1). Pub. L. 90-258, §2, substituted in second sentence "amounts of trading" for "amount of trading", inserted "which may be done or positions which may be held by any person" before "under contracts of sale", and struck out "which may be done" after "rules of any contract market", inserted third sentence providing for inclusion of controlled positions and trading in determining whether prescribed position or trading limits have been exceeded and for application of such position and trading limits to activities of two or more persons acting pursuant to agreement or understanding as if the activities of a single person, and included in fourth, formerly third, sentence references to position limits and to positions, substituted "normally" for "commonly", and struck out "trading" from "from fixing trading limits" and "from trading limits".

Par. (2)(B). Pub. L. 90-258, §3, substituted prohibition against holding of net long or net short positions in excess of any position limit fixed by the Commission for former prohibition of purchases or sales which result in net long or net short positions in excess of trading limits fixed by the Commission and provided that the position limit shall not apply to a position acquired in good faith prior to the effective date of the order.

Par. (3). Pub. L. 90-258, §4, included references to positions, made hedging applicable to short and long positions, substituted "contract market" for "board of trade", and required the activities to be those of the same person to constitute hedging.

1956—Par. (3)(C). Act July 24, 1956, added subpar. (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title VII, §737(d), July 21, 2010, 124 Stat. 1725, provided that: "This section [amending this section] and the amendments made by this section shall become effective on the date of the enactment of this section [July 21, 2010]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(g) of Pub. L. 110-246 effective June 18, 2008, see section 13204(a) of Pub. L. 110-246, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-463, title IV, §404, Oct. 23, 1974, 88 Stat. 1413, provided that the amendment of par. (3) which struck out provisions that enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position, was effective immediately upon the enactment of Pub. L. 93-463, which was approved Oct. 23, 1974.

Amendment by Pub. L. 93-463 of par. (1) and that part of par. (3) directing the Commission to define "bona fide hedging transactions or positions" effective so as to allow implementation of all changes effected by this amendment to be carried out after Oct. 23, 1974, and before as well as after the 180th day thereafter, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act July 24, 1956, ch. 690, §2, 70 Stat. 630, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [July 24, 1956]."

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

REGULATIONS DEFINING BONA FIDE HEDGING TRANSACTIONS AND POSITIONS

Pub. L. 93-463, title IV, §404, Oct. 23, 1974, 88 Stat. 1413, provided in part: "That notwithstanding any other provision of law, the Secretary of Agriculture, immediately upon the enactment of the Commodity Futures Trading Commission Act of 1974 [which was approved on Oct. 23, 1974], is authorized and directed to promulgate regulations defining bona fide hedging transactions and positions: *And provided further*, That until the Secretary issues such regulations defining bona fide hedging transactions and positions and such regulations are in full force and effect, such terms shall continue to be defined as set forth in the Commodity Exchange Act [par. (3) of this section] prior to its amendment by the Commodity Futures Trading Commission Act of 1974 [Pub. L. 93-463]."

§6b. Contracts designed to defraud or mislead

(a) Unlawful actions

It shall be unlawful—

(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or

(2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market

—

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person; or

(D)(i) to bucket an order if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market; or

(ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of the other person to become the buyer in respect to any selling order of the other person, or become the seller in respect to any buying order of the other person, if the order is either represented by the person as an order to be executed, or is

required to be executed, on or subject to the rules of a designated contract market unless the order is executed in accordance with the rules of the designated contract market.

(b) Clarification

Subsection (a)(2) of this section shall not obligate any person, in or in connection with a transaction in a contract of sale of a commodity for future delivery, or swap, with another person, to disclose to the other person nonpublic information that may be material to the market price, rate, or level of the commodity or transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(c) Buying and selling orders for commodity

Nothing in this section or in any other section of this chapter shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

(d) Inapplicability to transactions on foreign exchanges

Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market.

(e) Contracts of sale on group or index of securities

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

(1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(Sept. 21, 1922, ch. 369, §4b, as added June 15, 1936, ch. 545, §5, 49 Stat. 1493; amended Pub. L. 90–258, §5, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93–463, title IV, §405, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 99–641, title I, §101, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102–546, title IV, §402(3), Oct. 28, 1992, 106 Stat. 3624; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407; Pub. L. 110–234, title XIII, §13102, May 22, 2008, 122 Stat. 1432; Pub. L. 110–246, §4(a), title XIII, §13102, June 18, 2008, 122 Stat. 1664, 2194; Pub. L. 111–203, title VII, §741(b)(1), July 21, 2010, 124 Stat. 1730.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–203, §741(b)(1)(A), substituted "or swap," for "or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 7a(g) of this title,".

Subsec. (b). Pub. L. 111–203, §741(b)(1)(B), substituted "or swap," for "or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 7a(g) of this title,".

Subsec. (e). Pub. L. 111–203, §741(b)(1)(C), added subsec. (e).

2008—Pub. L. 110–246, §13102, inserted section catchline, added subsecs. (a) and (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and struck out former subsec. (a) which related to contracts designed to defraud or mislead and bucketing orders.

2000—Subsec. (a)(1). Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.

1992—Pub. L. 102–546 designated first par. as subsec. (a), redesignated cls. (a) to (c) as subpars. (A) to (C), respectively, and subpars. (A) to (D) as cls. (i) to (iv), respectively, and designated second and third undesignated pars. as subsecs. (b) and (c), respectively.

1986—Pub. L. 99–641 struck out "on or subject to the rules of any contract market," after "to be made" in cl. (2) of first par. and added concluding paragraph that this section not apply to activity on board of trade, exchange, market, or clearinghouse located outside United States involving contract of sale of commodity for future delivery.

1974—Pub. L. 93–463 substituted "a commodity" for "cotton" in provisions following subpar. (D) and inserted requirement that execution of buying and selling orders for commodities held simultaneously by the same merchant or broker be carried out in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

1968—Pub. L. 90–258 relocated cl. (1) designation in first par. to follow "unlawful" rather than to precede "any contract of sale", provided in such cl. (1) for orders to make or making of contracts of sale "made, or to be made on or subject to the rules of any contract market, for or on behalf of any other person" and in cl. (2) "for any person, in or in connection with any order to make, or the making of," any contract of sale of any commodity for future delivery for or on behalf of any "other" person; and inserted "other" before "person" in subpar. (A) and in subpars. (B) and (C) where appearing for first time, respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6b–1. Enforcement authority

(a) Commodity Futures Trading Commission

Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

(b) Prudential regulators

The prudential regulators shall have exclusive authority to enforce the provisions of section 6s(e) of this title with respect to swap dealers or major swap participants for which they are the prudential regulator.

(c) Referrals

(1) Prudential regulators

If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this chapter (including section 6s of this title or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

- (A) a request that the Commission initiate an enforcement proceeding under this chapter; and
- (B) an explanation of the facts and circumstances that led to the preparation of the written report.

(2) Commission

If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 6s of this title or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

- (A) a request that the prudential regulator initiate an enforcement proceeding under this chapter or any other Federal law (including regulations); and
- (B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

(d) Backstop enforcement authority

(1) Initiation of enforcement proceeding by prudential regulator

If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

(2) Initiation of enforcement proceeding by Commission

If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.

(Sept. 21, 1922, ch. 369, §4b–1, as added Pub. L. 111–203, title VII, §741(a), July 21, 2010, 124 Stat. 1729.)

REFERENCES IN TEXT

Subtitle A of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a), is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of this title and subchapter I (§8301 et seq.) of chapter 109 and section 78c–2 of Title 15, Commerce and Trade, amended sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of this title, section 761 of Title 11, Bankruptcy, sections 4421 and 4422 of Title 12, Banks and Banking, and sections 78f, 78o, and 78s of Title 15, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of this title, and amended provisions set out as a note under section 78c of Title 15. For complete classification of subtitle A to the Code, see Tables.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§6c. Prohibited transactions

(a) In general

(1) Prohibition

It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) or swap if the transaction is used or may be used to—

(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

(2) Transaction

A transaction referred to in paragraph (1) is a transaction that—

(A)(i) is, of the character of, or is commonly known to the trade as, a "wash sale" or "accommodation trade"; or

(ii) is a fictitious sale; or

(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

(3) Contract of sale

It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress (as such terms are defined under section 2 of the STOCK Act) or any judicial officer or judicial employee (as such terms are defined, respectively, under section 2 of the STOCK Act) who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—

(A) a contract of sale of a commodity for future delivery (or option on such a contract);

(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or

(C) a swap.

(4) Nonpublic information

(A) Imparting of nonpublic information

It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for

personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

- (i) a contract of sale of a commodity for future delivery (or option on such a contract);
- (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or
- (iii) a swap.

(B) Knowing use

It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

- (i) a contract of sale of a commodity for future delivery (or option on such a contract);
- (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or
- (iii) a swap.

(C) Theft of nonpublic information

It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government or by Congress or by the judiciary that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

- (i) a contract of sale of a commodity for future delivery (or option on such a contract);
- (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or
- (iii) a swap, provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, to Congress, any Member of Congress, any employee of Congress, any judicial officer, or any judicial employee, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses ¹(i), (ii), or (iii).

(5) Disruptive practices

It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

- (A) violates bids or offers;
- (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
- (C) is, is of the character of, or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

(6) Rulemaking authority

The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

(7) Use of swaps to defraud

It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.

(b) Regulated option trading

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

(c) Regulations for elimination of pilot status of commodity option transactions; terms and conditions of options trading

Not later than 90 days after November 10, 1986, the Commission shall issue regulations—

(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.

(d) Dealer options exempt from subsections (b) and (c) prohibitions; requirements

Notwithstanding the provisions of subsection (c) of this section—

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided*, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, if—

(A) the grantor is a person domiciled in the United States who—

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least \$5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below \$5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 78c(a)(12) of title 15), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who—

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection, other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

(e) Rules and regulations

The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.

(f) Nonapplicability to foreign currency options

Nothing in this chapter shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

(g) Oral orders

The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market or derivatives transaction execution facility placed by a member of the contract market or derivatives transaction execution facility who is present on the floor at the time such order is placed.

(Sept. 21, 1922, ch. 369, §4c, as added June 15, 1936, ch. 545, §5, 49 Stat. 1494; amended Pub. L. 93–463, title I, §103(a), title IV, §402, Oct. 23, 1974, 88 Stat. 1392, 1412; Pub. L. 95–405, §3, Sept. 30, 1978, 92 Stat. 867; Pub. L. 97–444, title I, §102, title II, §206, Jan. 11, 1983, 96 Stat. 2296, 2301; Pub. L. 99–641, title I, §102, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102–546, title II, §203(a), title IV, §402(4), Oct. 28, 1992, 106 Stat. 3600, 3624; Pub. L. 106–554, §1(a)(5) [title I, §§109, 123(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–383, 2763A–407; Pub. L. 111–203, title VII, §§741(b)(2), 746, 747, July 21, 2010, 124 Stat. 1731, 1737, 1739; Pub. L. 112–105, §5, Apr. 4, 2012, 126 Stat. 293.)

REFERENCES IN TEXT

Section 2 of the STOCK Act, referred to in subsec. (a)(3), is section 2 of Pub. L. 112–105, which is set out as a note under section 101 of the Ethics in Government Act of 1978, Pub. L. 95–521, in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (a)(3). Pub. L. 112–105, §5(1), inserted in introductory provisions "or any Member of Congress or employee of Congress (as such terms are defined under section 2 of the STOCK Act) or any judicial officer or judicial employee (as such terms are defined, respectively, under section 2 of the STOCK Act)" after "any department or agency of the Federal Government", "Member, officer," after "position of the", and "or by Congress or by the judiciary" after "creating the information".

Subsec. (a)(4)(A). Pub. L. 112–105, §5(2)(A), inserted in introductory provisions "or any Member of Congress or employee of Congress or any judicial officer or judicial employee" after "any department or agency of the Federal Government", "Member, officer," after "position of the", and "or by Congress or by the judiciary" after "creating the information".

Subsec. (a)(4)(B). Pub. L. 112–105, §5(2)(B), inserted "or any Member of Congress or employee of Congress or any judicial officer or judicial employee" after "Federal Government" in introductory provisions.

Subsec. (a)(4)(C). Pub. L. 112–105, §5(2)(C)(i), inserted "or by Congress or by the judiciary" in two places in introductory provisions.

Subsec. (a)(4)(C)(iii). Pub. L. 112–105, §5(2)(C)(ii), inserted "to Congress, any Member of Congress, any employee of Congress, any judicial officer, or any judicial employee," after "Federal Government,".

2010—Subsec. (a)(1). Pub. L. 111–203, §741(b)(2), inserted "or swap" before "if the transaction is used or may be used".

Subsec. (a)(3), (4). Pub. L. 111–203, §746, added pars. (3) and (4).

Subsec. (a)(5) to (7). Pub. L. 111–203, §747, added pars. (5) to (7).

2000—Pub. L. 106–554, §1(a)(5) [title I, §109], inserted section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §109], added subsec. (a) and struck out former subsec. (a) which read as follows: "It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

"(A) if such transaction is, is of the character of, or is commonly known to the trade as, a 'wash sale,' 'cross trade,' or 'accommodation trade,' or is a fictitious sale; or

"(B) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission."

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

1992—Subsec. (d)(2). Pub. L. 102–546, §402(4), made technical amendments to references to section 78c(a)(12) of title 15 in subpar. (A)(iv) and to section 2(a) of this title in concluding provisions.

Subsec. (g). Pub. L. 102–546, §203(a), added subsec. (g).

1986—Subsec. (c). Pub. L. 99–641, amended subsec. (c) generally, substituting provisions relating to regulations to eliminate pilot status of program for commodity option transactions for provisions relating to commodity option transactions, pilot program and permanent authorization, conditions ending prohibition, and excepted persons.

1983—Subsec. (a)(B), (C). Pub. L. 97–444, §206(1), redesignated par. (C) as (B). Former par. (B), relating to transactions involving any commodity specifically set forth in section 2(a) of this title, prior to October 23, 1974, if such transactions were of the character of, or were commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", was struck out.

Subsec. (b). Pub. L. 97–444, §206(2), in revising section generally, struck out references to any transaction subject to provisions of subsection (a) of this section and to any commodity not specifically set forth in section

2(a) of this title, prior to October 23, 1974, and struck out "within one year after the effective date of the Commodity Futures Trading Commission Act of 1974 unless the Commission determines and notifies the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture that it is unable to prescribe such terms and conditions within such period of time:" after "such terms and conditions as the Commission shall prescribe".

Subsec. (c). Pub. L. 97-444, §206(3), inserted "With respect to any commodity regulated under this chapter and specifically set forth in section 2(a) of this title prior to October 23, 1974, the Commission may, pursuant to the procedures set forth in this subsection, establish a pilot program for a period not to exceed three years to permit such commodity option transactions. The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test of the trading of such option transactions. After completion of the pilot program, the Commission may authorize commodity option transactions without regard to the restrictions in the pilot program after the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the documentation required under clause (1) of the first sentence of this subsection and the expiration of thirty calendar days of continuous session of Congress after the date of such transmittal."

Subsec. (d)(1). Pub. L. 97-444, §206(4)(A), inserted ", other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "physical commodity".

Subsec. (d)(2). Pub. L. 97-444, §206(4)(B), inserted ", other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "subsection (b) of this section" in provisions preceding subpar. (A).

Pub. L. 97-444, §206(4)(C), inserted ", other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "The Commission may permit persons not domiciled in the United States to grant options under this subsection" in provisions following par. (2).

Subsec. (f). Pub. L. 97-444, §102, added subsec. (f).

1978—Subsec. (a). Pub. L. 95-405, §3(1), in provisions following par. (C) substituted "have been approved" for "not have been disapproved".

Subsec. (b). Pub. L. 95-405, §3(2), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

Subsecs. (c) to (e). Pub. L. 95-405, §3(3), added subsecs. (c) to (e).

1974—Subsec. (a). Pub. L. 93-463, §§103(a), 402(a), (b), (d), designated existing provisions as subsec. (a), in par. (B) of subsec. (a) as so designated inserted "if such transaction involves any commodity specifically set forth in section 2(a) of this title, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, and" and "option", and in provisions following par. (C), struck out provisions prohibiting a construction of this section or section 6b of this title which would impair any State law applicable to any transaction enumerated or described in this section or section 6b of this title and substituted "Commission" for "Secretary of Agriculture".

Subsec. (b). Pub. L. 93-463, §402(c), added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-546, title II, §203(b), Oct. 28, 1992, 106 Stat. 3600, provided that: "The Commission shall adopt the rules required by the amendment made under subsection (a) [amending this section] within two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

¹ So in original. Probably should be "clause".

§6d. Dealing by unregistered futures commission merchants or introducing brokers prohibited; duties in handling customer receipts; conflict-of-interest systems and procedures; Chief Compliance Officer; rules to avoid duplicative regulations; swap requirements; portfolio margining accounts

(a) Futures commission merchant registration requirements; duties of merchants in handling customer receipts

It shall be unlawful for any person to be a futures commission merchant unless—

(1) such person shall have registered, under this chapter, with the Commission as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market or derivatives transaction execution facility, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearinghouse organization of such contract market or derivatives transaction execution facility or with any member of such contract market or derivatives transaction execution facility, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further,* That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further,* That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(b) Duties of clearing agencies, depositories, and others in handling customer receipts

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section,¹ to hold, dispose of, or use any such money, securities, or property as belonging to the depositing

futures commission merchant or any person other than the customers of such futures commission merchant.

(c) Conflicts of interest

The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

- (1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and
- (2) address such other issues as the Commission determines to be appropriate.

(d) Designation of Chief Compliance Officer

Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 21 of this title.

(e) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof), involving the application of—

- (1) section 78h, section 78o(c)(3), and section 78q of title 15 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 78c(a)(40) of title 15), involving security futures products; and
- (2) similar provisions of this chapter and the rules and regulations thereunder involving security futures products.

(f) Swaps

(1) Registration requirement

It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this chapter with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

(2) Cleared swaps

(A) Segregation required

A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

(B) Commingling prohibited

Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

(3) Exceptions

(A) Use of funds

(i) In general

Notwithstanding paragraph (2), money, securities, and property of swap customers of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with a derivatives clearing organization.

(ii) Withdrawal

Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

(B) Commission action

Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

(4) Permitted investments

Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(5) Commodity contract

A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

(6) Prohibition

It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.

(g) Introducing broker registration requirements

It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this chapter with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.

(h) Contracts held in portfolio margining accounts

Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 6(c) of this title or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section 6f(a)(1) of this title and also registered as a broker or dealer pursuant to section 78(o)(b)(1) of title 15 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to

section 78s(b) of title 15, hold in a portfolio margining account carried as a securities account subject to section 78(o)(c)(3) of title 15 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.

(Sept. 21, 1922, ch. 369, §4d, as added June 15, 1936, ch. 545, §5, 49 Stat. 1494; amended Pub. L. 90–258, §6, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93–463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §4, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97–444, title II, §207, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6), title II, §251(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407, 2763A–443; Pub. L. 111–203, title VII, §§713(b), 724(a), 732, 749(a), July 21, 2010, 124 Stat. 1646, 1682, 1712, 1746.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §749(a)(1)(A), in introductory provisions, substituted "be a" for "engage as" and struck out "or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility" after "merchant".

Subsec. (a)(1). Pub. L. 111–203, §749(a)(1)(B), struck out "or introducing broker" after "merchant".

Subsec. (a)(2). Pub. L. 111–203, §749(a)(1)(C), struck out "if a futures commission merchant," after "such person shall,".

Subsecs. (c) to (e). Pub. L. 111–203, §732, added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

Subsec. (f). Pub. L. 111–203, §724(a), which directed amendment of section by adding subsec. (f) at end, was executed by making the addition after subsec. (e) to reflect the probable intent of Congress and the addition of subsec. (h) by section 713(b) of Pub. L. 111–203.

Subsec. (g). Pub. L. 111–203, §749(a)(2), which directed amendment of section by adding subsec. (g) at end, was executed by making the addition after subsec. (f) to reflect the probable intent of Congress and the addition of subsec. (h) by section 713(b) of Pub. L. 111–203.

Subsec. (h). Pub. L. 111–203, §713(b), added subsec. (h).

2000—Pub. L. 106–554, §1(a)(5) [title II, §251(f)], designated first undesignated par. as subsec. (a), designated second undesignated par. as subsec. (b), and added subsec. (c).

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" wherever appearing.

1983—Pub. L. 97–444, §207(1), inserted reference to introducing brokers in provisions preceding par. (1).

Par. (1). Pub. L. 97–444, §207(2), inserted "or introducing broker" after "futures commission merchant".

Par. (2). Pub. L. 97–444, §207(3), inserted "if a futures commission merchant," after "such person shall,".

1978—Pub. L. 95–405 in par. (2) inserted provisions authorizing Commission to prescribe terms and conditions under which funds and property commingled and deposited as permitted by par. (2) may be commingled and deposited with other funds and property received by a futures commission merchant and required by Commission to be separately accounted for and treated as belonging to its customers.

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" in pars. (1) and (2).

1968—Pub. L. 90–258 struck out from second proviso of first par. authorization for investment of customer funds in investment securities of the kind national banking associations may buy or in loans secured by negotiable warehouse receipts conveying or securing title to readily marketable commodities to the extent of the current loan value of such receipts and added second par., making it unlawful for any person, including a clearing agency of a contract market or any depository, to treat customer funds as belonging to any person other than the customer, respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

¹ So in original. Probably means subsection (a)(2) of this section.

§6e. Dealings by unregistered floor trader or broker prohibited

It shall be unlawful for any person to act as floor trader in executing purchases and sales, or as floor broker in executing any orders for the purchase or sale, of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless such person shall have registered, under this chapter, with the Commission as such floor trader or floor broker and such registration shall not have expired nor been suspended nor revoked.

(Sept. 21, 1922, ch. 369, §4e, as added June 15, 1936, ch. 545, §5, 49 Stat. 1495; amended Pub. L. 93-463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102-546, title II, §207(a), Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Pub. L. 106-554 inserted "or derivatives transaction execution facility" after "contract market".

1992—Pub. L. 102-546 amended section generally. Prior to amendment, section read as follows: "It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall have registered, under this chapter, with the Commission as such floor broker and such registration shall not have expired nor been suspended nor revoked."

1974—Pub. L. 93-463 substituted "Commission" for "Secretary of Agriculture".

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-546, title II, §207(c), Oct. 28, 1992, 106 Stat. 3604, provided that: "The amendments made by this section [amending this section and sections 6f, 6g, 12a, and 13a-2 of this title] shall become effective one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992], and the Commodity Futures Trading Commission shall issue any regulations necessary to implement the amendments made by this section no later than one hundred and eighty days after the date of enactment of this Act."

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6f. Registration and financial requirements; risk assessment

(a) Registration of futures commission merchants, introducing brokers, and floor brokers and traders

(1) Any person desiring to register as a futures commission merchant, introducing broker, floor broker, or floor trader hereunder shall be registered upon application to the Commission. The application shall be made in such form and manner as prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged, including in the case of an application of a futures commission merchant or an introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this chapter.

(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

(D) the broker or dealer is a member of a national securities association registered pursuant to section 78o-3(a) of title 15.

The registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

(3) A floor broker or floor trader shall be exempt from the registration requirements of section 6e of this title and paragraph (1) of this subsection if—

(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products; and

(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.

(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration

pursuant to paragraph (3), shall be exempt from the following provisions of this chapter and the rules thereunder:

- (i) Subsections (b), (d), (e), and (g) of section 6c of this title.
- (ii) Sections 6d, 6e, and 6h of this title.
- (iii) Subsections (b) and (c) of this section.
- (iv) Section 6j of this title.
- (v) Section 6k(1) of this title.
- (vi) Section 6p of this title.
- (vii) Section 13a-2 of this title.
- (viii) Subsections (d) and (g) of section 12 of this title.
- (ix) Section 20 of this title.

(B)(i) Except as provided in clause (ii) of this subparagraph, but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2), or any broker or dealer exempt from registration pursuant to paragraph (3), from any provision of this chapter or of any rule or regulation thereunder, to the extent the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 21 of this title.

(ii) No futures association registered under section 21 of this title shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).

(b) Financial requirements for futures commission merchants and introducing brokers

Notwithstanding any other provisions of this chapter, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligation as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market or derivatives transaction execution facility and conforms to minimum financial standards and related reporting requirements set by such contract market or derivatives transaction execution facility in its bylaws, rules, regulations, or resolutions and approved by the Commission as adequate to effectuate the purposes of this subsection.

(c) Risk assessment for holding company systems

(1) As used in this subsection:

(i) The term "affiliated person" means any person directly or indirectly controlling, controlled by, or under common control with a futures commission merchant, as the Commission, by rule or regulation, may determine will effectuate the purposes of this subsection.

(ii) The term "Federal banking agency" shall have the same meaning as the term "appropriate Federal banking agency" in section 1813(q) of title 12.

(2)(A) Each registered futures commission merchant shall obtain such information and make and keep such records as the Commission, by rule or regulation, prescribes concerning the registered futures commission merchant's policies, procedures, or systems for monitoring and controlling

financial and operational risks to it resulting from the activities of any of its affiliated persons, other than a natural person.

(B) The records required under subparagraph (A) shall describe, in the aggregate, each of the futures and other financial activities conducted by, and the customary sources of capital and funding of, those of its affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant, including its adjusted net capital, its liquidity, or its ability to conduct or finance its operations.

(C) The Commission, by rule or regulation, may require summary reports of such information to be filed by the futures commission merchant with the Commission no more frequently than quarterly.

(3)(A),¹ If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (2) or other available information, the Commission reasonably concludes that the Commission has concerns regarding the financial or operational condition of any registered futures commission merchant, the Commission may require the futures commission merchant to make reports concerning the futures and other financial activities of any of such person's affiliated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant.

(B) The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a contract market or derivatives transaction execution facility or other self-regulatory organization with primary responsibility for examining the registered futures commission merchant's financial and operational condition.

(4)(A) in ² developing and implementing reporting requirements pursuant to paragraph (2) with respect to affiliated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to the written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish the comment and response in the Federal Register at the time of publishing the adopted rule.

(B)(i) Except as provided in clause (ii), a registered futures commission merchant shall be considered to have complied with a recordkeeping or reporting requirement adopted pursuant to paragraph (2) concerning an affiliated person that is subject to examination by, or reporting requirements of, a Federal banking agency if the futures commission merchant utilizes for the recordkeeping or reporting requirement copies of reports filed by the affiliated person with the Federal banking agency pursuant to section 161 of title 12, section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.), section 1817(a) of title 12, section 1467a(b) of title 12, or section 1844 of title 12.

(ii) The Commission may, by rule adopted pursuant to paragraph (2), require any futures commission merchant filing the reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that the supplemental information is necessary to inform the Commission regarding potential risks to the futures commission merchant. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include the information.

(5) Prior to making a request pursuant to paragraph (3) for information with respect to an affiliated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

(A) notify the agency of the information required with respect to the affiliated person; and

(B) consult with the agency to determine whether the information required is available from the agency and for other purposes, unless the Commission determines that any delay resulting from the consultation would be inconsistent with ensuring the financial and operational condition of the futures commission merchant or the stability or integrity of the futures markets.

(6) Nothing in this subsection shall be construed to permit the Commission to require any futures commission merchant to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained in the report.

(7) No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request under paragraph (5) regarding any affiliated person that is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than as provided in section 12 of this title or section 12a(6) of this title), without the prior written approval of the Federal banking agency.

(8) The Commission shall notify a Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any futures commission merchant to any affiliated person thereof that is subject to examination by or reporting requirements of the Federal banking agency.

(9) The Commission, by rule, regulation, or order, may exempt any person or class of persons under such terms and conditions and for such periods as the Commission shall provide in the rule, regulation, or order, from this subsection and the rules and regulations issued under this subsection. In granting the exemption, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 3401(7) of title 12), a State insurance commission or similar State agency, the Securities and Exchange Commission, or a similar foreign regulator;

(B) the primary business of any affiliated person;

(C) the nature and extent of domestic or foreign regulation of the affiliated person's activities;

(D) the nature and extent of the registered futures commission merchant's commodity futures and options activities; and

(E) with respect to the registered futures commission merchant and its affiliated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from activities in the United States futures markets.

(10) Information required to be provided pursuant to this subsection shall be subject to section 12 of this title. Except as specifically provided in section 12 of this title and notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any affiliated person of a registered futures commission merchant.

(11) Nothing in paragraphs (1) through (10) shall be construed to supersede or to limit in any way the authority or powers of the Commission pursuant to any other provision of this chapter or regulations issued under this chapter.

(Sept. 21, 1922, ch. 369, §4f, as added June 15, 1936, ch. 545, §5, 49 Stat. 1495; amended Pub. L. 90-258, §7, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93-463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, §5, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, §208, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 102-546, title II, §§207(b)(1), 229, Oct. 28, 1992, 106 Stat. 3604, 3619; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(6), title II, §252(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407, 2763A-447; Pub. L. 110-234, title XIII, §13105(b), May 22, 2008, 122 Stat. 1434; Pub. L. 110-246, §4(a), title XIII, §13105(b), June 18, 2008, 122 Stat. 1664, 2196.)

REFERENCES IN TEXT

Section 9 of the Federal Reserve Act, referred to in subsec. (c)(4)(B)(i), is section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (c)(4)(B)(i). Pub. L. 110-246, §13105(b), substituted "complied" for "compiled".

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §252(b)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (a)(4). Pub. L. 106–554, §1(a)(5) [title II, §252(c)], added par. (4).

Subsecs. (b), (c)(3)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" wherever appearing.

1992—Subsec. (a). Pub. L. 102–546, §§207(b)(1), 229(1), redesignated par. (1) as subsec. (a) and substituted "floor broker, or floor trader" for "or floor broker".

Subsec. (b). Pub. L. 102–546, §229(1), (2), redesignated par. (2) as subsec. (b) and substituted "this subsection" for "this paragraph (2)".

Subsec. (c). Pub. L. 102–546, §229(3), added subsec. (c).

1983—Par. (1). Pub. L. 97–444, §208(1), made grammatical changes, made registration provisions applicable to introducing brokers, and substituted "revoked pursuant to the provisions of this chapter" for "revoked after notice and hearing as prescribed in this chapter".

Par. (2). Pub. L. 97–444, §208(2), made financial requirements applicable to introducing brokers.

1978—Par. (1). Pub. L. 95–405 substituted "Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe" for "All registrations shall expire on the 31st day of December of the year for which issued".

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture".

1968—Par. (1). Pub. L. 90–258, §7(a), substituted "this chapter" for "section 6g of this title".

Par. (2). Pub. L. 90–258, §7(b), substituted provisions that prescribed financial requirements for registration as futures commission merchant be met and continued at all times and that such requirements will be considered met by membership in a contract market and compliance with its minimum financial standards and related reporting requirements for former provisions for display of futures commission merchants' registration certificates.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(1) of Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

¹ So in original. The comma probably should not appear.

§6g. Reporting and recordkeeping

(a) In general

Every person registered hereunder as futures commission merchant, introducing broker, floor broker, or floor trader shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

(b) Daily trading records: registered entities

Every registered entity shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

(c) Daily trading records: floor brokers, introducing brokers, and futures commission merchants

Floor brokers, introducing brokers, and futures commission merchants shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (b).

(d) Daily trading records: form and reports

Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission. Reports shall be made from the records maintained at such times and at such places and in such form as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures.

(e) Disclosure of information

Before the beginning of trading each day, the exchange shall, insofar as is practicable and under terms and conditions specified by the Commission, make public the volume of trading on each type of contract for the previous day and such other information as the Commission deems necessary in the public interest and prescribes by rule, order, or regulation.

(f) Authority of Commission to make separate determinations unimpaired

Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different registered entities when such determinations are warranted in the judgment of the Commission.

(Sept. 21, 1922, ch. 369, §4g, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 90-258, §8, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93-463, title I, §103(a), (f), title IV, §415, Oct. 23, 1974, 88 Stat. 1392, 1415; Pub. L. 95-405, §6, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, §209, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 102-546, title II, §207(b)(1), title IV, §402(5), Oct. 28, 1992, 106 Stat. 3604, 3624; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407; Pub. L. 110-234, title XIII, §13202(a), May 22, 2008, 122 Stat. 1438; Pub. L. 110-246, §4(a), title XIII, §13202(a), June 18, 2008, 122 Stat. 1664, 2200.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–246, §13202(a), inserted ", and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract" after "elsewhere".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(7)(A)], substituted "registered entity" for "clearinghouse and contract market".

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(7)(B)], substituted "registered entities" for "clearinghouses, contract markets, and exchanges".

1992—Subsec. (a). Pub. L. 102–546, §§207(b)(1), 402(5)(A), redesignated par. (1) as subsec. (a) and substituted "floor broker, or floor trader" for "or floor broker".

Subsec. (b). Pub. L. 102–546, §402(5)(A), redesignated par. (2) as subsec. (b).

Subsec. (c). Pub. L. 102–546, §402(5), redesignated par. (3) as subsec. (c) and substituted "subsection (b)" for "paragraph (2)".

Subsecs. (d) to (f). Pub. L. 102–546, §402(5)(A), redesignated pars. (4) to (6) as subsecs. (d) to (f), respectively.

1983—Par. (1). Pub. L. 97–444, §209(1), made reporting and recordkeeping requirements applicable to introducing brokers.

Par. (2). Pub. L. 97–444, §209(2), made customer daily trading records requirement applicable to introducing brokers.

1978—Par. (3). Pub. L. 95–405 substituted "Floor brokers" for "Brokers".

1974—Par. (1). Pub. L. 93–463, §§103(a), (f), 415, designated existing provisions as par. (1) and substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

Pars. (2) to (6). Pub. L. 93–463, §415, added pars. (2) to (6).

1968—Pub. L. 90–258 rephrased existing provisions to express reporting and recordkeeping requirements as a positive obligation of futures commission merchants and floor brokers, rather than as a ground for revoking or suspending registration and struck out provisions for revocation or suspension of registration. See section 9 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13202(a) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(1) of Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463 see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6h. False self-representation as registered entity member prohibited

It shall be unlawful for any person falsely to represent such person to be a member of a registered entity or the representative or agent of such member, or to be a registrant under this chapter or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any registered entity.

(Sept. 21, 1922, ch. 369, §4h, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 97-444, title II, §210, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(8)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Pub. L. 106-554 substituted "registered entity" for "contract market" in two places.

1983—Pub. L. 97-444 struck out provisions formerly designated as par. (1) relating to conduct of offices or places of business anywhere in the United States or its territories that were used for dealing in commodities for future delivery unless such dealings were executed or consummated by or through a member of a contract market, which provisions were transferred to section 6(a) of this title, and broadened remaining provisions, formerly designated as par. (2), to prohibit false representations that a person is registered with the Commission in any capacity, and not only as a futures commission merchant, as previously provided.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6i. Reports of deals equal to or in excess of trading limits; books and records; cash and controlled transactions

It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract—

(1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade or electronic trading facility, and of cash or spot transactions in, and

inventories and purchase and sale commitments of such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

(Sept. 21, 1922, ch. 369, §4i, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 90–258, §9, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93–463, title I, §103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §211, Jan. 11, 1983, 96 Stat. 2303; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407; Pub. L. 110–234, title XIII, §13202(b), May 22, 2008, 122 Stat. 1439; Pub. L. 110–246, §4(a), title XIII, §13202(b), June 18, 2008, 122 Stat. 1664, 2201.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, §13202(b), in introductory provisions, inserted ", or any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract" after "derivatives transaction execution facility" and, in concluding provisions, inserted "or electronic trading facility" after "board of trade".

2000—Pub. L. 106–554 inserted "or derivatives transaction execution facility" after "contract market" in introductory provisions.

1983—Pub. L. 97–444 amended section generally by substantially restating provisions and inserting requirement that persons whose transactions and positions in any cash commodity or commodity future are equal to or in excess of amounts fixed by the Commission, must keep books and records of such transactions and positions as well as books and records of any such commodity traded on or subject to rules of any other board of trade, whether or not such person is required to file reports with the Commission concerning such transactions and positions.

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

1968—Pub. L. 90–258 required recordkeeping of positions and of cash or spot transactions in commodities entered into, and inventories and purchase and sale commitments of commodities held, in any month in which reports are required to be kept, including details concerning positions, inventories, and commitments, and included controlled transactions and positions in the futures and cash or spot transactions and positions of any person.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13202(b) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6j. Restrictions on dual trading in security futures products on designated contract markets and registered derivatives transaction execution facilities

(a) Issuance of regulations

The Commission shall issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility. The regulations issued by the Commission under this section—

(1) shall provide that the prohibition of dual trading thereunder shall take effect upon issuance of the regulations; and

(2) shall provide exceptions, as the Commission determines appropriate, to ensure fairness and orderly trading in security futures product markets, including—

(A) exceptions for spread transactions and the correction of trading errors;

(B) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this section; and

(C) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and with the purposes of this section.

(b) "Dual trading" defined

As used in this section, the term "dual trading" means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for—

(1) the account of such floor broker;

(2) an account for which such floor broker has trading discretion; or

(3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association.

(c) "Broker association" defined

As used in this section, the term "broker association" shall include two or more contract market members or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker, who—

(1) engage in floor brokerage activity on behalf of the same employer,

(2) have an employer and employee relationship which relates to floor brokerage activity,

(3) share profits and losses associated with their brokerage or trading activity, or

(4) regularly share a deck of orders.

(Sept. 21, 1922, ch. 369, §4j, as added Pub. L. 93-463, title II, §203, Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 94-16, §2, Apr. 16, 1975, 89 Stat. 77; Pub. L. 102-546, title I, §§101, 102(a), Oct. 28, 1992, 106 Stat. 3591, 3594; Pub. L. 106-554, §1(a)(5) [title II, §251(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-442.)

AMENDMENTS

2000—Pub. L. 106-554 amended section generally. Prior to amendment, section required Commission to issue regulations to prohibit the privilege of dual trading on contract markets, allowed for certain exemptions, required Commission to make determinations relating to trading by floor brokers and futures commission merchants, and restricted trading among members of broker associations.

1992—Subsec. (a). Pub. L. 102-546, §101(a)(3), added subsec. (a).

Subsec. (b). Pub. L. 102–546, §101(a)(1), (2), redesignated par. (1) as subsec. (b) and substituted "If, in addition to the regulations issued pursuant to subsection (a) of this section, the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a) of this section, the Commission shall" for "The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required,".

Subsec. (c). Pub. L. 102–546, §101(a)(1), redesignated par. (2) as subsec. (c).

Subsec. (d). Pub. L. 102–546, §102(a), added subsec. (d).

1975—Pub. L. 94–16 substituted "nine months" for "six months" in pars. (1) and (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–546, title I, §102(b), Oct. 28, 1992, 106 Stat. 3594, provided that: "The amendment made by subsection (a) [amending this section] shall become effective two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992]."

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6k. Registration of associates of futures commission merchants, commodity pool operators, and commodity trading advisors; required disclosure of disqualifications; exemptions for associated persons

(1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this paragraph.

(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 12a(2) of this title, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

(6) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this chapter and the rules thereunder:

- (A) Subsections (b), (d), (e), and (g) of section 6c of this title.
- (B) Sections 6d, 6e, and 6h of this title.
- (C) Subsections (b) and (c) of section 6f of this title.
- (D) Section 6j of this title.
- (E) Paragraph (1) of this section.
- (F) Section 6p of this title.
- (G) Section 13a-2 of this title.
- (H) Subsections (d) and (g) of section 12 of this title.
- (I) Section 20 of this title.

(Sept. 21, 1922, ch. 369, §4k, as added Pub. L. 93-463, title II, §204(a), Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 95-405, §7, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, §212, Jan. 11, 1983, 96 Stat. 2303; Pub. L. 106-554, §1(a)(5) [title II, §252(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-448; Pub. L. 110-234, title XIII, §13105(c), May 22, 2008, 122 Stat. 1434; Pub. L. 110-246, §4(a), title XIII, §13105(c), June 18, 2008, 122 Stat. 1664, 2196.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Pars. (5), (6). Pub. L. 110-246, §13105(c), redesignated par. (5) relating to exempting associated persons or dealers from provisions of this chapter as (6).

2000—Par. (5). Pub. L. 106–554, §1(a)(5) [title II, §252(d)], which directed amendment of this section by "inserting after paragraph (4), as added by subsection (c) of this section" a new par. (5) relating to exempting associated persons or dealers from provisions of this chapter, was executed by adding that par. (5) at the end. Section 1(a)(5)[title II, §252(c)] did not add a par. (4) to this section.

1983—Par. (1). Pub. L. 97–444 amended par. (1) generally to apply to introducing brokers and persons associated with introducing brokers.

Par. (2). Pub. L. 97–444 added par. (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 97–444 added par. (3). Former par. (3), which empowered Commission to authorize a registered futures association to perform any portion of the registration functions under this section, in accordance with rules approved by the Commission, and subject to the provisions of this chapter applicable to registrations granted by the Commission, was struck out.

Par. (4). Pub. L. 97–444 redesignated former par. (2) as (4) and substituted "Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe" for "Any such person desiring to be registered shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire two years after the effective date thereof or at such other time, not less than one year from the date of issuance thereof, as the Commission may by rule, regulation, or order prescribe and shall be renewed upon application therefor, unless the registration has been suspended (and the period of such suspension has not expired) or revoked after notice and hearing as prescribed in section 9 of this title: *Provided*, That upon initial registration, unless the Commission otherwise prescribes by rule, regulation, or order, the effective period of such registration shall be not more than two years nor less than one year from the effective date thereof".

Par. (5). Pub. L. 97–444 added par. (5).

1978—Par. (2). Pub. L. 95–405, §7(1), inserted provisions authorizing the Commission to prescribe the period of registration of not less than one year for associated persons.

Par. (3). Pub. L. 95–405, §7(2), added par. (3).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6l. Commodity trading advisors and commodity pool operators; Congressional finding

It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets or derivatives transaction execution facilities; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets or derivatives transaction execution facilities.

(Sept. 21, 1922, ch. 369, §41, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1397; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-408.)

AMENDMENTS

2000—Pars. (2), (3). Pub. L. 106-554 inserted "or derivatives transaction execution facilities" after "contract markets".

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6m. Use of mails or other means or instrumentalities of interstate commerce by commodity trading advisors and commodity pool operators; relation to other law

(1) It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 18 of this title.

(2) Nothing in this chapter shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

(3) EXCEPTION.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a of this title, and that does not act as a commodity trading advisor to any commodity pool that is engaged primarily in trading commodity interests.

(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be "engaged primarily" in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being

engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

(C) **COMMODITY INTERESTS.**—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.

(Sept. 21, 1922, ch. 369, §4m, as added Pub. L. 93–463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95–405, §8, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97–444, title I, §103, Jan. 11, 1983, 96 Stat. 2296; Pub. L. 106–554, §1(a)(5) [title II, §251(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–443; Pub. L. 111–203, title VII, §§721(e)(2), 749(b), July 21, 2010, 124 Stat. 1671, 1747.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (2), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in par. (2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2010—Par. (3). Pub. L. 111–203, §749(b), inserted heading, designated existing provisions as subpar. (A) and inserted heading, substituted "Paragraph (1)" for "Subsection (1) of this section" and "to any commodity pool that is engaged primarily in trading commodity interests." for "to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.", and added subpars. (B) and (C).

Pub. L. 111–203, §721(e)(2), substituted "section 1a" for "section 1a(6)".

2000—Par. (3). Pub. L. 106–554 added par. (3).

1983—Pub. L. 97–444 designated existing provisions as par. (1) and added par. (2).

1978—Pub. L. 95–405 inserted provisions relating to applicability of this section to commodity trading advisors who are dealers, processors, brokers, or sellers in cash market transactions of specifically listed commodities or nonprofit, voluntary membership, general farm organizations who provide advice on sale or purchase of specifically listed commodities if the advice by the person described in cl. (1) or (2) of this sentence is incidental solely to the conduct to the person's business and that such person be subject to proceedings under section 18 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6n. Registration of commodity trading advisors and commodity pool operators; application; expiration and renewal; record keeping and reports; disclosure; statements of account

(1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this chapter by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(3)(A) Every commodity trading advisor and commodity pool operator registered under this chapter shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

(Sept. 21, 1922, ch. 369, §4n, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95-405, §9, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title II, §213, Jan. 11, 1983, 96 Stat. 2305.)

AMENDMENTS

1983—Par. (5). Pub. L. 97-444 struck out par. (5) which authorized Commission, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person was

subject to an outstanding order under this chapter denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

Par. (6). Pub. L. 97-444 struck out par. (6) which authorized Commission to deny registration or revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission found that such denial, revocation, or suspension was in the public interest and that such person had been guilty of certain specified activities. See section 12a(2), (3), and (4) of this title.

1978—Par. (2). Pub. L. 95-405, §9(1)–(3), redesignated par. (3) as (2) and substituted "Each registration" for "All registrations" and inserted "or at such other time, not less than one year from the effective date thereof, as the Commission may rule, regulation, or order prescribe," after "June of each year,". Former par. (2), which provided that registration under this section becomes effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine, was struck out.

Pars. (3) to (6). Pub. L. 95-405, §9(1), redesignated pars. (4) to (7) as (3) to (6), respectively. Former par. (3) redesignated (2).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§60. Fraud and misrepresentation by commodity trading advisors, commodity pool operators, and associated persons

(1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this chapter to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof. This section shall not be construed to prohibit a statement that a person is registered under this chapter as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented.

(Sept. 21, 1922, ch. 369, §4o, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1399; amended Pub. L. 95-405, §10, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title II, §214, Jan. 11, 1983, 96 Stat. 2305.)

AMENDMENTS

1983—Par. (1). Pub. L. 97-444 made the antifraud prohibition applicable to an associated person of a commodity trading advisor or a commodity pool operator.

Par. (2). Pub. L. 97–444 made the misrepresentation prohibition applicable to an associated person of a commodity training advisor or a commodity pool operator, authorized registration statements of such persons, and substituted "such person" and "such person's abilities" for "he" before "has been sponsored" and "his abilities", respectively.

1978—Par. (1). Pub. L. 95–405 struck out "registered under this chapter" after "pool operator".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§60–1. Transferred

CODIFICATION

Section, Sept. 21, 1922, ch. 369, §4q, formerly §4p, as added Pub. L. 106–554, §1(a)(5) [title I, §121], Dec. 21, 2000, 114 Stat. 2763, 2763A–404, and renumbered, which related to special procedures to encourage and facilitate bona fide hedging by agricultural producers, was transferred to section 6q of this title.

§6p. Standards and examinations

(a) The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 21 of this title, contract markets, or derivatives transaction execution facilities may adopt written proficiency examinations to be given to applicants for registration and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal.

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this chapter, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, derivatives transaction execution facility, registered futures association, or other self-regulatory organization, or any other applicable Federal or state ¹ law, rule or regulation.

(Sept. 21, 1922, ch. 369, §4p, as added Pub. L. 93–463, title II, §206, Oct. 23, 1974, 88 Stat. 1400; amended Pub. L. 97–444, title II, §215, Jan. 11, 1983, 96 Stat. 2305; Pub. L. 102–546, title II, §210(a), Oct. 28, 1992, 106 Stat. 3607; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–408.)

CODIFICATION

Another section 4p of act Sept. 21, 1922, was renumbered section 4q and is classified to section 6q of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(11)(A)], substituted "title, contract markets, or derivatives transaction execution facilities" for "title or contract markets".

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(11)(B)], inserted "derivatives transaction execution facility," after "contract market,".

1992—Pub. L. 102–546 designated existing provisions as subsec. (a) and added subsec. (b).

1983—Pub. L. 97–444 substituted "persons required to be registered with the Commission" for "futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers" in first sentence, "customers, clients, pool participants, or other members of the public with whom such individuals deal" for "the customers of futures commission merchants and floor brokers" in last sentence, and in second and third sentences struck out "as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers," after "applicants for registration".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

REGULATIONS

Pub. L. 102–546, title II, §210(b), Oct. 28, 1992, 106 Stat. 3607, provided that: "The Commodity Futures Trading Commission shall issue the regulations required by section 4p(b) of the Commodity Exchange Act [7 U.S.C. 6p(b)], as added by subsection (a), no later than one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992]."

¹ So in original. Probably should be capitalized.

§6q. Special procedures to encourage and facilitate bona fide hedging by agricultural producers

(a) Authority

The Commission shall consider issuing rules or orders which—

(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(9) of this title which is the subject of a contract for purchase or sale for future delivery;

(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable the producers to hedge price risk associated with their production;

(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and

(4) encourage contract markets to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.

(b) Report

Within 1 year after December 21, 2000, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and

Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.

(Sept. 21, 1922, ch. 369, §4q, formerly §4p, as added Pub. L. 106–554, §1(a)(5) [title I, §121], Dec. 21, 2000, 114 Stat. 2763, 2763A–404; renumbered §4q, Pub. L. 110–234, title XIII, §13105(d), May 22, 2008, 122 Stat. 1434, and Pub. L. 110–246, §4(a), title XIII, §13105(d), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §721(e)(3), July 21, 2010, 124 Stat. 1671.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 both renumbered this section as section 4q of act Sept. 21, 1922. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234.

Section was formerly classified to section 60–1 of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203 substituted "section 1a(9)" for "section 1a(4)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

§6r. Reporting and recordkeeping for uncleared swaps

(a) Required reporting of swaps not accepted by any derivatives clearing organization

(1) In general

Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

(A) a swap data repository described in section 24a of this title; or

(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

(2) Transition rule for preenactment swaps

(A) Swaps entered into before July 21, 2010

Each swap entered into before July 21, 2010, the terms of which have not expired as of July 21, 2010, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

(i) 30 days after issuance of the interim final rule; or

(ii) such other period as the Commission determines to be appropriate.

(B) Commission rulemaking

The Commission shall promulgate an interim final rule within 90 days of July 21, 2010, providing for the reporting of each swap entered into before July 21, 2010.

(C) Effective date

The reporting provisions described in this section shall be effective upon the enactment of this section.

(3) Reporting obligations

(A) Swaps in which only 1 counterparty is a swap dealer or major swap participant

With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (1) and (2).

(B) Swaps in which 1 counterparty is a swap dealer and the other a major swap participant

With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (1) and (2).

(C) Other swaps

With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (1) and (2).

(b) Duties of certain individuals

Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not—

- (1) clear the swap in accordance with section 2(h)(1) of this title; or
- (2) have the data regarding the swap accepted by a swap data repository in accordance with rules (including timeframes) adopted by the Commission under section 24a of this title.

(c) Requirements

An individual or entity described in subsection (b) shall—

- (1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and
- (2) maintain books and records pertaining to the swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—
 - (A) any representative of the Commission;
 - (B) an appropriate prudential regulator;
 - (C) the Securities and Exchange Commission;
 - (D) the Financial Stability Oversight Council; and
 - (E) the Department of Justice.

(d) Identical data

In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 24a of this title.

(Sept. 21, 1922, ch. 369, §4r, as added Pub. L. 111–203, title VII, §729, July 21, 2010, 124 Stat. 1701.)

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§6s. Registration and regulation of swap dealers and major swap participants

(a) Registration

(1) Swap dealers

It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) Major swap participants

It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) Requirements

(1) In general

A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) Contents

(A) In general

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) Continual reporting

A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) Expiration

Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) Rules

Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

(5) Transition

Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after July 21, 2010.

(6) Statutory disqualification

Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) Dual registration

(1) Swap dealer

Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

(2) Major swap participant

Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

(d) Rulemakings

(1) In general

The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

(2) Exception for prudential requirements

(A) In general

The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

(B) Applicability

Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) Capital and margin requirements

(1) In general

(A) Swap dealers and major swap participants that are banks

Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) Swap dealers and major swap participants that are not banks

Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) Rules

(A) Swap dealers and major swap participants that are banks

The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(B) Swap dealers and major swap participants that are not banks

The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(C) Capital

In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

(3) Standards for capital and margin

(A) In general

To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall—

- (i) help ensure the safety and soundness of the swap dealer or major swap participant; and
- (ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

(B) Rule of construction

(i) In general

Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 6f(a) of this title (except for section 6f(a)(3) of this title) in accordance with section 6f(b) of this title; or

(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) ¹ in accordance with section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).

(ii) Futures commission merchants and other dealers

A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this chapter or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(C) Margin requirements

In prescribing margin requirements under this subsection, the prudential regulator with respect to swap dealers and major swap participants for which it is the prudential regulator and the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

- (i) preserving the financial integrity of markets trading swaps; and
- (ii) preserving the stability of the United States financial system.

(D) Comparability of capital and margin requirements

(i) In general

The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) Comparability

The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

- (I) swap dealers; and
- (II) major swap participants.

(4) Applicability with respect to counterparties

The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii), including the initial and variation margin requirements imposed by rules adopted pursuant to paragraphs (2)(A)(ii) and (2)(B)(ii), shall not apply to a swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of this title, or an exemption issued under section 6(c)(1) of this title from the requirements of section 2(h)(1)(A) of this title for cooperative entities as defined in such exemption, or satisfies the criteria in section 2(h)(7)(D) of this title.

(f) Reporting and recordkeeping

(1) In general

Each registered swap dealer and major swap participant—

(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission; and

(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.

(2) Rules

The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

(g) Daily trading records

(1) In general

Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) Information requirements

The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) Counterparty records

Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

(4) Audit trail

Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) Rules

The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

(h) Business conduct standards

(1) In general

Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered swap dealer and major swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) Responsibilities with respect to special entities

(A) Advising special entities

A swap dealer or major swap participant that acts as an advisor to a special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) Entering of swaps with respect to special entities

A swap dealer that enters into or offers to enter into swap ² with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

(C) Special entity defined

For purposes of this subsection, the term "special entity" means—

- (i) a Federal agency;
- (ii) a State, State agency, city, county, municipality, or other political subdivision of a State;
- (iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
- (iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or
- (v) any endowment, including an endowment that is an organization described in section 501(c)(3) of title 26.

(3) Business conduct requirements

Business conduct requirements adopted by the Commission shall—

- (A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;
- (B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—
 - (i) information about the material risks and characteristics of the swap;
 - (ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and
 - (iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and
 - (II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;
- (C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and
- (D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(4) Special requirements for swap dealers acting as advisors

(A) In general

It shall be unlawful for a swap dealer or major swap participant—

- (i) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;
- (ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or
- (iii) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(B) Duty

Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(C) Reasonable efforts

Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

- (i) the financial status of the Special Entity;
- (ii) the tax status of the Special Entity;
- (iii) the investment or financing objectives of the Special Entity; and
- (iv) any other information that the Commission may prescribe by rule or regulation.

(5) Special requirements for swap dealers as counterparties to special entities

(A) Any swap dealer or major swap participant that offers to enter or enters into a swap with a Special Entity shall—

(i) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) ³ of this title, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the swap dealer or major swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act ⁴ of 1974 [29 U.S.C. 1001 et seq.], is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

(B) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(6) Rules

The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

(7) Applicability

This section shall not apply with respect to a transaction that is—

(A) initiated by a Special Entity on an exchange or swap execution facility; and

(B) one in which the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.

(i) Documentation standards

(1) In general

Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

(2) Rules

The Commission shall adopt rules governing documentation standards for swap dealers and major swap participants.

(j) Duties

Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

(1) Monitoring of trading

The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

(2) Risk management procedures

The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

(3) Disclosure of general information

The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

- (A) terms and conditions of its swaps;
- (B) swap trading operations, mechanisms, and practices;
- (C) financial integrity protections relating to swaps; and
- (D) other information relevant to its trading in swaps.

(4) Ability to obtain information

The swap dealer or major swap participant shall—

- (A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and
- (B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

(5) Conflicts of interest

The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

- (A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this chapter; and
- (B) address such other issues as the Commission determines to be appropriate.

(6) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a swap dealer or major swap participant shall not—

- (A) adopt any process or take any action that results in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading or clearing.

(7) Rules

The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.

(k) Designation of chief compliance officer

(1) In general

Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

- (A) report directly to the board or to the senior officer of the swap dealer or major swap participant;
- (B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;
- (C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;
- (D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

- (i) compliance office review;
- (ii) look-back;
- (iii) internal or external audit finding;
- (iv) self-reported error; or
- (v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

- (i) the compliance of the swap dealer or major swap participant with respect to this chapter (including regulations); and
- (ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) Requirements

A compliance report under subparagraph (A) shall—

- (i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and
- (ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(I) Segregation requirements

(1) Segregation of assets held as collateral in uncleared swap transactions

(A) Notification

A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

(B) Segregation and maintenance of funds

At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

- (i) segregate the funds or other property for the benefit of the counterparty; and
- (ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.

(2) Applicability

The requirements described in paragraph (1) shall—

(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and

- (B)(i) not apply to variation margin payments; or
- (ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

(3) Use of independent third-party custodians

The segregated account described in paragraph (1) shall be—

- (A) carried by an independent third-party custodian; and
- (B) designated as a segregated account for and on behalf of the counterparty.

(4) Reporting requirement

If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(Sept. 21, 1922, ch. 369, §4s, as added and amended Pub. L. 111–203, title VII, §§724(c), 731, July 21, 2010, 124 Stat. 1684, 1703; Pub. L. 114–1, title III, §302(a), Jan. 12, 2015, 129 Stat. 28.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (e)(3)(B)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (h)(5)(A)(i)(VII), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2015—Subsec. (e)(4). Pub. L. 114–1 added par. (4).

2010—Subsec. (l). Pub. L. 111–203, §724(c), added subsec. (l).

EFFECTIVE DATE

Section and amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

IMPLEMENTATION

Pub. L. 114–1, title III, §303, Jan. 12, 2015, 129 Stat. 28, provided that: "The amendments made by this title to the Commodity Exchange Act [amending this section] shall be implemented—

"(1) without regard to—

"(A) chapter 35 of title 44, United States Code; and

"(B) the notice and comment provisions of section 553 of title 5, United States Code;

"(2) through the promulgation of an interim final rule, pursuant to which public comment will be sought before a final rule is issued; and

"(3) such that paragraph (1) shall apply solely to changes to rules and regulations, or proposed rules and regulations, that are limited to and directly a consequence of such amendments."

¹ [So in original. Probably should be followed by a third closing parenthesis.](#)

² [So in original. Probably should be preceded by "a".](#)

³ [So in original. Probably should be "section 1a\(18\)\(A\)".](#)

⁴ [So in original. Probably should be "Act".](#)

§6t. Large swap trader reporting

(a) Prohibition

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

(2) Exception

Paragraph (1) shall not apply if—

(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

(b) Requirements

(1) In general

Books and records described in subsection (a)(2)(B) shall—

(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

(B) be open at all times to inspection and examination by any representative of the Commission; and

(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section 1a(47)(A)(v) of this title), and consistent with the confidentiality and disclosure requirements of section 12 of this title.

(2) Jurisdiction

Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for large swap traders under this section.

(c) Applicability

For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

(d) Significant price discovery function

In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 6a(a)(3) of this title.

(Sept. 21, 1922, ch. 369, §4t, as added Pub. L. 111–203, title VII, §730, July 21, 2010, 124 Stat. 1702.)

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of

the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§7. Designation of boards of trade as contract markets

(a) Applications

A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this chapter.

(b) Repealed. Pub. L. 111–203, title VII, §735(a), July 21, 2010, 124 Stat. 1718

(c) Existing contract markets

A board of trade that is designated as a contract market on December 21, 2000, shall be considered to be a designated contract market under this section.

(d) Core principles for contract markets

(1) Designation as contract market

(A) In general

To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

- (i) any core principle described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of contract market

Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(2) Compliance with rules

(A) In general

The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

- (i) access requirements;
- (ii) the terms and conditions of any contracts to be traded on the contract market; and
- (iii) rules prohibiting abusive trade practices on the contract market.

(B) Capacity of contract market

The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(C) Requirement of rules

The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(3) Contracts not readily subject to manipulation

The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) Prevention of market disruption

The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

- (A) methods for conducting real-time monitoring of trading; and
- (B) comprehensive and accurate trade reconstructions.

(5) Position limitations or accountability

(A) In general

To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Maximum allowable position limitation

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(6) Emergency authority

The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

- (A) to liquidate or transfer open positions in any contract;
- (B) to suspend or curtail trading in any contract; and
- (C) to require market participants in any contract to meet special margin requirements.

(7) Availability of general information

The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

- (A) the terms and conditions of the contracts of the contract market; and
- (B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and
- (ii) the rules and specifications describing the operation of the contract market's—
 - (I) electronic matching platform; or
 - (II) trade execution facility.

(8) Daily publication of trading information

The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) Execution of transactions

(A) In general

The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

(B) Rules

The rules of the board of trade may authorize, for bona fide business purposes—

- (i) transfer trades or office trades;
- (ii) an exchange of—
 - (I) futures in connection with a cash commodity transaction;
 - (II) futures for cash commodities; or
 - (III) futures for swaps; or
- (iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(10) Trade information

The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

- (A) to assist in the prevention of customer and market abuses; and
- (B) to provide evidence of any violations of the rules of the contract market.

(11) Financial integrity of transactions

The board of trade shall establish and enforce—

(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

- (B) rules to ensure—
 - (i) the financial integrity of any—
 - (I) futures commission merchant; and
 - (II) introducing broker; and

(ii) the protection of customer funds.

(12) Protection of markets and market participants

The board of trade shall establish and enforce rules—

(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

(B) to promote fair and equitable trading on the contract market.

(13) Disciplinary procedures

The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(14) Dispute resolution

The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

(15) Governance fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

(16) Conflicts of interest

The board of trade shall establish and enforce rules—

(A) to minimize conflicts of interest in the decision-making process of the contract market; and

(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

(17) Composition of governing boards of contract markets

The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

(18) Recordkeeping

The board of trade shall maintain records of all activities relating to the business of the contract market—

- (A) in a form and manner that is acceptable to the Commission; and
- (B) for a period of at least 5 years.

(19) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall not—

- (A) adopt any rule or taking ¹ any action that results in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading on the contract market.

(20) System safeguards

The board of trade shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(21) Financial resources

(A) In general

The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) Determination of adequacy

The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(22) Diversity of board of directors

The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(23) Securities and Exchange Commission

The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.

(e) Current agricultural commodities

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(9) of this title that is available for trade on a contract market, as of December 21, 2000, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, §5, as added Pub. L. 106–554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–384; amended Pub. L. 111–203, title VII, §§721(e)(4), 735, July 21, 2010, 124 Stat. 1671, 1718.)

PRIOR PROVISIONS

A prior section 7, acts Sept. 21, 1922, ch. 369, §5, 42 Stat. 1000; June 15, 1936, ch. 545, §§2, 6, 49 Stat. 1491, 1497; Pub. L. 90–258, §§10, 11, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93–463, title I, §103(a), (f), (g), title II, §207, Oct. 23, 1974, 88 Stat. 1392, 1400; Pub. L. 102–546, title II, §§201(c), 209(b)(2), Oct. 28, 1992, 106

Stat. 3597, 3606, related to conditions and requirements for designation of boards of trade as contract markets, prior to repeal by Pub. L. 106–554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–384.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203, §735(a), struck out subsec. (b) which related to criteria for designation as a contract market.

Subsec. (d). Pub. L. 111–203, §735(b), added subsec. (d) and struck out former subsec. (d) which related to core principles for contract markets.

Subsec. (e)(1). Pub. L. 111–203, §721(e)(4), substituted "section 1a(9)" for "section 1a(4)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

¹ So in original. Probably should be "take".

§7a. Repealed. Pub. L. 111–203, title VII, §734(a), July 21, 2010, 124 Stat. 1718

Section, act Sept. 21, 1922, ch. 369, §5a, as added Pub. L. 106–554, §1(a)(5) [title I, §111], Dec. 21, 2000, 114 Stat. 2763, 2763A–387; amended Pub. L. 110–234, title XIII, §13203(h), May 22, 2008, 122 Stat. 1440; Pub. L. 110–246, §4(a), title XIII, §13203(h), June 18, 2008, 122 Stat. 1664, 2202; Pub. L. 111–203, title VII, §721(e)(5), July 21, 2010, 124 Stat. 1671, related to derivatives transaction execution facilities.

A prior section 7a, act Sept. 21, 1922, ch. 369, §5a, as added June 15, 1936, ch. 545, §7, 49 Stat. 1497; amended Pub. L. 90–258, §12, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93–463, title I, §103(a), (e), (f), title II, §§208–210, title IV, §§406, 407, Oct. 23, 1974, 88 Stat. 1392, 1400, 1401, 1413; Pub. L. 95–405, §§11, 12, Sept. 30, 1978, 92 Stat. 870, 871; Pub. L. 97–444, title II, §§216, 217(a), Jan. 11, 1983, 96 Stat. 2306, 2307; Pub. L. 99–641, title I, §110(2), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102–546, title I, §103, title II, §§201(a), 206(a)(1), 213(a), 217, 222(a), Oct. 28, 1992, 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615, related to duties of contract markets prior to repeal by Pub. L. 106–554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–384.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§7a–1. Derivatives clearing organizations

(a) Registration requirement

(1) In general

Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

(i) excluded from this chapter by subsection (a)(1)(C)(i), (c), or (f) of section 2 of this title; or

(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(B) a swap.

(2) Exception

Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

(b) Voluntary registration

A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this chapter may register with the Commission as a derivatives clearing organization.

(c) Registration of derivatives clearing organizations

(1) Application

A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) Core principles for derivatives clearing organizations

(A) Compliance

(i) In general

To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(ii) Discretion of derivatives clearing organization

Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

(B) Financial resources

(i) In general

Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

(ii) Minimum amount of financial resources

Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

(C) Participant and product eligibility

(i) In general

Each derivatives clearing organization shall establish—

(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

(ii) Required procedures

Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

(iii) Requirements

The participation and membership requirements of each derivatives clearing organization shall—

- (I) be objective;
- (II) be publicly disclosed; and
- (III) permit fair and open access.

(D) Risk management

(i) In general

Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(ii) Measurement of credit exposure

Each derivatives clearing organization shall—

- (I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and
- (II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

(iii) Limitation of exposure to potential losses from defaults

Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

- (I) the operations of the derivatives clearing organization would not be disrupted; and
- (II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

(iv) Margin requirements

The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

(v) Requirements regarding models and parameters

Each model and parameter used in setting margin requirements under clause (iv) shall be—

- (I) risk-based; and
- (II) reviewed on a regular basis.

(E) Settlement procedures

Each derivatives clearing organization shall—

- (i) complete money settlements on a timely basis (but not less frequently than once each business day);
- (ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);
- (iii) ensure that money settlements are final when effected;
- (iv) maintain an accurate record of the flow of funds associated with each money settlement;
- (v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

(F) Treatment of funds

(i) Required standards and procedures

Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

(ii) Holding of funds and assets

Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

(iii) Permissible investments

Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

(G) Default rules and procedures

(i) In general

Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

(I) become insolvent; or

(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

(ii) Default procedures

Each derivatives clearing organization shall—

(I) clearly state the default procedures of the derivatives clearing organization;

(II) make publicly available the default rules of the derivatives clearing organization; and

(III) ensure that the derivatives clearing organization may take timely action—

(aa) to contain losses and liquidity pressures; and

(bb) to continue meeting each obligation of the derivatives clearing organization.

(H) Rule enforcement

Each derivatives clearing organization shall—

(i) maintain adequate arrangements and resources for—

(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

(II) the resolution of disputes;

(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

(I) System safeguards

Each derivatives clearing organization shall—

(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

- (I) the timely recovery and resumption of operations of the derivatives clearing organization; and
- (II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

(J) Reporting

Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(K) Recordkeeping

Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

- (i) in a form and manner that is acceptable to the Commission; and
- (ii) for a period of not less than 5 years.

(L) Public information

(i) In general

Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

(ii) Availability of information

Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(iii) Public disclosure

Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

- (I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;
- (II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;
- (III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;
- (IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and
- (V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

(M) Information-sharing

Each derivatives clearing organization shall—

- (i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and
- (ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

(N) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a derivatives clearing organization shall not—

- (i) adopt any rule or take any action that results in any unreasonable restraint of trade; or
- (ii) impose any material anticompetitive burden.

(O) Governance fitness standards

(i) Governance arrangements

Each derivatives clearing organization shall establish governance arrangements that are transparent—

- (I) to fulfill public interest requirements; and
- (II) to permit the consideration of the views of owners and participants.

(ii) Fitness standards

Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

- (I) directors;
- (II) members of any disciplinary committee;
- (III) members of the derivatives clearing organization;
- (IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and
- (V) any party affiliated with any individual or entity described in this clause.

(P) Conflicts of interest

Each derivatives clearing organization shall—

- (i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and
- (ii) establish a process for resolving conflicts of interest described in clause (i).

(Q) Composition of governing boards

Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

(R) Legal risk

Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.

(3) Orders concerning competition

A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this chapter.

(d) Existing derivatives clearing organizations

A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before December 21, 2000.

(e) Appointment of trustee

(1) In general

If a proceeding under section 7b of this title results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

(2) Assumption of jurisdiction

If the Commission applies for appointment of a trustee under paragraph (1)—

- (A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and
- (B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take

possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

(f) Linking of regulated clearing facilities

(1) In general

The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.

(2) Coordination

In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

(g) Existing depository institutions and clearing agencies

(1) In general

A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before July 21, 2010—

- (A) the depository institution cleared swaps as a multilateral clearing organization; or
- (B) the clearing agency cleared swaps.

(2) Conversion of depository institutions

A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) Sharing of information

The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).

(h) Exemptions

The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

(i) Designation of chief compliance officer

(1) In general

Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

- (A) report directly to the board or to the senior officer of the derivatives clearing organization;
- (B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

- (i) compliance office review;
- (ii) look-back;
- (iii) internal or external audit finding;
- (iv) self-reported error; or
- (v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

- (i) the compliance of the derivatives clearing organization of the compliance officer with respect to this chapter (including regulations); and
- (ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).

(B) Requirements

A compliance report under subparagraph (A) shall—

- (i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and
- (ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(k) ¹ Reporting requirements

(1) Duty of derivatives clearing organizations

Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this chapter.

(2) Data collection and maintenance requirements

The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

- (A) swaps data reported to swap data repositories; and
- (B) swaps traded on swap execution facilities.

(3) Reports on security-based swap agreements to be shared with the Securities and Exchange Commission

(A) In general

A derivatives clearing organization that clears security-based swap agreements (as defined in section 1a(47)(A)(v) of this title) shall, upon request, open to inspection and examination to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and disclosure requirements of section 12 of this title.

(B) Jurisdiction

Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is registered with the Commission.

(4) Information sharing

Subject to section 12 of this title, and upon request, the Commission shall share information collected under paragraph (2) with—

- (A) the Board;
- (B) the Securities and Exchange Commission;
- (C) each appropriate prudential regulator;
- (D) the Financial Stability Oversight Council;
- (E) the Department of Justice; and
- (F) any other person that the Commission determines to be appropriate, including—
 - (i) foreign financial supervisors (including foreign futures authorities);
 - (ii) foreign central banks; and
 - (iii) foreign ministries.

(5) Confidentiality agreement

Before the Commission may share information with any entity described in paragraph (4), the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided.

(6) Public information

Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13) of this title.

(Sept. 21, 1922, ch. 369, §5b, as added Pub. L. 106–554, §1(a)(5) [title I, §112(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–396; amended Pub. L. 111–203, title VII, §§721(e)(6), 725(a)–(c), (e), (h), July 21, 2010, 124 Stat. 1671, 1685–1687, 1693, 1695; Pub. L. 114–94, div. G, title LXXXVI, §86001(a), Dec. 4, 2015, 129 Stat. 1797.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1)(A)(ii) and (g)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 5b of act Sept. 21, 1922, was renumbered section 5e, and is classified to section 7b of this title.

AMENDMENTS

2015—Subsec. (k)(5). Pub. L. 114–94 amended par. (5) generally. Prior to amendment, text read as follows: "Before the Commission may share information with any entity described in paragraph (4)—

"(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided; and

"(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 12 of this title."

2010—Subsec. (a). Pub. L. 111–203, §725(a), added subsec. (a) and struck out former subsec. (a) which related to registration requirement of derivatives clearing organizations.

Pub. L. 111–203, §721(e)(6), substituted "section 1a" for "section 1a(9)" in introductory provisions.

Subsec. (b). Pub. L. 111–203, §725(a), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this chapter by section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of

this title, or exempted under section 2(h) or 6(c) of this title, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization."

Subsec. (c)(2). Pub. L. 111–203, §725(c), added par. (2) and struck out former par. (2) which related to core principles for derivatives clearing organizations.

Subsec. (f)(1). Pub. L. 111–203, §725(h), inserted at end "In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization."

Subsecs. (g) to (i). Pub. L. 111–203, §725(b), added subsecs. (g) to (i).

Subsec. (k). Pub. L. 111–203, §725(e), added subsec. (k).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–94, div. G, title LXXXVI, §86001(d), Dec. 4, 2015, 129 Stat. 1798, provided that: "The amendments made by this section [amending this section, section 24a of this title, and section 78m of Title 15, Commerce and Trade] shall take effect as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203)."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

CONFLICTS OF INTEREST

Pub. L. 111–203, title VII, §725(d), July 21, 2010, 124 Stat. 1692, provided that: "The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment."

[For definitions of terms used in section 725(d) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

¹So in original. No subsec. (j) has been enacted.

§7a–2. Common provisions applicable to registered entities

(a) Acceptable business practices under core principles

(1) In general

Consistent with the purposes of this chapter, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 7(d) and 7a–1(c)(2) of this title, to describe what would constitute an acceptable business practice under such sections.

(2) Effect of interpretation

An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).

(b) Delegation of functions under core principles

(1) In general

A contract market, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.

(2) Responsibility

A contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

(3) Noncompliance

If a contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this chapter, the contract market, derivatives transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.

(c) New contracts, new rules, and rule amendments

(1) In general

A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

(2) Rule review

The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this chapter (including regulations under this chapter).

(3) Stay of certification for rules

(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

(i) withdraws the stay prior to that time; or

(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this chapter (including regulations under this chapter).

(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

(4) Prior approval

(A) In general

A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) Prior approval required

Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) ¹ of this title (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) Deadline

If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(5) Approval

(A) Rules

The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this chapter (including regulations).

(B) Contracts and instruments

The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this chapter (including regulations).

(C) Special rule for review and approval of event contracts and swaps contracts

(i) Event contracts

In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) ² of this title), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

- (I) activity that is unlawful under any Federal or State law;
- (II) terrorism;
- (III) assassination;
- (IV) war;
- (V) gaming; or
- (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

(ii) Prohibition

No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

(iii) Swaps contracts

(I) In general

In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

(II) Requirements

- Any such criteria, conditions, or rules shall consider—
- (aa) the financial integrity of the derivatives clearing organization; and
 - (bb) any other factors which the Commission determines may be appropriate.

(iv) Deadline

The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.

(d) Repealed. Pub. L. 111–203, title VII, §745(c), July 21, 2010, 124 Stat. 1737

(e) Reservation of emergency authority

Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 12a(9) of this title.

(f) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof) with respect to the application of—

- (1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 6d(e) of this title involving security futures products; and
- (2) similar rules of national securities associations registered pursuant to section 78o-3(a) of title 15 and national securities exchanges registered pursuant to section 78f(g) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, §5c, as added and amended Pub. L. 106-554, §1(a)(5) [title I, §113, title II, §251(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-399, 2763A-444; Pub. L. 110-234, title XIII, §§13105(e), (f), 13203(i)-(k), May 22, 2008, 122 Stat. 1434, 1440, 1441; Pub. L. 110-246, §4(a), title XIII, §§13105(e), (f), 13203(i)-(k), June 18, 2008, 122 Stat. 1664, 2196, 2202, 2203; Pub. L. 111-203, title VII, §§717(d), 721(e)(7), 745, 749(c), July 21, 2010, 124 Stat. 1652, 1671, 1735, 1747.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(5)(A), was in the original "this subtitle", and was translated as reading "this Act" to reflect the probable intent of Congress.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203, §749(c)(1), struck out ", 7a(d)," after "7(d)" and "and section 2(h)(7) of this title with respect to significant price discovery contracts," before "to describe".

Subsec. (a)(2). Pub. L. 111-203, §745(a), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections."

Subsec. (c). Pub. L. 111-203, §745(b), added subsec. (c) and struck out former subsec. (c) which related to new contracts, new rules, and rule amendments and Commission approval upon certification of compliance with this chapter.

Subsec. (c)(1). Pub. L. 111-203, §717(d), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(2)(B). Pub. L. 111-203, §721(e)(7), substituted "section 1a(9)" for "section 1a(4)".

Subsec. (d). Pub. L. 111-203, §745(c), struck out subsec. (d) which related to violation of core principles.

Subsec. (f)(1). Pub. L. 111-203, §749(c)(2), substituted "section 6d(e) of this title" for "section 6d(c) of this title".

2008—Subsec. (a)(1). Pub. L. 110-246, §13203(i), which directed amendment of par. (1) by inserting ", and section 2(h)(7) of this title with respect to significant price discovery contracts," after ", and 7a-1(d)(2) of this title", was executed by making the insertion after ", and 7a-1(c)(2) of this title" to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, §13105(e). See below.

Pub. L. 110-246, §13105(e), substituted "7a-1(c)(2)" for "7a-1(d)(2)".

Subsec. (b)(1). Pub. L. 110-246, §13203(j)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity."

Subsec. (b)(2), (3). Pub. L. 110-246, §13203(j)(2), (3), substituted "contract market, derivatives transaction execution facility, or electronic trading facility" for "contract market or derivatives transaction execution

facility" wherever appearing.

Subsec. (d)(1). Pub. L. 110–246, §13203(k), which directed amendment of par. (1) by inserting "or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility," after "7a–1(d)(2)", was executed by making the insertion after "7a–1(c)(2)" in introductory provisions to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110–246, §13105(e). See below.

Pub. L. 110–246, §13105(e), substituted "7a–1(c)(2)" for "7a–1(d)(2)" in introductory provisions.

Subsec. (f)(1). Pub. L. 110–246, §13105(f), substituted "6d(c)" for "6d(3)".

2000—Subsec. (f). Pub. L. 106–554, §1(a)(5) [title II, §251(h)], added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(i)–(k) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

¹ *So in original. Probably should be "section 1a(9)".*

² *So in original. There is no section "1a(2)(i)" in this title.*

§7a–3. Repealed. Pub. L. 111–203, title VII, §734(a), July 21, 2010, 124 Stat. 1718

Section, act Sept. 21, 1922, ch. 369, §5d, as added Pub. L. 106–554, §1(a)(5) [title I, §114], Dec. 21, 2000, 114 Stat. 2763, 2763A–401, related to exempt boards of trade.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§7b. Suspension or revocation of designation as registered entity

The failure of a registered entity to comply with any provision of this chapter, or any regulation or order of the Commission under this chapter, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity, in accordance with the procedures and subject to the judicial review provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §5e, formerly §5b, as added June 15, 1936, ch. 545, §7, 49 Stat. 1498; amended Pub. L. 90–258, §13, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93–463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102–546, title II, §209(b)(3), Oct. 28, 1992, 106 Stat. 3607; renumbered §5e and amended Pub. L. 106–554, §1(a)(5) [title I, §§110(1), 115], Dec. 21, 2000, 114 Stat. 2763, 2763A–384, 2763A–402; Pub. L. 110–234, title XIII, §13203(l), May 22, 2008, 122 Stat. 1441; Pub. L. 110–246, §4(a), title XIII, §13203(l), June 18, 2008, 122 Stat. 1664, 2203; Pub. L. 111–203, title VII, §749(d), July 21, 2010, 124 Stat. 1747.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Pub. L. 111–203 struck out "or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," after "or revocation of designation as a registered entity,".

2008—Pub. L. 110–246, §13203(l), inserted ", or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," after "designation as a registered entity".

2000—Pub. L. 106–554, §1(a)(5) [title I, §115], amended section generally. Prior to amendment, section read as follows: "The failure or refusal of any board of trade to comply with any of the provisions of this chapter, or any of the rules, regulations, or orders of the Commission or the commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a 'contract market' in accordance with the procedure and subject to the judicial review provided in section 8(b) of this title."

1992—Pub. L. 102–546 substituted reference to section 8(b) of this title for reference to section 8 of this title.

1974—Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258 substituted "rules, regulations, or orders of the Secretary of Agriculture or the commission" for "rules and regulations of the Secretary of Agriculture".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(l) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§7b–1. Designation of securities exchanges and associations as contract markets

(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 78o–3(a) of title 15, or is an alternative trading system shall be a designated contract market in security futures products if—

(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures

products;

(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

(3) the registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

Such designation shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to this section shall be exempt from the following provisions of this chapter and the rules thereunder:

(A) Subsections (c), (e), and (g) of section 6c of this title.

(B) Section 6j of this title.

(C) Section 7 of this title.

(D) Section 7a–2 of this title.

(E) Section 10a of this title.

(F) Section 12(d) of this title.

(G) Section 13(f)¹ of this title.

(H) Section 20 of this title.

(2) An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 21 of this title and shall be exempt from any provision of this chapter that would require such alternative trading system to—

(A) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such alternative trading system; or

(B) discipline subscribers other than by exclusion from trading.

(3) To the extent that an alternative trading system is exempt from any provision of this chapter pursuant to paragraph (2) of this subsection, the futures association registered under section 21 of this title of which the alternative trading system is a member shall set rules governing the conduct of subscribers to the alternative trading system and discipline the subscribers.

(4)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this chapter or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.

(Sept. 21, 1922, ch. 369, §5f, as added Pub. L. 106–554, §1(a)(5) [title II, §252(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–445.)

REFERENCES IN TEXT

Subsec. (f) of section 13 of this title, referred to in subsec. (b)(1)(G), was redesignated subsec. (e) by Pub. L. 110–246, title XIII, §13105(h)(2), June 18, 2008, 122 Stat. 2197.

¹ See [References in Text note below](#).

§7b–2. Privacy

(a) Treatment as financial institutions

Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act [15 U.S.C. 6809(3)(B)], any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commission under this chapter with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act [15 U.S.C. 6801 et seq.] with respect to such financial activity.

(b) Treatment of CFTC as Federal functional regulator

For purposes of title V of such Act [15 U.S.C. 6801 et seq.], the Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act [15 U.S.C. 6809(2)] and shall prescribe regulations under such title within 6 months after December 21, 2000.

(Sept. 21, 1922, ch. 369, §5g, as added Pub. L. 106–554, §1(a)(5) [title I, §124], Dec. 21, 2000, 114 Stat. 2763, 2763A–411.)

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in text, is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§6801 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§7b–3. Swap execution facilities

(a) Registration

(1) In general

No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

(2) Dual registration

Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.

(b) Trading and trade processing

(1) In general

Except as specified in paragraph (2), a swap execution facility that is registered under subsection (a) may—

- (A) make available for trading any swap; and
- (B) facilitate trade processing of any swap.

(2) Agricultural swaps

A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

(c) Identification of facility used to trade swaps by contract markets

A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.

(d) Rule-writing

(1) The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e).

(2) For all swaps that are not required to be executed through a swap execution facility as defined in paragraph (1), such trades may be executed through any other available means of interstate commerce.

(3) The Securities and Exchange Commission and Commodity Futures Trading Commission shall update these rules as necessary to account for technological and other innovation.

(e) Rule of construction

The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.

(f) Core principles for swap execution facilities

(1) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

- (i) the core principles described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of swap execution facility

Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

(2) Compliance with rules

A swap execution facility shall—

(A) establish and enforce compliance with any rule of the swap execution facility, including

- (i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and
- (ii) any limitation on access to the swap execution facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

- (i) to provide market participants with impartial access to the market; and
- (ii) to capture information that may be used in establishing whether rule violations have occurred;

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h) of this title, the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8) of this title.

(3) Swaps not readily susceptible to manipulation

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

(4) Monitoring of trading and trade processing

The swap execution facility shall—

- (A) establish and enforce rules or terms and conditions defining, or specifications detailing—
 - (i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and
 - (ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(5) Ability to obtain information

The swap execution facility shall—

- (A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;
- (B) provide the information to the Commission on request; and
- (C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(6) Position limits or accountability

(A) In general

To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Position limits

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the swap execution facility shall—

- (i) set its position limitation at a level no higher than the Commission limitation; and
- (ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

(7) Financial integrity of transactions

The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1) of this title.

(8) Emergency authority

The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

(9) Timely publication of trading information

(A) In general

The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

(B) Capacity of swap execution facility

The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

(10) Recordkeeping and reporting

(A) In general

A swap execution facility shall—

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this chapter; and

(iii) shall keep any such records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission." [1](#)

(B) Requirements

The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

(11) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the swap execution facility shall not—

(A) adopt any rules or taking [2](#) any actions that result in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(12) Conflicts of interest

The swap execution facility shall—

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(B) establish a process for resolving the conflicts of interest.

(13) Financial resources

(A) In general

The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(B) Determination of resource adequacy

The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

(14) System safeguards

The swap execution facility shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

(i) are reliable and secure; and

(ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

(i) the timely recovery and resumption of operations; and

(ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

(i) order processing and trade matching;

- (ii) price reporting;
- (iii) market surveillance and
- (iv) maintenance of a comprehensive and accurate audit trail.

(15) Designation of chief compliance officer

(A) In general

Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) Duties

The chief compliance officer shall—

- (i) report directly to the board or to the senior officer of the facility;
- (ii) review compliance with the core principles in this subsection;
- (iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;
- (iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;
- (v) ensure compliance with this chapter and the rules and regulations issued under this chapter, including rules prescribed by the Commission pursuant to this section; and
- (vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

(C) Requirements for procedures

In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(D) Annual reports

(i) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

- (I) the compliance of the swap execution facility with this chapter; and
- (II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(ii) Requirements

The chief compliance officer shall—

- (I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and
- (II) include in the report a certification that, under penalty of law, the report is accurate and complete.

(g) Exemptions

The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

(h) Rules

The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.

(Sept. 21, 1922, ch. 369, §5h, as added Pub. L. 111–203, title VII, §733, July 21, 2010, 124 Stat. 1712.)

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

¹ *So in original. The closing quotation marks probably should not appear.*

² *So in original. Probably should be "take".*

§8. Application for designation as contract market or derivatives transaction execution facility; time; suspension or revocation of designation; hearing; review by court of appeals

(a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this chapter, and with a sufficient assurance that it will continue to comply with the the ¹ requirements of this chapter. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed 6 months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that the contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government, made a condition of its designation or registration as set forth in sections 7 through 7a–1 of this title or section 7b–1 of this title, or that the contract market or derivatives transaction execution facility or electronic trading facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set

aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(Sept. 21, 1922, ch. 369, §6(a), (b), formerly §6(a), 42 Stat. 1001; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §7(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 90–258, §§14, 15, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93–463, title I, §103(a)–(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §13(1), (2), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97–444, title II, §218, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 98–620, title IV, §402(3), Nov. 8, 1984, 98 Stat. 3357; renumbered §6(a), (b) and amended Pub. L. 102–546, title II, §209(a)(1)–(3), title IV, §402(1)(B), (9)(A), Oct. 28, 1992, 106 Stat. 3606, 3624, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A), (B)], Dec. 21, 2000, 114 Stat. 2763, 2763A–408; Pub. L. 110–234, title XIII, §13203(m), May 22, 2008, 122 Stat. 1441; Pub. L. 110–246, §4(a), title XIII, §13203(m), June 18, 2008, 122 Stat. 1664, 2203; Pub. L. 111–203, title VII, §749(e), July 21, 2010, 124 Stat. 1747.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section is comprised of subsecs. (a) and (b) of section 6 of act Sept. 21, 1922. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 struck out ", or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," before "on a showing".

2008—Subsec. (b). Pub. L. 110–246, §13203(m), added first sentence, in second sentence substituted "Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record" for "Such suspension or revocation shall only be after a notice to the officers of the contract market or derivatives transaction execution facility affected and upon a hearing on the record", and struck out former first sentence which read as follows: "The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that such contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a–1 of this title or section 7b–1 of this title or that such contract market or derivatives transaction execution facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission or the Commission thereunder."

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(iv)], substituted "designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person" for "designate as a 'contract market' any board of trade that has made application therefor, such board of trade" in last sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(iii)], in third sentence, substituted "person" for "board of trade" and "180-day period" for "one-year period".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(ii)], substituted "designation or registration as a contract market or derivatives transaction execution facility within 180 days" for "designation as a contract market within one year" in second sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(i)], in first sentence, substituted "person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration" for "board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation", "conditions set forth in this chapter" for "above conditions", and "the requirements of this chapter" for "above requirements".

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(B)(iii)], substituted "person" for "board of trade" in two places in last sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(B)(ii)], in second sentence, substituted "contract market or derivatives transaction execution facility affected" for "board of trade affected", "person appeals" for "board of trade appeals" and "person will" for "board of trade will".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(B)(i)], in first sentence, substituted "designation or registration of any contract market or derivatives transaction execution facility on" for "designation of any board of trade as a 'contract market' upon", "contract market or derivatives transaction execution facility" for "board of trade" in two places, and "designation or registration as set forth in sections 7 through 7a–1 of this title or section 7b–1 of this title" for "designation as set forth in section 7 of this title".

1992—Pub. L. 102–546, §209(a)(1), (2), designated first par. as subsec. (a) and redesignated former par. (a) as subsec. (b).

Subsec. (a). Pub. L. 102–546, §209(a)(3), substituted "subsection (b)" for "paragraph (a)".

Subsec. (b). Pub. L. 102–546, §402(9)(A), which directed amendment of first sentence by striking "the Secretary of Agriculture or", could not be executed because of amendment by Pub. L. 93–463, §103(a). See 1974 Amendment note below.

Pub. L. 102–546, §402(1)(B), substituted "Commission" for "commission" wherever appearing.

1984—Par. (a). Pub. L. 98–620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

1983—Pub. L. 97–444 required approval or denial of application within one year period of filing of application, stay of such period following notification that application was incomplete and deficient until resubmission of application, minimum period prior to acting upon resubmitted application, and specification of grounds for denial of application.

1978—Pub. L. 95–405, §13(1), in provisions before par. (a) inserted "on the record" after "opportunity for a hearing".

Par. (a). Pub. L. 95–405, §13(2), inserted "on the record" after "upon a hearing".

1974—Pub. L. 93–463, §103(a), substituted "Commission" for "Secretary of Agriculture" in first par.

Par. (a). Pub. L. 93–463, §103(c), struck out "the Secretary of Agriculture, who shall thereupon notify the other members of" after "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to".

Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in that phrase in par. (a), section 103(b) did not apply to par. (a) and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258, §14, inserted provision affording any board of trade refused a contract market designation a hearing before the Commission with right to appeal in adverse decision to the court of appeals as provided for in par. (a) of this section at end of first par.

Par. (a). Pub. L. 90–258, §15, amended par. (a) generally, striking out such parts both of first sentence and of proviso of last sentence as described the commission as made up of the Secretary of Agriculture, Secretary of Commerce, and Attorney General (covered in definition of "Commission" in section 2 of this title, including representation of such officials by their designees), extending grounds for suspension or revocation of designation to include violations of any provisions of this chapter or rules, regulations, or orders of the Secretary of Agriculture or commission, requiring delivery of appeal petitions to Secretary of Agriculture rather than any member of the commission, who would notify the other members, and filing of commission records of proceedings on appeal by the Secretary of Agriculture and not the commission, striking out provisions describing Secretary of Agriculture as Chairman (now found in section 2 of this title), superseding such part of proviso of seventh sentence as authorized appeals to the commission from Secretary of Agriculture's refusal of a contract market designation by provisions of first par. of this section, and striking out such other part as made decision of court on appeal from commission final and binding on the parties.

1958—Pub. L. 85–791 substituted "thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28" for "forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings including the notice to the board of trade, a copy of the charges, the evidence, and the report and order" in third notice, and struck out "certified and" after "duly" in fourth sentence.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing in this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(m) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

[So in original.](#)

§9. Prohibition regarding manipulation and false information

(1) Prohibition against manipulation

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after July 21, 2010, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(A) Special provision for manipulation by false reporting

Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

(B) Effect on other law

Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 13(a)(2) of this title.

(C) Good faith mistakes

Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate paragraph (1)(A).

(2) Prohibition regarding false information

It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this chapter, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

(3) Other manipulation

In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

(4) Enforcement

(A) Authority of Commission

If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this section, or any other provision of this chapter (including any rule, regulation, or order of the Commission promulgated in accordance with this section or any other provision of this chapter), the Commission may serve upon the person a complaint.

(B) Contents of complaint

A complaint under subparagraph (A) shall—

- (i) contain a description of the charges against the person that is the subject of the complaint; and
- (ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

(C) Hearing

A hearing described in subparagraph (B)(ii)—

- (i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);
- (ii) shall require the person to show cause regarding why—
 - (I) an order should not be made—
 - (aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and
 - (bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and
 - (II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and
- (iii) may be held before—
 - (I) the Commission; or
 - (II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

(5) Subpoena

For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, and for the purpose of any action taken under section 16(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

(6) Witnesses

The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

(7) Service

A subpoena issued under this section ¹ may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

(8) Refusal to obey

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

(9) Failure to obey

Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

(10) Evidence

On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

(C) assess such person—

(i) a civil penalty of not more than an amount equal to the greater of—

(I) \$140,000; or

(II) triple the monetary gain to such person for each such violation; or

(ii) in any case of manipulation or attempted manipulation in violation of this section or section 13(a)(2) of this title, a civil penalty of not more than an amount equal to the greater of—

(I) \$1,000,000; or

(II) triple the monetary gain to the person for each such violation; and

(D) require restitution to customers of damages proximately caused by violations of the person.

(11) Orders

(A) Notice

The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

- (i) registered mail;
- (ii) certified mail; or
- (iii) personal delivery.

(B) Review

(i) In general

A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

(ii) Petition

To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

- (I) for the circuit in which the petitioner carries out the business of the petitioner; or
- (II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

(C) Procedure

(i) Duty of clerk of appropriate court

The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

(ii) Duty of Commission

In accordance with section 2112 of title 28, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

(iii) Jurisdiction of appropriate court

Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8, 49 Stat. 1498; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; June 16, 1955, ch. 151, 69 Stat. 160; Pub. L. 85–791, §7(b), Aug. 28, 1958, 72 Stat. 944; Pub. L. 86–507, §1(2), June 11, 1960, 74 Stat. 200; Pub. L. 90–258, §16, Feb. 19, 1968, 82 Stat. 30; Pub. L. 91–452, title II, §202, Oct. 15, 1970, 84 Stat. 928; Pub. L. 93–463, title I, §103(a), (b), (d), (e), title II, §§204(b), 205(b), 212(a)(1), (2), title IV, §408, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1403, 1414; Pub. L. 95–405, §13(3), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97–444, title II, §219, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99–641, title I, §103, Nov. 10, 1986, 100 Stat. 3557; renumbered §6(c) and amended Pub. L. 102–546, title II, §§209(a)(1), 212(b), 223, title III, §301, title IV, §402(1)(C), (6), (7), (9)(B), Oct. 28, 1992, 106 Stat. 3606, 3609, 3617, 3622, 3624, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(C)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 110–234, title XIII, §13103(a), May 22, 2008, 122 Stat. 1433; Pub. L. 110–246, §4(a), title XIII, §13103(a), June 18, 2008, 122 Stat. 1664, 2195; Pub. L. 111–203, title VII, §§741(b)(3), 753(a), July 21, 2010, 124 Stat. 1731, 1750.)

REFERENCES IN TEXT

This section, referred to in par. (7), means section 6 of act Sept. 21, 1922, ch. 369, 42 Stat. 1001. For classification of section 6 to the Code, see Codification note below.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section is comprised of subsec. (c) of section 6 of act Sept. 21, 1922. Prior to amendment by Pub. L. 111–203, a further provision of subsec. (c) was contained in section 15 of this title and, prior to its incorporation

into the Code, contained a provision as to finality of judgments and review by the Supreme Court which is covered by section 1254 of Title 28, Judiciary and Judicial Procedure. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Pub. L. 111–203, §753(a), amended section generally. Prior to amendment, section related to exclusion of persons from privilege of "registered entities", procedure for exclusion, review by court of appeals, and enforcement powers of Commission.

Pub. L. 111–203, §741(b)(3), in first sentence, inserted "or of any swap," before "or has willfully made".

2008—Pub. L. 110–246, §13103(a), in cl. (3) of third sentence inserted "(A)" after "assess such person" and added subcl. (B).

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" wherever appearing, "registered entities" for "contract markets" wherever appearing, and "privileges" for "trading privileges" in two places.

1992—Pub. L. 102–546, §402(9)(B), which directed amendment of first sentence by striking "the Secretary of Agriculture or", could not be executed because of amendment by Pub. L. 93–463, §103(a). See 1974 Amendment note below.

Pub. L. 102–546, §§209(a)(1), 212(b), 223, 402(1)(C), (6), substituted, in first sentence, "Commission thereunder" for "commission thereunder", in sentence beginning "Upon evidence received", inserted "(1)", substituted "(2) if" for "and, if", "suspend" for "may suspend", "(3)" for "and may", "the higher of \$100,000 or triple the monetary gain to such person" for "\$100,000", and inserted before period "and (4) require restitution to customers of damages proximately caused by violations of such persons", and in sentence beginning "After the issuance", substituted "offending person" for "offending person".

1983—Pub. L. 97–444 struck out "as futures commission merchant or any person associated therewith as described in section 6k of this title, commodity trading advisor, commodity pool operator, or as floor broker hereunder" after "such person, if registered" and also after "such person is registered" and inserted ", or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located," after "court of appeals of the circuit in which the petitioner is doing business".

1974—Pub. L. 93–463, §§103(e), 204(b), 205(b), 212(a)(1), (2), 408, substituted "it" for "he", inserted "or any person associated therewith as described in section 6k of this title," after "futures commission merchant" wherever appearing, inserted "commodity trading advisor, commodity pool operator" before "or as floor broker" wherever appearing, inserted provision for the assessment of civil penalties of not more than \$100,000 for each violation, set a limit of fifteen days after the issuance of an order within which period the person against whom the order was issued must file with the court of appeals his petition that the order be set aside, and substituted "an Administrative Law Judge" and "Administrative Law Judge" for "a referee" and "referee", respectively.

Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Section 103(a) was executed wherever the term "Secretary of Agriculture" appeared in this section including in the phrase "the Secretary of Agriculture or the commission" in the first sentence. Because the word "commission" was not capitalized in that phrase in the first sentence, section 103(b) did not apply to that phrase and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258 amended first sentence generally, providing for denial of trading privileges to persons other than contract markets and suspension or revocation of registration of futures commission merchants and floor brokers, who are manipulating or have attempted to manipulate prices, for willful, material, misstatements in, or omissions from, reports or registration statements, and for violations of orders of Secretary of Agriculture or commission, and authorizing the Secretary to prohibit such persons from trading on or subject to rules of any contract market.

1960—Pub. L. 86–507 inserted "or by certified mail" after "registered mail".

1958—Pub. L. 85–791 substituted "transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28" for "served upon the Secretary of Agriculture by delivering such copy to him and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record

theretofore made, including evidence received" in seventh sentence, and substituted "petition" for "transcript" in eighth sentence.

1936—Act June 15, 1936, among other changes, amended section by inserting provisions relating to the service of complaints and penalties for violations of this chapter.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing in this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 741(b)(3) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Pub. L. 111–203, title VII, §753(d), July 21, 2010, 124 Stat. 1754, provided that:

"(1) The amendments made by this section [amending this section and sections 13b and 25 of this title] shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission [see 76 F.R. 41398, effective Aug. 15, 2011] pursuant to this Act [see Tables for classification] takes effect.

"(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

¹ [See References in Text note below.](#)

§9a. Assessment of money penalties

(1) In determining the amount of the money penalty assessed under section 9 of this title, the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under section 9 of this title shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by section 9 of this title has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities;
and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under section 9 of this title takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(Sept. 21, 1922, ch. 369, §6(e), formerly §6(d), as added Pub. L. 93–463, title II, §212(a)(3), Oct. 23, 1974, 88 Stat. 1403; renumbered §6(e) and amended Pub. L. 102–546, title II, §209(a)(1), (5), Oct. 28, 1992, 106 Stat. 3606; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 111–203, title VII, §741(b)(11), July 21, 2010, 124 Stat. 1732.)

CODIFICATION

Section is comprised of subsec. (e) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (f), and (g) of section 6 are classified to sections 13b, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Pars. (4), (5). Pub. L. 111–203 added pars. (4) and (5).

2000—Pars. (2)(A), (3)(A). Pub. L. 106–554 substituted "the privileges of all registered entities" for "trading on all contract markets".

1992—Pub. L. 102–546 amended section generally. Prior to amendment, section read as follows: "In determining the amount of the money penalty assessed under sections 9 and 15 of this title, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market—the appropriateness of such penalty to the size of the business of the person charged, the extent of such person's ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market—the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§9b. Rules prohibiting deceptive and other abusive telemarketing acts or practices

(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 6102(a) of title 15, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this chapter in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this chapter provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 6102(a) of title 15; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(Sept. 21, 1922, ch. 369, §6(f), as added Pub. L. 103–297, §3(e)(2), Aug. 16, 1994, 108 Stat. 1547.)

CODIFICATION

Section is comprised of subsec. (f) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), and (g) of section 6 are classified to sections 13b, 9a, and 9c of this title, respectively.

§9c. Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to section 9 and 13b of this title against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b–1 of this title.

(Sept. 21, 1922, ch. 369, §6(g), as added Pub. L. 106–554, §1(a)(5) [title II, §253(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–449.)

CODIFICATION

Section is comprised of subsec. (g) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), and (f) of section 6 are classified to sections 13b, 9a, and 9b of this title, respectively.

§10. Repealed. June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948

Section, acts Sept. 21, 1922, ch. 369, §6(b), 42 Stat. 1001; June 15, 1936, ch. 545, §8(k), 49 Stat. 1499, related to review by Supreme Court on certiorari. See section 1254 of Title 28, Judiciary and Judicial Procedure.

§10a. Cooperative associations and corporations, exclusion from board of trade; rules of board inapplicable to payment of compensation by association

(a) No board of trade which has been designated or registered as a contract market or a derivatives transaction execution facility exclude 1 from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 8(b) of this title, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade designated or registered as a contract market or a derivatives transaction execution facility shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

(Sept. 21, 1922, ch. 369, §6a, as added June 15, 1936, ch. 545, §9, 49 Stat. 1499; amended June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 102-546, title II, §209(b)(4), title IV, §402(8), Oct. 28, 1992, 106 Stat. 3607, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(13)(A)], substituted "designated or registered as a contract market or a derivatives transaction execution facility" for "designated as a 'contract market' shall".

Subsec. (b). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(13)(B)], substituted "designated or registered as a contract market or a derivatives transaction execution facility" for "designated as a contract market".

1992—Pub. L. 102-546 redesignated subsecs. (1) and (2) as (a) and (b), respectively, and in subsec. (a) substituted reference to section 8(b) of this title for reference to section 8 of this title.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

¹ So in original. Probably should read "shall exclude".

§11. Vacation on request of designation or registration as "registered entity"; redesignation or reregistration

Any person that has been designated or registered a registered entity in the manner provided in this chapter may have such designation or registration vacated and set aside by giving notice in writing to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation or registration shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation or registration of the registered entity, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other registered entities. From and after the date upon which the vacation became effective the said person can thereafter be designated or registered again a registered entity by making application to the Commission in the manner in this chapter provided for an original application.

(Sept. 21, 1922, ch. 369, §7, 42 Stat. 1002; Pub. L. 93-463, title I, §103(a), (e), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(17)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

AMENDMENTS

2000—Pub. L. 106-554, in first sentence, substituted "person" for "board of trade", inserted "or registered" after "designated", inserted "or registration" after "designation" wherever appearing, and substituted "registered entity" for "contract market" in two places, in second sentence, substituted "designation or registration of the registered entity" for "designation of such board of trade as a contract market" and "registered entities" for "contract markets", and, in last sentence, substituted "person" for "board of trade" and "designated or registered again a registered entity" for "designated again a contract market".

1974—Pub. L. 93-463 substituted "Commission" for "Secretary of Agriculture" and "its order" for "his order".

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

§12. Public disclosure

(a) Investigations respecting operations of boards of trade and others subject to this chapter; publication of results; restrictions; information received from foreign futures authorities; undercover operations; notice of investigations and enforcement actions

(1) For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this chapter. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this chapter, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this chapter; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding involving a receiver appointed in a judicial proceeding commenced by the United States or the Commission, or in any proceeding under title 11 in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3) (B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this chapter, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover operations by such agencies. The Commission and the Department of Justice shall assess the effectiveness of such undercover operations and, within two years of October 28, 1992, shall recommend to Congress any additional undercover or other authority for the Commission that the Commission or the Department of Justice believes to be necessary.

(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.

(b) Business matters; congressional, administrative, judicial, and bankruptcy proceedings

The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, in an administrative or judicial proceeding brought under this chapter, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this chapter, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11. This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.

(c) Reports respecting conduct of registered entities or transactions of violators; contents

The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any registered entity or to the transactions of any person found guilty of violating the provisions of this chapter or the rules, regulations, or orders of the Commission thereunder in proceedings brought under sections 8, 9, 9a, 9b, 9c, and 13b of this title. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this chapter.

(d) Investigations respecting marketing conditions of commodities and commodity products and byproducts; reports

The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) Names and addresses of traders of boards of trade previously disclosed; disclosure to Congress and agencies or departments of States or foreign governments or foreign futures authority

The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. However, any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such foreign futures authority, department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this chapter or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a foreign futures authority or to a department, central bank and ministries, or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department, central bank and ministries, or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department, central bank and ministries, or agency thereof, or foreign futures authority, is a party.

(f) Compliance with subpoena after notice to informant; congressional subpoenas and requests for information excepted

The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpoena or summons to such person, and

(2) at least fourteen days have expired from the date of such mailing of the subpoena or summons, or such other notice.

This subsection shall not apply to congressional subpoenas or congressional requests for information.

(g) Requests for information by State agencies or subdivisions; volunteering of information by Commission

The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

(h) Omitted

(i) Review and audits by Comptroller General

The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

(Sept. 21, 1922, ch. 369, §8, 42 Stat. 1003; June 15, 1936, ch. 545, §2, 49 Stat. 1491; Pub. L. 90–258, §19(a), Feb. 19, 1968, 82 Stat. 32; Pub. L. 93–463, title I, §103(a), (e), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §16, Sept. 30, 1978, 92 Stat. 873; Pub. L. 97–444, title II, §222, Jan. 11, 1983, 96 Stat. 2309; Pub. L. 102–546, title II, §205, title III, §§304, 305, title IV, §402(7), Oct. 28, 1992, 106 Stat. 3600, 3623, 3624; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(18), title II, §253(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410, 2763A–449; Pub. L. 110–234, title XIII, §13105(g), May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13105(g), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §725(f), July 21, 2010, 124 Stat. 1694.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section is based on section 8 of Act Sept. 21, 1922, as amended generally by Pub. L. 95–405, §16. Prior to such general amendment, section was comprised of the first paragraph of section 8, and the second, third, and fourth pars. of section 8 were classified to sections 12–1, 12–2, and 12–3 of this title, respectively.

Subsection (h), which required the Commodity Futures Trading Commission to submit an annual report to Congress detailing the operations of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 158 of House Document No. 103–7.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–203, in last sentence, inserted ", central bank and ministries," after "department" wherever appearing and substituted ", is a party." for ". is a party."

2008—Subsec. (a)(1). Pub. L. 110–246, §13105(g), in concluding provisions, struck out "commenced" after "receivership proceeding" and inserted "commenced" after "in a judicial proceeding".

2000—Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title II, §253(a)], added par. (3).

Subsec. (c). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(18)], in first sentence, substituted "registered entity" for "board of trade".

1992—Subsec. (a). Pub. L. 102–546, §§205, 304(1), designated existing provisions as par. (1), inserted provisions at end relating to disclosure of information received from foreign futures authorities, and added par. (2).

Subsec. (b). Pub. L. 102–546, §304(2), inserted at end "This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority."

Subsec. (e). Pub. L. 102–546, §305, inserted references to foreign futures authority in fifth and last sentences.

Subsec. (f). Pub. L. 102–546, §402(7), substituted "subpoena" for "subpena" wherever appearing and "subpoenas" for "subpenas" in last sentence.

1983—Subsec. (a). Pub. L. 97–444, §222(1), inserted proviso authorizing Commission to withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person.

Subsec. (b). Pub. L. 97–444, §222(2), inserted references to receivership proceedings involving a receiver appointed in a judicial proceeding brought under this chapter and to bankruptcy proceedings in which the Commission has intervened or in which Commission has right to appear and be heard under title 11.

Subsec. (e). Pub. L. 97–444, §222(3), struck out "of the Executive Branch" after "Upon the request of any department or agency" and inserted "Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this chapter or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party."

Subsecs. (f), (g). Pub. L. 97–444, §222(5), added subsecs. (f) and (g). Former subsecs. (f) and (g) were redesignated (h) and (i), respectively.

Subsecs. (h), (i). Pub. L. 97–444, §222(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1978—Pub. L. 95–405 consolidated under this section provisions formerly contained in this section and sections 12–1, 12–2, and 12–3 of this title, generally revised provisions thus consolidated to clarify and expand disclosure to public of traders and their positions on boards of trade, and divided provisions thus consolidated and revised into subsecs. (a) to (g).

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture", "it" for "he", "its" for "his", and "It" for "He".

1968—Pub. L. 90–258 authorized investigations to ascertain facts regarding operations of other persons subject to any provisions of this chapter.

1936—Act June 15, 1936, substituted "commodity" for "grain" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

§§12–1 to 12–3. Omitted

CODIFICATION

Sections 12–1 to 12–3 comprised the second, third, and fourth pars., respectively, of section 8 of the Commodity Exchange Act, Sept. 21, 1922, ch. 369, §8, 42 Stat. 1003. Such section 8 was amended generally by Pub. L. 95–405, §16, Sept. 30, 1978, 92 Stat. 873, and is classified in its entirety to section 12 of this title.

Section 12–1, as added Dec. 19, 1947, ch. 523, 61 Stat. 941; amended Feb. 19, 1968, Pub. L. 90–258, §19(b), 82 Stat. 32; Oct. 23, 1974, Pub. L. 93–463, title I, §103(a), (e), (f), 88 Stat. 1392, related to disclosure of names of traders on commodity markets by Commission. See section 12(e) of this title.

Section 12–2, as added Oct. 23, 1974, Pub. L. 93–463, title I, §105, 88 Stat. 1392, required an annual report to Congress. See Codification note under section 12 of this title.

Section 12–3, as added Oct. 23, 1974, Pub. L. 93–463, title I, §105, 88 Stat. 1392, related to reviews and audits by Comptroller General. See section 12(i) of this title.

§12a. Registration of commodity dealers and associated persons; regulation of registered entities

The Commission is authorized—

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, floor brokers, and floor traders upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: *Provided*, That notwithstanding any provision of this chapter, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the

basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity where such activity involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 6c or 23 of this title, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961, 1962, 1963, or 2314, or chapter 25, 47, 95, or 96 of title 18, or section 7201 or 7206 of title 26;

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this chapter, 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 1935,¹ the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Securities Investors² Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, chapter 96 of title 18, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(F) if such person is subject to an outstanding order of the Commission denying privileges on any registered entity to such person, denying, suspending, or revoking such person's membership in any registered entity or registered futures association, or barring or suspending such person from being associated with a registrant under this chapter or with a member of a registered entity or with a member of a registered futures association;

(G) if, as to any of the matters set forth in this paragraph and paragraph (3), such person willfully made any materially false or misleading statement or omitted to state any material fact in such person's application or any update thereto; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph:

Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in section 9 of this title; and

Provided, further, That for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated, or has consented to findings of a violation of, any provision of this chapter, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of 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 1935,¹ the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Securities Investors³ Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this chapter, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: *Provided*, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph if (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

(D) such person pleaded guilty to or was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section, or was convicted of a felony of the type specified in paragraph (2)(D) of this section more than ten years preceding the filing of the application;

(E) such person pleaded guilty to or was convicted of any misdemeanor which (i) involves any transaction or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 6c or 23 of this title or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, or section 7203, 7204, 7205, or 7207 of title 26;

(F) such person was debarred by any agency of the United States from contracting with the United States;

(G) such person willfully made any materially false or misleading statement or willfully omitted to state any material fact in such person's application or any update thereto, in any report required to be filed with the Commission by this chapter or the regulations thereunder, in any proceeding before the Commission or in any registration disqualification proceeding;

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court, in a United States military court, or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this chapter or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a registered entity, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such registered entity, association, self-regulatory organization, or foreign regulatory body;

(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

(L) such person has associated with such person any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

(M) there is other good cause; or

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, That pending final determination under this paragraph, registration shall not be granted:

Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in section 9 of this title;

(4) in accordance with the procedure provided for in section 9 of this title, to suspend, revoke, or place restrictions upon the registration of any person registered under this chapter if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any registered entity from any person if such person has been denied trading privileges on any registered entity by order of the Commission under section 9 of this title and the period of denial specified in such order shall not have expired: *Provided*, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in section 9 of this title;

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this chapter;

(6) to communicate to the proper committee or officer of any registered entity, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(26)], notwithstanding the provisions of section 12 of this title, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this chapter: *Provided*, That any information furnished by the Commission under this paragraph shall not be disclosed by such registered entity, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a registered entity insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a registered entity that such registered entity effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such registered entity has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such registered entity, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such registered entity. Such rules, regulations, or orders may specify changes with respect to such matters as—

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such registered entity;

(B) the form or manner of execution of purchases and sales for future delivery;

(C) other trading requirements;

(D) margin requirements, provided that the rules, regulations, or orders shall—

(i) be limited to protecting the financial integrity of the derivatives clearing organization;

(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

(iii) not set specific margin amounts;

(E) safeguards with respect to the financial responsibility of members;

(F) the manner, method, and place of soliciting business, including the content of such solicitations; and

(G) the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts;

(8) to make and promulgate such rules and regulations with respect to those persons registered under this chapter, who are not members of a registered entity, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the registered entity, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the

time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a registered entity to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions;

(10) to authorize any person to perform any portion of the registration functions under this chapter, in accordance with rules, notwithstanding any other provision of law, adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 21(j) of this title, and subject to the provisions of this chapter applicable to registrations granted by the Commission; and

(11)(A) by written notice served on the person and pursuant to such rules, regulations, and orders as the Commission may adopt, to suspend or modify the registration of any person registered under this chapter who is charged (in any information, indictment, or complaint authorized by a United States attorney or an appropriate official of any State) with the commission of or participation in a crime involving a violation of this chapter, or a violation of any other provision of Federal or State law that would reflect on the honesty or the fitness of the person to act as a fiduciary (including an offense specified in subparagraph (D) or (E) of paragraph (2)) that is punishable by imprisonment for a term exceeding one year, if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(B) Prior to the suspension or modification of the registration of a person under this paragraph, the person shall be afforded an opportunity for a hearing at which the Commission shall have the burden of showing that the continued registration of the person does, or is likely to, pose a threat to the public interest or threaten to impair public confidence in any market regulated by the Commission.

(C) Any notice of suspension or modification issued under this paragraph shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(D) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such person an order pursuant to paragraph (2) or (4) to suspend, restrict, or revoke the registration of such person.

(E) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under this chapter.

(F) A person aggrieved by an order issued under this paragraph may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §8a, as added June 15, 1936, ch. 545, §10, 49 Stat. 1500; amended Aug. 5, 1955, ch. 574, 69 Stat. 535; Pub. L. 90-258, §§20-23, Feb. 19, 1968, 82 Stat. 32, 33; Pub. L. 93-463, title I, §103(a), title II, §§204(c), 205(c), 213-215, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1404; Pub. L. 95-405, §17, Sept. 30, 1978, 92 Stat. 874; Pub. L. 97-444, title I, §104, title II, §§223-225, Jan. 11, 1983, 96 Stat. 2297, 2310-2315; Pub. L. 102-546, title II, §§207(b)(3), (4), 208, 209(b)(6), 227, title IV, §402(10), Oct. 28, 1992, 106 Stat. 3604, 3607, 3618, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(19)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410; Pub. L. 111-203, title VII, §736, July 21, 2010, 124 Stat. 1722.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in pars. (2)(E) and (3)(B), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (2)(E) and (3)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Public Utility Holding Company Act of 1935, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

The Trust Indenture Act of 1939, referred to in pars. (2)(E) and (3)(B), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, as amended, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of Title 15. For complete classification of this Act to the Code, see section 77aaa of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in pars. (2)(E) and (3)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Securities Investor Protection Act of 1970, referred to in pars. (2)(E) and (3)(B), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B–1 (§78aaa et seq.) of Title 15. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Foreign Corrupt Practices Act of 1977, referred to in pars. (2)(E) and (3)(B), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2010—Par. (7)(C). Pub. L. 111–203, §736(1), struck out ", excepting the setting of levels of margin" after "requirements".

Par. (7)(D) to (G). Pub. L. 111–203, §736(2), (3), added subpar. (D) and redesignated former subpars. (D) to (F) as (E) to (G), respectively.

2000—Pub. L. 106–554, §1(a)(5) [title I, §123(a)(19)(A)], substituted "registered entity" for "contract market" wherever appearing.

Par. (2)(F). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(19)(B)], substituted "privileges" for "trading privileges".

1992—Par. (1). Pub. L. 102–546, §207(b)(3), substituted "floor brokers, and floor traders" for "and floor brokers".

Par. (2). Pub. L. 102–546, §209(b)(6)(A), made technical amendment to reference to sections 9 and 15 of this title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (2)(C)(i). Pub. L. 102–546, §207(b)(4), inserted "floor trader," after "floor broker,".

Par. (2)(C)(ii). Pub. L. 102–546, §208(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities".

Par. (2)(D)(ii). Pub. L. 102–546, §207(b)(4), inserted "floor trader," after "floor broker,".

Par. (2)(D)(iv). Pub. L. 102–546, §208(b), inserted references to sections 1001, 1503, 1623, 1961 to 1963, and 2314 of title 18 and sections 7201 and 7206 of title 26.

Par. (2)(E). Pub. L. 102–546, §208(c), substituted "in a proceeding brought" for "by any court of competent jurisdiction," and in cl. (i) inserted reference to chapter 96 of title 18.

Par. (2)(G). Pub. L. 102–546, §208(d), substituted "this paragraph and paragraph (3)" for "subparagraphs (A) through (F) of this paragraph", "materially false" for "material false", and "application or any update thereto" for "application".

Par. (3). Pub. L. 102–546, §209(b)(6)(B), made technical amendment to reference to sections 9 and 15 of this title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (3)(D). Pub. L. 102–546, §208(e), inserted "pleaded guilty to or" after "person", substituted "section," for "section within ten years preceding the filing of the application or at any time thereafter," and "felony of the type specified in paragraph (2)(D) of this section more" for "felony, including a felony of the type specified in paragraph (2)(D) of this section, more".

Par. (3)(E). Pub. L. 102–546, §208(f)(1), (2), inserted "pleaded guilty to or" after "person" and struck out "within ten years preceding the filing of the application for registration or at any time thereafter" before "of any misdemeanor".

Par. (3)(E)(ii). Pub. L. 102–546, §207(b)(4), inserted "floor trader," after "floor broker,".

Par. (3)(E)(iv). Pub. L. 102–546, §208(f)(3), inserted reference to sections 7203 to 7205 and 7207 of title 26.

Par. (3)(G). Pub. L. 102–546, §208(g)(5), which directed the insertion of "or in any registration disqualification proceeding" after "Commission", was executed by making the insertion after "Commission" the second time it appeared to reflect the probable intent of Congress.

Pub. L. 102–546, §208(g)(1)–(4), substituted "materially false" for "material false", "application or any update thereto," for "application," and struck out "or" after "thereunder,".

Par. (3)(H). Pub. L. 102–546, §208(h), inserted ", in a United States military court," after "State court".

Par. (3)(J). Pub. L. 102–546, §208(i), struck out "or" before "any other self-regulatory", inserted "or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program", and substituted "association, self-regulatory organization, or foreign regulatory body" for "association, or self-regulatory organization".

Par. (4). Pub. L. 102–546, §209(b)(6)(C), made technical amendment to references to sections 9 and 15 of this title in concluding provisions to reflect change in references to corresponding section of original act.

Par. (5). Pub. L. 102–546, §402(10)(A), struck out "and" at end.

Par. (7). Pub. L. 102–546, §402(10)(B), substituted "matters as—" for "matters as:" in introductory provisions.

Par. (11). Pub. L. 102–546, §227, added par. (11).

1983—Par. (1). Pub. L. 97–444, §223, substituted authorization for registration of "associated persons of futures commission merchants" for "and persons associated therewith as described in section 6k of this title"; authorized registration of introducing brokers, associated persons of introducing brokers, associated persons of commodity trading advisors and associated persons of commodity pool operators, substituted "such persons" for "any persons" before "associated with the applicant", and authorized establishment of registration and renewal fees and charges and granting of temporary licenses for terms not exceeding six months from date of issuance.

Par. (2). Pub. L. 97–444, §224(1), added par. (2) and struck out prior par. (2) which authorized Commission "to refuse to register any person—

"(A) if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked;

"(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant, or, if the applicant is a partnership, any general partner, or, if the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, at any time engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown; or

"(C) in the case of an applicant for registration as futures commission merchant, if it is found after opportunity for hearing that the applicant has not established that he meets the minimum financial requirements under section 6f of this title: *Provided*, That pending final determination under subparagraph (B) or (C), registration shall not be granted: *And provided further*, That the applicant may appeal from the refusal of registration under subparagraph (B) or (C) in the manner provided in sections 9 and 15 of this title; and".

Par. (3). Pub. L. 97–444, §224(3), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 97–444, §224(2), (4), struck out par. (4) provision for establishment of registration and renewal fees and charges, covered in par. (1), redesignated par. (3) as (4), and in redesignated par. (4), authorized placing of restrictions on registrations, suspension or revocation of registration of an introducing broker and appeals from registration decisions made pursuant to this paragraph as provided in sections 9 and 15 of this title, and substituted "if cause exists under paragraph (3) of this section" for "if cause exists under paragraph (2)(B) or (C) of this section".

Par. (6). Pub. L. 97–444, §104, authorized communication of full facts respecting transactions or market operations to registered futures associations and self-regulatory organizations, included concern for investors, provided for communications when necessary or appropriate to effectuate purposes of this chapter, and prohibited disclosure of furnished information except in self-regulatory actions or proceedings.

Pars. (6) to (8). Pub. L. 97–444, §224(5), struck out "and" at end of pars. (6), (7), and (8).

Par. (9). Pub. L. 97-444, §225, authorized Commission to direct the contract market to take certain action, including, but not limited to, setting of temporary emergency margin levels on any futures contract, and fixing of limits that may apply to a market position acquired in good faith prior to the effective date of Commission's action and inserted provisions respecting judicial review.

Par. (10). Pub. L. 97-444, §224(6), added par. (10).

1978—Par. (1). Pub. L. 95-405, §17(1), inserted ", which may require the applicant, and any persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing" after "by the Commission".

Par. (6). Pub. L. 95-405, §17(2), struck out "and to publish" after "any contract market".

1974—Pub. L. 93-463, §103(a), substituted "Commission" for "Secretary of Agriculture" in provisions preceding par. (1).

Par. (1). Pub. L. 93-463, §§103(a), 204(c), 205(c), substituted "Commission" for "Secretary of Agriculture", inserted "and persons associated therewith as described in section 6k of this title," after "futures commission merchants", and inserted "commodity trading advisors, commodity pool operators" before "and floor brokers".

Pars. (3), (5), (6). Pub. L. 93-463, §103(a), substituted "Commission" for "Secretary of Agriculture".

Par. (7). Pub. L. 93-463, §213, amended par. (7) generally, substituting provisions covering the altering or supplementing of the rules of a contract market for provisions covering the disapproval of bylaws, rules, regulations, and resolutions made, issued, or proposed by a contract market.

Par. (8). Pub. L. 93-463, §214, added par. (8).

Par. (9). Pub. L. 93-463, §215, added par. (9).

1968—Par. (2). Pub. L. 90-258, §20, designated existing provisions as subpar. (A), substituted "if the prior registration of such person" for "if such person has violated any of the provisions of this chapter or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person" and added subpars. (B) and (C).

Par. (3). Pub. L. 90-258, §21, authorized Secretary of Agriculture, in accordance with procedure provided for in sections 9 and 15 of this title, to suspend or revoke the registration of any person registered under this chapter if cause exists under par. (2)(B) or (C) of this section which would warrant a refusal of registration of such person.

Par. (4). Pub. L. 90-258, §22, struck out authorization for establishment of fees for copies of registration certificates.

Par. (7). Pub. L. 90-258, §23, added par. (7).

1955—Par. (4). Act Aug. 5, 1955, authorized Secretary to fix and establish reasonable fees for registrations and renewals, and struck out provisions which set the fee for each registration and renewal at not more than \$10.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(3), (4) of Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

¹ [See References in Text note below.](#)

² [So in original. Probably should be "Investor".](#)

³ [So in original. Probably should be "Investor".](#)

§12b. Trading ban violations; prohibition

It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any registered entity, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any registered entity.

(Sept. 21, 1922, ch. 369, §8b, as added Pub. L. 90–258, §24, Feb. 19, 1968, 82 Stat. 33; amended Pub. L. 93–463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410.)

AMENDMENTS

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture".

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463 see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§12c. Disciplinary actions

(a) Action taken; written notice of reasons for action

(1) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(2) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission.

(b) Review by Commission

The Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(c) Affirmance, modification, set aside, or remand of action

The Commission may affirm, modify, set aside, or remand any exchange decision it reviews pursuant to subsection (b), after a determination on the record whether the action of the exchange was in accordance with the policies of this chapter. Subject to judicial review, any order of the Commission entered pursuant to subsection (b) shall govern the exchange in its further treatment of the matter.

(d) Stay of action

The Commission, in its discretion, may order a stay of any action taken pursuant to subsection (a) pending review thereof.

(e) Major disciplinary rule violations

(1) The Commission shall issue regulations requiring each registered entity to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered entity.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any individual who is found to have committed any major violation from service on the governing board of any registered entity or registered futures association, or on any disciplinary committee thereof.

(Sept. 21, 1922, ch. 369, §8c, as added Pub. L. 93–463, title II, §216, Oct. 23, 1974, 88 Stat. 1405; amended Pub. L. 95–405, §18, Sept. 30, 1978, 92 Stat. 874; Pub. L. 102–546, title II, §206(a)(2), Oct. 28, 1992, 106 Stat. 3602; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–554 substituted "registered entity" for "contract market" wherever appearing.

1992—Pub. L. 102–546 redesignated pars. (1) to (4) as subsecs. (a) to (d), respectively, in subsec. (a) redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, in subsec. (c) substituted references to subsection (b) for references to paragraph (2), in subsec. (d) substituted reference to subsection (a) for reference to paragraph (1), and added subsec. (e).

1978—Par. (1)(B). Pub. L. 95–405 substituted "An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined or denied access, and to the Commission" for "Otherwise the notice and reasons shall be kept confidential".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§12d. Commission action for noncompliance with export sales reporting requirements

The Commission may, in accordance with the procedures provided for in this chapter, refuse to register, register conditionally, or suspend, place restrictions upon, or revoke the registration of, any person, and may bar for any period as it deems appropriate any person from using or participating in

any manner in any market regulated by the Commission, if such person is subject to a final decision or order of any court of competent jurisdiction or agency of the United States finding such person to have knowingly violated any provision of the export sales reporting requirements of section 612c-3 ¹ of this title, or of any regulation issued thereunder.

(Sept. 21, 1922, ch. 369, §8d, as added Pub. L. 97-444, title II, §226, Jan. 11, 1983, 96 Stat. 2316.)

REFERENCES IN TEXT

Section 612c-3 of this title, referred to in text, was repealed by Pub. L. 101-624, title XV, §1578, Nov. 28, 1990, 104 Stat. 3702.

EFFECTIVE DATE

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

¹ [*See References in Text note below.*](#)

§12e. Repealed. Pub. L. 106-554, §1(a)(5) [title I, §123(a)(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410

Section, act Sept. 21, 1922, ch. 369, §8e, as added Pub. L. 102-546, title II, §202(a), Oct. 28, 1992, 106 Stat. 3598, related to Commission oversight and deficiency orders.

§13. Violations generally; punishment; costs of prosecution

(a) Felonies generally

It shall be a felony punishable by a fine of not more than \$1,000,000 or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for:

(1) Any person registered or required to be registered under this chapter, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to such person's use or to the use of another, any money, securities, or property having a value in excess of \$100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or of any swap, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 6, section 6b, subsections (a) through (e) of subsection ¹ 6c, section 6h, section 6o(1), or section 23 of this title.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement required under this chapter, or by any registered entity or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under this chapter acting in furtherance of its official duties under this chapter.

(5) Any person willfully to violate any other provision of this chapter, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, but no person shall be subject to imprisonment under this paragraph for the violation of any rule or regulation if such person proves that he had no knowledge of such rule or regulation.

(6) Any person to abuse the end user clearing exemption under section 2(h)(4) of this title, as determined by the Commission.

(b) Suspension of convicted felons

Any person convicted of a felony under this section shall be suspended from registration under this chapter and shall be denied registration or reregistration for five years or such longer period as the Commission may determine, and barred from using, or participating in any manner in, any market regulated by the Commission for five years or such longer period as the Commission shall determine, on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.

(c) Transactions by Commissioners and Commission employees prohibited

It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission. The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.

(d) Use of information by Commissioners and Commission employees prohibited

It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized

contract, or is marketed or managed in substantially the same manner as such a standardized contract; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(e) Insider trading prohibited

It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, swap data repository, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon, or swaps, on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties; or

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association.

Such felony shall be punishable by a fine of not more than \$500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment for not more than five years, or both, together with the costs of prosecution.

(Sept. 21, 1922, ch. 369, §9, 42 Stat. 1003; June 15, 1936, ch. 545, §§2, 11, 49 Stat. 1491, 1501; Pub. L. 90–258, §25, Feb. 19, 1968, 82 Stat. 33; Pub. L. 93–463, title II, §212(d), title IV, §401, 409, Oct. 23, 1974, 88 Stat. 1404, 1412, 1414; Pub. L. 95–405, §19, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97–444, title II, §227, Jan. 11, 1983, 96 Stat. 2316; Pub. L. 99–641, title I, §§105, 110(3), (4), Nov. 10, 1986, 100 Stat. 3558, 3561; Pub. L. 102–546, title II, §§212(a), 214(a), Oct. 28, 1992, 106 Stat. 3608, 3610; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(22)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410; Pub. L. 110–234, title XIII, §§13103(d), 13105(h), May 22, 2008, 122 Stat. 1434, 1435; Pub. L. 110–246, §4(a), title XIII, §§13103(d), 13105(h), June 18, 2008, 122 Stat. 1664, 2196, 2197; Pub. L. 111–203, title VII, §741(b)(6), (7), July 21, 2010, 124 Stat. 1731.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–203, §741(b)(6)(A)(i), inserted "or of any swap," before "or to corner".

Subsec. (a)(4). Pub. L. 111–203, §741(b)(6)(A)(ii), inserted "swap data repository," before "or futures association".

Subsec. (a)(6). Pub. L. 111–203, §741(b)(7), added par. (6).

Subsec. (e)(1). Pub. L. 111–203, §741(b)(6)(B), inserted "swap data repository," before "or registered futures association" and ", or swaps," before "on the basis".

2008—Subsec. (a). Pub. L. 110–246, §13103(d), in introductory provisions, struck out "(or \$500,000 in the case of a person who is an individual)" after "\$1,000,000" and substituted "10 years" for "five years".

Subsecs. (e), (f). Pub. L. 110–246, §13105(h), redesignated subsec. (f) as (e) and, in par. (1), substituted "; or" for period at end.

2000—Subsecs. (a)(2) to (4), (f)(1), (2). Pub. L. 106–554 substituted "registered entity" for "contract market".

1992—Subsec. (a). Pub. L. 102–546, §212(a)(1)(A), (C), added subsec. (a) and struck out former subsec. (a) which related to penalty for embezzlement and larcenous actions.

Subsec. (b). Pub. L. 102–546, §212(a)(1)(A), (C), added subsec. (b) and struck out former subsec. (b) which related to penalty for price manipulation, cornering, and fraudulent information.

Subsec. (c). Pub. L. 102–546, §212(a)(1)(A), (B), (2), redesignated subsec. (d) as (c), substituted "\$500,000" for "\$100,000", and struck out former subsec. (c) which related to penalty for misdemeanors.

Subsecs. (d) to (f). Pub. L. 102–546, §§212(a)(1)(B), (3), 214(a), redesignated subsec. (e) as (d), substituted "\$500,000" for "\$100,000", and added subsec. (f).

1986—Subsec. (c). Pub. L. 99–641, §110(3), substituted "6k," for "6k."

Subsec. (d). Pub. L. 99–641, §110(4), substituted "advance guaranty" for "advance guarantee".

Pub. L. 99–641, §105, inserted "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission" after "actual commodity", and substituted provisions which related to foregoing prohibitions not being applicable to transactions determined by Commission not contrary to public interest or inconsistent with this subsection for provisions which read as follows: "Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public."

1983—Subsec. (a). Pub. L. 97–444, §227(1), expanded applicability to any person registered or required to be registered under this chapter and inserted provision suspending persons convicted under this subsec. from registration and denying reregistration for five years or longer as determined by the Commission, unless such suspension or denial is not required to protect the public interest.

Subsec. (b). Pub. L. 97–444, §227(2), inserted "A person convicted of a felony under this subsection shall be suspended from any registration under this chapter, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof."

Subsec. (c). Pub. L. 97–444, §227(3), inserted "A person convicted under this subsection of knowingly violating the provisions of section 6a of this title shall be suspended from any registration under this chapter, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof."

Subsec. (d). Pub. L. 97–444, §227(4), in amending subsec. (d) generally, added to range of felonious conduct, participation in any transaction for the delivery of any commodity under a standardized contract

commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, and added to nonapplicability of prohibition against any investment transaction in an actual commodity, a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction.

Subsec. (e). Pub. L. 97-444, §227(5), inserted after words " 'decline guaranty' " each place they appear the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

1978—Subsec. (a). Pub. L. 95-405, §19(1), substituted "\$500,000" for "\$100,000" and inserted provision relating to a fine of not more than \$100,000 plus costs of prosecution for a violation by a person who is an individual.

Subsec. (b). Pub. L. 95-405, §19(2), substituted "\$500,000" for "\$100,000" and inserted provisions making felonies the violation of sections 6, 6b, 6c(b) to (e), 6h, 6o(1) and 23 of this title, knowingly making any false or misleading statement of material fact, or omitting such fact in any application or report, and setting the fine for such felonies at not more than \$100,000 for a person who is an individual.

Subsec. (c). Pub. L. 95-405, §19(3), inserted references to subsecs. (d) and (e) of this section and substituted "sections 6a, 6c(a), 6d, 6e, 6i, 6k, 6m, 6o(2), or 12b of this title" for "sections 6 to 6e, 6h, 6i, 6k, 6m, 6o or 12b of this title".

Subsecs. (d), (e). Pub. L. 95-405, §19(4), (5), substituted "\$100,000" for "\$10,000".

1974—Subsecs. (a), (b). Pub. L. 93-463, §212(d)(1), (2), substituted "\$100,000" for "\$10,000".

Subsec. (c). Pub. L. 93-463, §§212(d)(3), 409, substituted "\$100,000" for "\$10,000" and inserted reference to sections 6k, 6m, and 6o of this title.

Subsecs. (d), (e). Pub. L. 93-463, §401, added subsecs. (d) and (e).

1968—Subsec. (a). Pub. L. 90-258 added subsec. (a).

Subsec. (b). Pub. L. 90-258 incorporated existing offenses in provisions designated as subsec. (b), changed classification thereof from misdemeanors to felonies, and increased term of imprisonment from not more than one year to not more than five years.

Subsec. (c). Pub. L. 90-258 incorporated existing offenses in provisions designated as subsec. (c), and included penalty for violation of section 12b of this title.

1936—Act June 15, 1936, amended section generally and provided that price manipulations of commodities in interstate commerce was a violation.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

REGULATIONS

Pub. L. 102–546, title II, §214(b), Oct. 28, 1992, 106 Stat. 3611, provided that: "The Commodity Futures Trading Commission shall issue regulations to implement the amendment made by subsection (a) [amending this section] not later than three hundred and sixty days after the date of enactment of this Act [Oct. 28, 1992]."

PENALTIES STUDY AND GUIDELINES

Pub. L. 102–546, title II, §225, Oct. 28, 1992, 106 Stat. 3618, provided that the Commodity Futures Trading Commission should study the penalties the Commission imposes against persons found to have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the penalties imposed by contract markets and registered futures associations against persons found to have violated their respective rules established under such Act, and, within two years after Oct. 28, 1992, submit to Congress a report, including proposed penalty guidelines, that describes the results of the study.

¹ So in original. Probably should be "section".

§13–1. Violations, prohibition against dealings in motion picture box office receipts or onion futures; punishment

(a) No contract for the sale of motion picture box office receipts (or any index, measure, value, or data related to such receipts) or onions for future delivery shall be made on or subject to the rules of any board of trade in the United States. The terms used in this section shall have the same meaning as when used in the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(b) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$5,000.

(Pub. L. 85–839, §1, Aug. 28, 1958, 72 Stat. 1013; Pub. L. 111–203, title VII, §721(e)(10), July 21, 2010, 124 Stat. 1672.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (a), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 inserted "motion picture box office receipts (or any index, measure, value, or data related to such receipts) or" after "sale of".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE

Pub. L. 85–839, §2, Aug. 28, 1958, 72 Stat. 1013, provided that: "This Act [enacting this section] shall take effect thirty days after its enactment [Aug. 28, 1958]."

§13a. Nonenforcement of rules of government or other violations; cease and desist orders; fines and penalties; imprisonment; misdemeanor; separate offenses

If any registered entity is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a–2 of this title, or if any registered entity, or any director, officer, agent, or employee of any registered entity otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 8(b) of this title, make and enter an order directing that such registered entity, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than \$500,000 for each such violation, or, in any case of manipulation or attempted manipulation in violation of section 9, 15, 13b, or 13(a)(2) of this title, a civil penalty of not more than \$1,000,000 for each such violation. If such registered entity, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such registered entity, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500,000 or imprisoned for not less than six months nor more than one year, or both, except that if the failure or refusal to obey or comply with the order involved any offense under section 13(a)(2) of this title, the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 13(a)(2) of this title. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending registered entity or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a registered entity shall further consider whether the amount of the penalty will materially impair the ability of the registered entity to carry on its operations and duties.

(Sept. 21, 1922, ch. 369, §6b, as added June 15, 1936, ch. 545, §9, 49 Stat. 1500; amended Pub. L. 90–258, §18, Feb. 19, 1968, 82 Stat. 31; Pub. L. 93–463, title II, §212(b), Oct. 23, 1974, 88 Stat. 1403; Pub. L. 95–405, §14, Sept. 30, 1978, 92 Stat. 872; Pub. L. 102–546, title II, §§209(b)(5), 212(c), Oct. 28, 1992, 106 Stat. 3607, 3609; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 110–234, title XIII, §13103(b), May 22, 2008, 122 Stat. 1433; Pub. L. 110–246, §4(a), title XIII, §13103(b), June 18, 2008, 122 Stat. 1664, 2195.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, §13103(b), in first sentence, inserted before period at end ", or, in any case of manipulation or attempted manipulation in violation of section 9, 15, 13b, or 13(a)(2) of this title, a civil penalty of not more than \$1,000,000 for each such violation" and, in second sentence, inserted before period at

end ", except that if the failure or refusal to obey or comply with the order involved any offense under section 13(a)(2) of this title, the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 13(a)(2) of this title".

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" wherever appearing, "designation or registration as set forth in sections 7 through 7a–2 of this title" for "designation as set forth in section 7 of this title" in first sentence, and "the ability of the registered entity" for "the contract market's ability" in last sentence.

1992—Pub. L. 102–546 substituted "section 8(b) of this title" for "paragraph (a) of section 8 of this title", substituted "\$500,000" for "\$100,000" in two places, and in last sentence struck out "the appropriateness of such penalty to the net worth of the offending person and" after "Commission shall consider".

1978—Pub. L. 95–405 inserted "on the record" after "notice and hearing".

1974—Pub. L. 93–463 inserted provision for assessment of a civil penalty of not more than \$100,000 for each violation, substituted "not more than \$100,000" for "not less than \$500 nor more than \$10,000" as permissible range of fines imposed, inserted provisions for enforcement of a penalty, and substituted "orders of the Commission" for "orders of the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258 amended section to clarify application only to boards of trade designated as contract markets, to include as grounds for cease and desist orders failure to enforce the market's rules of government made a condition of its designation and violation of rules or regulations of the commission or orders of the Secretary, and to authorize such orders in conjunction with a suspension or revocation of designation as a contract market rather than in lieu of suspension or revocation.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§13a–1. Enjoining or restraining violations

(a) Action to enjoin or restrain violations

Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this chapter, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing,

dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this chapter shall be issued ex parte by said court.

(b) Injunction or restraining order

Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Writs or other orders

Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this chapter or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte.

(d) Civil penalties

(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

(A) a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation; or

(B) in any case of manipulation or attempted manipulation in violation of section 9, 15, 13b, or 13(a)(2) of this title, a civil penalty in the amount of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each violation.

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

(3) EQUITABLE REMEDIES.—In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

(B) disgorgement of gains received in connection with such violation.

(e) Venue and process

Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(f) Action by Attorney General

In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action.

(g) Notice to Attorney General of action brought by Commission

Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

(h) Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title,

any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.

(Sept. 21, 1922, ch. 369, §6c, as added Pub. L. 93-463, title II, §211, Oct. 23, 1974, 88 Stat. 1402; amended Pub. L. 97-444, title II, §220, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99-641, title I, §104, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102-546, title II, §221, Oct. 28, 1992, 106 Stat. 3614; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(15), title II, §253(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409, 2763A-449; Pub. L. 110-234, title XIII, §13103(c), May 22, 2008, 122 Stat. 1434; Pub. L. 110-246, §4(a), title XIII, §13103(c), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111-203, title VII, §§741(b)(5), 744, July 21, 2010, 124 Stat. 1731, 1735.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §741(b)(5), inserted "or any swap" after "commodity for future delivery".

Subsec. (d)(3). Pub. L. 111-203, §744, added par. (3).

2008—Subsec. (d). Pub. L. 110-246, §13103(c), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: "In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation a civil penalty in the amount of not more than the higher of \$100,000 or triple the monetary gain to the person for each violation."

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(15)], substituted "registered entity" for "contract market".

Subsec. (h). Pub. L. 106-554, §1(a)(5) [title II, §253(c)], added subsec. (h).

1992—Pub. L. 102-546 designated first, second, and third sentences as subsecs. (a) to (c), respectively, added subsec. (d), and designated fourth, fifth, and sixth sentences as subsecs. (e) to (g), respectively.

1986—Pub. L. 99-641 inserted ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

1983—Pub. L. 97-444 inserted "(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property)" after "Provided, That no restraining order".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§13a-2. Jurisdiction of States

(1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, derivatives transaction execution facility, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this chapter, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia, shall have jurisdiction of all suits in equity and actions at law brought under this section to enforce any liability or duty created by this chapter or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this chapter or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this chapter shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(8)(A) Nothing in this chapter shall prohibit an authorized State official from proceeding in a State court against any person registered under this chapter (other than a floor broker, floor trader, or registered futures association) for an alleged violation of any antifraud provision of this chapter or any antifraud rule, regulation, or order issued pursuant to the chapter.

(B) The State shall give the Commission prior written notice of its intent to proceed before instituting a proceeding in State court as described in this subsection and shall furnish the Commission with a copy of its complaint immediately upon instituting any such proceeding. The Commission shall have the right to (i) intervene in the proceeding and, upon doing so, shall be heard on all matters arising therein, and (ii) file a petition for appeal. The Commission or the defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as *amicus curiae* in any such proceeding.

(Sept. 21, 1922, ch. 369, §6d, as added Pub. L. 95-405, §15, Sept. 30, 1978, 92 Stat. 872; amended Pub. L. 97-444, title II, §221, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 102-546, title II, §207(b)(1), (2),

Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409.)

AMENDMENTS

2000—Par. (1). Pub. L. 106–554 inserted "derivatives transaction execution facility," after "contract market,".

1992—Pars. (1), (8)(A). Pub. L. 102–546 inserted reference to floor trader.

1983—Par. (8). Pub. L. 97–444 added par. (8).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§13b. Manipulations or other violations; cease and desist orders against persons other than registered entities; punishment

If any person (other than a registered entity), is violating or has violated section 9 of this title or any other provisions of this chapter or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in section 9 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of \$140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 13 of this title, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): *Provided*, That any such cease and desist order under this section against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under section 9 of this title.

(Sept. 21, 1922, ch. 369, §6(d), formerly §6(c), as added Pub. L. 90–258, §17, Feb. 19, 1968, 82 Stat. 31; amended Pub. L. 93–463, title I, §103(a), (b), title II, §212(c), Oct. 23, 1974, 88 Stat. 1392, 1404; renumbered §6(d) and amended Pub. L. 102–546, title II, §§209(a)(1), (4), 212(b), Oct. 28, 1992, 106 Stat. 3606, 3609; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 111–203, title VII, §§741(b)(4), 753(b), July 21, 2010, 124 Stat. 1731, 1753.)

CODIFICATION

Section is comprised of subsec. (d) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (e), (f), and (g) of section 6 are classified to sections 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Pub. L. 111–203, §753(b), amended section generally. Prior to amendment, text read as follows: "If any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or of any swap, or otherwise is violating or has violated any of

the provisions of this chapter or of the rules, regulations, or orders of the Commission or the commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in sections 9 and 15 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 13 of this title, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph (a) or (b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under sections 9 and 15 of this title. Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense."

Pub. L. 111–203, §741(b)(4), inserted "or of any swap," before "or otherwise is violating".

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.

1992—Pub. L. 102–546 made technical amendment to references to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and substituted "the higher of \$100,000 or triple the monetary gain to such person" for "\$100,000".

1974—Pub. L. 93–463, §§103(a), 212(c), substituted "Commission" for "Secretary" before "may" and substituted "not more than \$100,000" for "not less than \$500 nor more than \$10,000".

Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 741(b)(4) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Amendment by section 753(b) of Pub. L. 111–203 effective on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to Pub. L. 111–203 takes effect [see 76 F.R. 41398, effective Aug. 15, 2011], see section 753(d) of Pub. L. 111–203, set out as a note under section 9 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§13c. Responsibility as principal; minor violations

(a) Any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant to this chapter, or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this chapter or any of such rules, regulations, or orders may be held responsible for such violation as a principal.

(b) Any person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such

controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

(c) Nothing in this chapter shall be construed as requiring the Commission or the Commission ¹ to report minor violations of this chapter for prosecution, whenever it appears that the public interest does not require such action.

(Sept. 21, 1922, ch. 369, §13, as added Pub. L. 90–258, §26, Feb. 19, 1968, 82 Stat. 34; amended Pub. L. 93–463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §230, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102–546, title IV, §402(1)(D), (9)(C), Oct. 28, 1992, 106 Stat. 3624, 3625.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–546, §402(9)(C), which directed that "the Secretary of Agriculture or" be struck out, could not be executed because of amendment by Pub. L. 93–463, §103(a). See 1974 Amendment note below.

Pub. L. 102–546, §402(1)(D), substituted "Commission" for "commission" before "to report".

1983—Subsec. (a). Pub. L. 97–444, §230(1), struck out "in administrative proceedings under this chapter" after "may be held responsible".

Subsecs. (b), (c). Pub. L. 97–444, §230(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (b). Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

¹ *So in original. The words "or the Commission" probably should not appear.*

§14. Repealed. Pub. L. 99–641, title I, §110(5), Nov. 10, 1986, 100 Stat. 3561

Section, act Sept. 21, 1922, ch. 369, §11, 42 Stat. 1003, provided that violations of this chapter occurring before Nov. 1, 1922, should not be punishable.

§15. Omitted

CODIFICATION

Section, act Sept. 21, 1922, ch. 369, §6(c) (part), formerly §6(b), 42 Stat. 1002, as amended and renumbered, which related to enforcement powers of Commission, was omitted in the general amendment of section 6(c) of act Sept. 21, 1922, by Pub. L. 111–203, title VII, §753(a), July 21, 2010, 124 Stat. 1750. Section 6(c) is now classified to section 9 of this title.

§15a. Repealed. Pub. L. 95–405, §24, Sept. 30, 1978, 92 Stat. 877

Section, Pub. L. 93–463, title II, §217, Oct. 23, 1974, 88 Stat. 1405, related to leverage contracts for gold and silver. See section 23(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§15b. Cotton futures contracts

(a) Short title

This section may be cited as the "United States Cotton Futures Act".

(b) Repeal of tax on cotton futures

Subchapter D of chapter 39 of title 26 (relating to tax on cotton futures) is repealed.

(c) Definitions

For purposes of this section—

(1) Cotton futures contract

The term "cotton futures contract" means any contract of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business which has been designated a "contract market" by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act [7 U.S.C. 1 et seq.] and the term "contract of sale" as so used shall be held to include sales, agreements of sale, and agreements to sell, except that—

(A) any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section; and

(B) any cotton futures contract that permits tender of cotton grown outside of the United States is excluded from the coverage of this paragraph and section to the extent that the cotton grown outside of the United States is tendered for delivery under the cotton futures contract.

(2) Future delivery

The term "future delivery" shall not include any cash sale of cotton for deferred shipment or delivery.

(3) Person

The term "person" includes an individual, trust, estate, partnership, association, company, or corporation.

(4) Secretary

The term "Secretary" means the Secretary of Agriculture of the United States.

(5) Standards

The term "standards" means the official cotton standards of the United States established by the Secretary pursuant to the United States Cotton Standards Act, as amended [7 U.S.C. 51 et seq.].

(d) Bona fide spot markets and commercial differences

(1) Definition

For purposes of this section, the only markets which shall be considered bona fide spot markets shall be those which the Secretary shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(2) Determination

In determining, pursuant to the provisions of this section, what markets are bona fide spot markets, the Secretary is directed to consider only markets in which spot cotton is sold in such

volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary; except that if there are not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary, to enable him to designate at least five spot markets in accordance with subsection (f)(3), he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the market selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to subsection (f)(1) and (2) shall be determined in compliance with such rules and regulations. It shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. A person complying with the preceding sentence shall not be liable for any loss or damage arising or resulting from such compliance.

(3) Withholding information

Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under paragraph (2) of this subsection, or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than \$500.

(e) Form and validity of cotton futures contracts

Each cotton futures contract shall be a basis grade contract, or a tendered grade contract, or a specific grade contract as specified in subsections (f), (g), or (h) and shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. No cotton futures contract which does not conform to such requirements shall be enforceable by, or on behalf of, any party to such contract or his privies.

(f) Basis grade contracts

(1) Conditions

Each basis grade cotton futures contract shall comply with each of the following conditions:

(A) Conformity with regulations

Conform to the regulations made pursuant to this section.

(B) Specification of grade, price, and dates of sale and settlement

Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary, except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E), the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled; except that middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(C) Provision for delivery of standard grades only

Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary except grades prohibited from being

delivered on a contract made under this subsection by subparagraph (E) and no other grade or grades.

(D) Provision for settlement on basis of actual commercial differences

Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(E) Prohibition of delivery of inferior cotton

Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed", shall not be delivered on, under, or in settlement of such contract.

(F) Provisions for tender in full, notice of delivery date, and certificate of grade

Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(G) Provision for tender and settlement in accordance with Government classification

Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations and shall be credited to the account referred to in section 55 of this title. The Secretary may provide by regulation conditions under which cotton samples submitted or used in the performance of services authorized by this act shall become the property of the United States and may be sold and the proceeds credited to the foregoing account: *Provided*, That such cotton samples shall not be subject to the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41. The Secretary is authorized to prescribe regulations for carrying out the purposes of this subparagraph and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this subparagraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(2) Incorporation of conditions in contracts

The provisions of paragraphs (1)(C), (D), (E), (F), and (G) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandums evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States Cotton Futures Act, subsection (f)."

(3) Delivery allowances

For the purpose of this subsection, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basic 1 grade in the settlement of a

contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with paragraph (1)(F), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary, as such values were established by the sales of spot cotton, in such designated five or more markets. For purposes of this paragraph, such values in the such spot markets shall be based upon the standards for grades of cotton established by the Secretary. Whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary.

(g) Tendered grade contracts

(1) Conditions

Each tendered grade cotton future contract shall comply with each of the following conditions:

(A) Compliance with subsection (f)

Comply with all the terms and conditions of subsection (f) not inconsistent with this subsection; and

(B) Provision for contingent specific performance

Provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(2) Incorporation of conditions in contract

Contracts made in compliance with this subsection shall be known as "subsection (g) Contracts". The provisions of this subsection shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States Cotton Futures Act, subsection (g)".

(3) Application of subsection

Nothing in this subsection shall be so construed as to authorize any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this section.

(h) Specific grade contracts

(1) Conditions

Each specific grade cotton futures contract shall comply with each of the following conditions:

(A) Conformity with rules and regulations

Conform to the rules and regulations made pursuant to this section.

(B) Specification of grade, price, dates of sale and delivery

Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(C) Prohibition of delivery of other than specified grade

Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which

does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(D) Provision for specific performance

Provide that the delivery of cotton under the contract shall not be effected by means of "setoff" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(2) Incorporation of conditions in contract

The provisions of paragraphs (1)(A), (C), and (D) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States Cotton Futures Act, subsection (h)".

(3) Application of subsection

This subsection shall not be construed to apply to any contract of sale made in compliance with subsection (f) or (g).

(i) Liability of principal for acts of agent

When construing and enforcing the provisions of this section, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation, as well as that of the person.

(j) Regulations

The Secretary is authorized to make such regulations with the force and effect of law as he determines may be necessary to carry out the provisions of this section and the powers vested in him by this section.

(k) Violations

Any person who knowingly violates any regulation made in pursuance of this section, shall, upon conviction thereof, be fined not less than \$100 nor more than \$500, for each violation thereof, in the discretion of the court, and, in case of natural persons, may, in addition be punished by imprisonment for not less than 30 days nor more than 90 days, for each violation, in the discretion of the court except that this subsection shall not apply to violations subject to subsection (d)(3).

(l) Applicability to contracts prior to effective date

The provisions of this section shall not apply to any cotton futures contract entered into prior to the effective date of this section or to any act or failure to act by any person prior to such effective date and all such prior contracts, acts or failure to act shall continue to be governed by the applicable provisions of the Internal Revenue Code of 1954 ² as in effect prior to the enactment of this section. All designations of bona fide spot markets and all rules and regulations issued by the Secretary pursuant to the applicable provisions of the Internal Revenue Code of 1954 ² which were in effect on the effective date of this section, shall remain fully effective as designations and regulations under this section until superseded, amended, or terminated by the Secretary.

(m) Authorization

There are authorized to be appropriated such sums as may be necessary to carry out this section. (Pub. L. 94-455, title XIX, §1952(a)-(m), Oct. 4, 1976, 90 Stat. 1841-1846; Pub. L. 97-35, title I, §156(c), Aug. 13, 1981, 95 Stat. 374; Pub. L. 102-237, title I, §123, Dec. 13, 1991, 105 Stat. 1844; Pub. L. 106-472, title III, §311, Nov. 9, 2000, 114 Stat. 2076; Pub. L. 114-36, §1(a), July 20, 2015, 129 Stat. 435.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c)(1), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

The United States Cotton Standards Act, referred to in subsec. (c)(5), is act Mar. 4, 1923, ch. 288, 42 Stat. 1517, which is classified generally to chapter 2 (§51 et seq.) of this title. For complete classification of this Act to the Code, see section 51 of this title and Tables.

The Internal Revenue Code of 1954, referred to in subsec. (l), was redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

CODIFICATION

Section was enacted as part of the Tax Reform Act of 1976, and not as part of the Commodity Exchange Act which comprises this chapter.

This section, referred to in subsec. (c)(1), was in the original a reference to this "Act", meaning the United States Cotton Futures Act, which comprises this section.

In subsec. (f)(1)(G), "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2015—Subsec. (c)(1). Pub. L. 114-36 inserted a dash after "except that", designated "any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section." as subpar. (A), and added subpar. (B).

2000—Subsec. (d)(2). Pub. L. 106-472 inserted at end "A person complying with the preceding sentence shall not be liable for any loss or damage arising or resulting from such compliance."

1991—Subsec. (c)(1). Pub. L. 102-237 inserted before period at end ", except that any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section".

1981—Subsec. (f)(1)(G). Pub. L. 97-35 inserted provisions relating to crediting to account referred to in section 55 of this title and provisions respecting cotton samples submitted or used becoming the property of the United States.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-36, §1(b), July 20, 2015, 129 Stat. 435, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to cotton futures contracts entered into on or after the date of the enactment of this Act [July 20, 2015]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 156(e) of Pub. L. 97-35, set out as an Effective Date note under section 61a of this title.

EFFECTIVE DATE

Pub. L. 94-455, title XIX, §1952(o), Oct. 4, 1976, 90 Stat. 1846, provided that: "The provisions of this section [enacting this section, amending section 6808 of Title 26, Internal Revenue Code, and repealing sections 7233 and 7263, subchapter D of chapter 39, and subchapter E of chapter 76 of Title 26] shall take effect on the 90th day after the date of the enactment of this Act [Oct. 4, 1976]."

¹ *So in original. Probably should be "basis".*

² *See References in Text note below.*

§16. Commission operations

(a) Cooperation with other agencies

The Commission may cooperate with any Department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.

(b) Employment of investigators, experts, Administrative Law Judges, consultants, clerks, and other personnel; contracts

(1) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

(3) The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this chapter, including, but not limited to, the rental of necessary space at the seat of Government and elsewhere.

(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on October 28, 1992.

(c) Expenses

All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of the fiscal years 2008 through 2013.

(e) Relation to other law, departments, or agencies

(1) Nothing in this chapter shall supersede or preempt—

(A) criminal prosecution under any Federal criminal statute;

(B) the application of any Federal or State statute (except as provided in paragraph (2)), including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest—

(i) that is not conducted on or subject to the rules of a registered entity or exempt board of trade;

(ii) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions; or

(iii) that is not subject to regulation by the Commission under section 6c or 23 of this title; or

(C) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this chapter who shall fail or refuse to obtain such registration or designation.

(2) This chapter shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

(A) an electronic trading facility excluded under section 2(e) ¹ of this title; and

(B) an agreement, contract, or transaction that is excluded from this chapter under section 2(c) or 2(f) of this title or sections 27 to 27f of this title, or exempted under section 6(c) of this title (regardless of whether any such agreement, contract, or transaction is otherwise subject to this chapter).

(f) Investigative assistance to foreign futures authorities

(1) On request from a foreign futures authority, the Commission may, in its discretion, provide assistance in accordance with this section if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.

(2) In deciding whether to provide assistance under this subsection, the Commission shall consider whether—

(A) the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters; and

(B) compliance with the request would prejudice the public interest of the United States.

(3) Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign futures authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation, or in providing any other assistance to a foreign futures authority, pursuant to this section. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Computerized futures trading

Consistent with its responsibilities under section 22 of this title, the Commission is directed to facilitate the development and operation of computerized trading as an adjunct to the open outcry auction system. The Commission is further directed to cooperate with the Office of the United States Trade Representative, the Department of the Treasury, the Department of Commerce, and the Department of State in order to remove any trade barriers that may be imposed by a foreign nation on the international use of electronic trading systems.

(h) Regulation of swaps as insurance under State law

A swap—

(1) shall not be considered to be insurance; and

(2) may not be regulated as an insurance contract under the law of any State.

(Sept. 21, 1922, ch. 369, §12, 42 Stat. 1003; Pub. L. 93–463, title I, §101(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 95–405, §20, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97–444, title II, §§228, 229, Jan. 11, 1983, 96 Stat. 2318; Pub. L. 99–641, title I, §106, Nov. 10, 1986, 100 Stat. 3558; Pub. L. 102–546, title II, §§216, 220(a), title III, §§302, 303, title IV, §401, title V, §502(c), Oct. 28, 1992, 106 Stat. 3611, 3614, 3622, 3624, 3631; Pub. L. 104–9, §2, Apr. 21, 1995, 109 Stat. 154; Pub. L. 106–554, §1(a)(5) [title I, §§116, 117], Dec. 21, 2000, 114 Stat. 2763, 2763A–402; Pub. L. 110–234, title XIII, §13104, May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13104, June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §§722(b), 749(f), July 21, 2010, 124 Stat. 1673, 1747.)

REFERENCES IN TEXT

Section 2(e) of this title relating to the exclusion of electronic trading facilities, referred to in subsec. (e)(2) (A), was struck out by Pub. L. 111–203, title VII, §723(a)(1)(A), July 21, 2010, 124 Stat. 1675.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (e)(2)(B). Pub. L. 111–203, §749(f), substituted "section 2(c) or 2(f) of this title" for "section 2(c), 2(d), 2(f), or 2(g) of this title" and struck out "2(h) or" before "6(c)".

Subsec. (h). Pub. L. 111–203, §722(b), added subsec. (h).

2008—Subsec. (d). Pub. L. 110–246, §13104, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of fiscal years 1995 through 2005."

2000—Subsec. (d). Pub. L. 106–554, §1(a)(5) [title I, §116], substituted "2005" for "2000".

Subsec. (e). Pub. L. 106–554, §1(a)(5) [title I, §117], added subsec. (e) and struck out former subsec. (e) which provided that this chapter did not supersede or preempt criminal prosecutions under Federal criminal statutes or the application of any Federal or State statute to certain specified transactions and persons.

1995—Subsec. (d). Pub. L. 104–9 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out this chapter—

"(1) \$53,000,000 for fiscal year 1993; and

"(2) \$60,000,000 for fiscal year 1994."

1992—Subsec. (a). Pub. L. 102–546, §302, inserted "any foreign futures authority, any department or agency of a foreign government or political subdivision thereof," after "thereof,"

Subsec. (b). Pub. L. 102–546, §216, designated first through third sentences as pars. (1) to (3), respectively, and added par. (4).

Subsec. (d). Pub. L. 102–546, §401, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989."

Subsec. (e)(2)(A). Pub. L. 102–546, §502(c), inserted "or, in the case of any State or local law that prohibits or regulates gaming or the operation of 'bucket shops' (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 6 of this title," after "market,"

Subsec. (f). Pub. L. 102–546, §303, added subsec. (f).

Subsec. (g). Pub. L. 102–546, §220(a), added subsec. (g).

1986—Subsec. (d). Pub. L. 99–641 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out the provisions of this chapter such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986."

1983—Subsec. (d). Pub. L. 97–444, §228, substituted appropriation authorization for fiscal years during period beginning Oct. 1, 1982, and ending Sept. 30, 1986, for prior authorization for fiscal years during period beginning Oct. 1, 1978, and ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97–444, §229, added subsec. (e).

1978—Subsec. (d). Pub. L. 95–405 substituted "for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, 1982" for "for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978".

1974—Pub. L. 93–463 designated existing unlettered provisions as subsecs. (a) to (d), substituted "Commission" for "Secretary of Agriculture", inserted provisions authorizing the expenditure of funds for expenses upon the presentation of itemized vouchers therefor approved by the Commission, substituted provisions authorizing appropriations specifically for fiscal years ending June 30, 1975, 1976, 1977, and 1978, for provisions making a general authorization of appropriations without a fiscal year limitation, and inserted authorization to enter into contracts and compensate experts and consultants in accordance with section 3109 of title 5 at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of title 5.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

[¹ See References in Text note below.](#)

§16a. Service fees and National Futures Association study

(a) Development and implementation of plan for user fees; report to and approval by Congressional committees

Notwithstanding any other provision of law, the Commodity Futures Trading Commission may develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission. However, prior to implementing such a plan, the Commission shall report its intention to do so to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Commission shall include in its report the feasibility and desirability of collecting such fees. Any plan developed under this section shall not be implemented until approved by the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Fees collected under any plan approved under this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) National Futures Association regulatory experience; report; contents

The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association for the period beginning January 1, 1983 and ending September 30, 1985. The report shall be submitted not later than January 1, 1986. The report shall include (but not to be limited to) the following—

- (1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17(p) and (q) of the Commodity Exchange Act [7 U.S.C. 21(p), (q)] and the effectiveness of the operation of such program;
- (2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;
- (3) the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;
- (4) problem areas, if any, encountered by the Association;
- (5) the nature of the working relationship between the Association and the Commission;
- (6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and
- (7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

(c) Schedule of fees for services, activities and functions; notice and hearing; actual cost standard

Nothing in this section shall limit the authority of the Commission to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act [7 U.S.C. 1 et seq.]: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission. (Pub. L. 95–405, §26, Sept. 30, 1978, 92 Stat. 877; Pub. L. 97–444, title II, §237, Jan. 11, 1983, 96 Stat. 2325.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Futures Trading Act of 1978, and not as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 97–444 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

STUDY OF ASSESSMENTS ON TRANSACTIONS

Pub. L. 102–546, title II, §218, Oct. 28, 1992, 106 Stat. 3612, required the Comptroller General to conduct a study to determine whether it was feasible to fund some or all of the enforcement and market surveillance activities of the Commodity Futures Trading Commission through the imposition of an assessment on commodity futures and options transactions executed pursuant to the Commodity Exchange Act, and report, by one year after Oct. 28, 1992, to Congress the Commission determinations together with any appropriate recommendations for the implementation of such a program of assessment-based funding.

§17. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Sept. 21, 1922, ch. 369, §10, 42 Stat. 1003.)

§17a. Separability of 1936 amendment

If any provision of the act of June 15, 1936, ch. 545, 49 Stat. 1491, which amends this chapter, or the application thereof to any person or circumstances is held invalid, the provisions of the section of this chapter which is amended by such provision of said act shall apply to such person or circumstances. No proceeding shall be abated by reason of any amendment to this chapter made by said act but shall be disposed of pursuant to said act.

(June 15, 1936, ch. 545, §12, 49 Stat. 1501.)

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§17b. Separability of 1968 amendment

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby, and the provisions of the section of this chapter which is amended by such provision of this Act shall apply to such person or circumstances. Pending proceedings shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the provisions of this chapter, in effect prior to the effective date of this Act.

(Pub. L. 90–258, §27, Feb. 19, 1968, 82 Stat. 34.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 90–258, Feb. 19, 1968, 82 Stat. 26. For complete classification of this Act to the Code, see Tables.

Effective date of this Act, referred to in text, as one hundred and twenty days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

§18. Complaints against registered persons

(a) Petition for actual damages

(1) Any person complaining of any violation of any provision of this chapter, or any rule, regulation, or order issued pursuant to this chapter, by any person who is registered under this chapter may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a registered entity, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(2)(A) An action may be brought under this subsection by any one or more persons described in this subsection for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

(B) Not later than two hundred and seventy days after October 28, 1992, the Commission shall propose and publish for public comment such rules as are necessary to carry out subparagraph (A). In

developing such rules, the Commission shall consider the potential impact of such actions on resources available to the reparations system established under this chapter and the relative merits of bringing such actions in Federal court.

(b) Rules and regulations; control over right of appeal

The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

(c) Bond requirement when complainant is nonresident; waiver

In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: *Provided*, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

(d) Enforcement of reparation award

(1) If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, for enforcement of such reparation award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection (e) of this section, an order of the Commission awarding reparations shall be final and conclusive.

(2) A reparation award shall be directly enforceable in district court as if it were a judgment pursuant to section 1963 of title 28. This paragraph shall operate retroactively from the effective date of its enactment, and shall apply to all reparation awards for which a proceeding described in paragraph (1) is commenced within 3 years of the date of the Commission's order.

(e) Review

Any order of the Commission entered hereunder shall be reviewable on petition of any party aggrieved thereby, by the United States Court of Appeals for any circuit in which a hearing was held, or if no hearing was held, any circuit in which the appellee is located, under the procedure provided in section 9 of this title. Such appeal shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The appellee shall not be liable for costs in said court. If the appellee prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

(f) Automatic bar from trading and suspension for noncompliance; effect of appeal

Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all registered entities and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

(g) Predispute resolution agreements for institutional customers

Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant's conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.

(Sept. 21, 1922, ch. 369, §14, as added Pub. L. 93-463, title I, §106, Oct. 23, 1974, 88 Stat. 1393; amended Pub. L. 94-16, §3, Apr. 16, 1975, 89 Stat. 77; Pub. L. 95-405, §21, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97-444, title II, §231, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102-546, title II, §§209(b)(7), 222(b), 224, title IV, §402(11), Oct. 28, 1992, 106 Stat. 3607, 3615, 3617, 3625; Pub. L. 106-554, §1(a)(5) [title I, §§118, 123(a)(23)], Dec. 21, 2000, 114 Stat. 2763, 2763A-403, 2763A-410; Pub. L. 110-234, title XIII, §13105(k), May 22, 2008, 122 Stat. 1435; Pub. L. 110-246, §4(a), title XIII, §13105(k), June 18, 2008, 122 Stat. 1664, 2197.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110-246, §13105(k), designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (a)(1)(B). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(23)(A)], substituted "registered entity" for "contract market".

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(23)(B)], substituted "registered entities" for "contract markets".

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title I, §118], added subsec. (g) and struck out former subsec. (g) which read as follows: "The provisions of this section shall not become effective until fifteen months after October 23, 1974: *Provided*, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such 15-month period."

1992—Subsec. (a). Pub. L. 102-546, §224, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Pub. L. 102-546, §222(b), substituted "awarding—" and pars. (1) and (2) for "awarding actual damages proximately caused by such violation."

Subsec. (e). Pub. L. 102-546, §209(b)(7), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (g). Pub. L. 102-546, §402(11), substituted "15-month" for second reference to "fifteen months".

1983—Subsec. (a). Pub. L. 97-444, §231(1), substituted provisions relating to complaints against violations by persons "registered under this chapter" for provisions relating to complaints against persons "registered or required to be registered under section 6d, 6e, 6j, or 6m of this title", and substituted provisions for application to Commission for an award of actual damages caused by such violation, for provisions authorizing application to Commission by petition, and forwarding of complaint, if warranted, to respondent for satisfaction or answer.

Subsec. (b). Pub. L. 97-444, §231(2), substituted provisions relating to promulgation by Commission of rules, regulations, and orders necessary or appropriate for administration of this section, including rules of

practice and procedure governing proceedings before the Commission, for provisions relating to investigation and service of complaint by Commission, and hearing thereon before an Administrative Law Judge, except that where amount claimed as damages did not exceed \$5,000, hearing need not be held, and proofs could be supplied by deposition or verified statements of fact.

Subsec. (c). Pub. L. 97-444, §231(3), (4), redesignated subsec. (d) as (c). Former subsec. (c), which provided that after opportunity for hearing on complaints where the damages claimed exceeded the sum of \$5,000 had been provided or waived and on complaints where damages claimed did not exceed the sum of \$5,000 not requiring hearing as provided herein, Commission would determine whether or not the respondent had violated any provision of this chapter or any rule, regulation, or order thereunder, was struck out.

Subsec. (d). Pub. L. 97-444, §231(4), (5), redesignated subsec. (f) as (d) and substituted "subsection (e)" for "subsection (g)". Former subsec. (d) was redesignated (c).

Subsec. (e). Pub. L. 97-444, §231(3), (4), redesignated subsec. (g) as (e). Former subsec. (e), which provided that if, after a hearing on a complaint made by any person under subsection (a) of this section, or without hearing as provided in subsections (b) and (c) of this section, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Commission determined that the respondent had violated any provision of this chapter, or any rule, regulation, or order thereunder, the Commission would unless the offender had already made reparation to the person complaining, determine the amount of damage, if any, to which such person was entitled as a result of such violation and would make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order, and that if, after the respondent had filed his answer to the complaint, it appeared therein that the respondent had admitted liability for a portion of the amount claimed in the complaint as damages, the Commission under such rules and regulations as it would prescribe, unless the respondent had already made reparation to the person complaining, could issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination, with the remaining disputed amount to be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Commission with respect to the undisputed sum, was struck out.

Subsec. (f). Pub. L. 97-444, §231(4), (6), redesignated subsec. (h) as (f), made certain grammatical changes, and inserted provision allowing party against whom a reparation order has been issued to show compliance by payment of the full amount of the order or any agreed settlement thereof.

Subsecs. (g) to (i). Pub. L. 97-444, §231(4), redesignated subsecs. (g), (h), and (i), as (e), (f), and (g), respectively.

1978—Subsec. (a). Pub. L. 95-405, §21(1), substituted "who is registered or required to be registered" for "registered".

Subsecs. (b), (c). Pub. L. 95-405, §21(2), (3), substituted "\$5,000" for "\$2,500" wherever appearing.

1975—Subsec. (i). Pub. L. 94-16 substituted "fifteen months" for "one year" in two places, and "one year" for "nine months".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

§19. Consideration of costs and benefits and antitrust laws

(a) Costs and benefits

(1) In general

Before promulgating a regulation under this chapter or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.

(2) Considerations

The costs and benefits of the proposed Commission action shall be evaluated in light of—

- (A) considerations of protection of market participants and the public;
- (B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;
- (C) considerations of price discovery;
- (D) considerations of sound risk management practices; and
- (E) other public interest considerations.

(3) Applicability

This subsection does not apply to the following actions of the Commission:

- (A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.
- (B) An emergency action.
- (C) A finding of fact regarding compliance with a requirement of the Commission.

(b) Antitrust laws

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 6(c) or 6c(b) of this title), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 21 of this title.

(Sept. 21, 1922, ch. 369, §15, as added Pub. L. 93–463, title I, §107, Oct. 23, 1974, 88 Stat. 1395; amended Pub. L. 102–546, title V, §502(b), Oct. 28, 1992, 106 Stat. 3631; Pub. L. 106–554, §1(a)(5) [title I, §119], Dec. 21, 2000, 114 Stat. 2763, 2763A–403.)

AMENDMENTS

2000—Pub. L. 106–554 inserted section catchline, added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

1992—Pub. L. 102–546 substituted "regulation (including any exemption under section 6(c) or 6c(b) of this title)" for "regulation".

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§20. Market reports

(a) Information

The Commission may conduct regular investigations of the markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and furnish reports of the findings of these investigations to the public on a regular basis. These market reports shall, where appropriate, include information on the supply, demand, prices, and other conditions in the United States and other countries with respect to such goods, articles, services, rights, interests, and information respecting the futures markets.

(b) Avoidance of duplication

The Commission shall cooperate with the Department of Agriculture and any other Department or Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.

(c) Furnishing of information; confidentiality

The Department of Agriculture and any other Department or Federal agency which has market information sought by the Commission shall furnish it to the Commission upon the request of any authorized employee of the Commission. The Commission shall abide by any rules of confidentiality applying to such information.

(d) Disclosure of business transactions, market positions, trade secrets, or names of customers

The Commission shall not disclose in such reports data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except as provided in section 12 of this title.

(e) Application

This section shall not apply to investigations involving any security underlying a security futures product.

(Sept. 21, 1922, ch. 369, §16, as added Pub. L. 93-463, title IV, §414, Oct. 23, 1974, 88 Stat. 1414; amended Pub. L. 97-444, title II, §232, Jan. 11, 1983, 96 Stat. 2320; Pub. L. 106-554, §1(a)(5) [title II, §251(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-443.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-554 added subsec. (e).

1983—Subsec. (d). Pub. L. 97-444 prohibited disclosure of market positions.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

STUDY OF TRADING IN CATTLE FUTURES CONTRACTS

Pub. L. 99-641, title I, §111, Nov. 10, 1986, 100 Stat. 3561, provided that:

"(a) **STUDY.**—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

"(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

"(2) the effect of the trading in contracts for the future delivery of live cattle on—

"(i) the price relationship between feeder cattle and fed cattle;

"(ii) the price discovery process with respect to live cattle; and

"(iii) price competition within the cattle industry;

"(3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;

"(4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

"(5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

"(6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

"(7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

"(b) **REPORTS.**—

"(1) **PRELIMINARY REPORT.**—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act [Nov. 10, 1986], the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a)."

POTATO FUTURES STUDY; SUBMISSION OF REPORT TO CONGRESS

Pub. L. 95–405, §27, Sept. 30, 1978, 92 Stat. 877, required, within one year of Oct. 1, 1978, Secretary of Agriculture to (1) conduct a comprehensive study of marketing of Irish potatoes and of making and trading of contracts of sale for future delivery of Irish potatoes, including rules and regulations pertaining to such trading issued by Commodity Futures Trading Commission or any contract market designated by Commission; and (2) submit to each House of Congress a detailed report on results of such study, and that report should also include any proposals Secretary may have concerning any legislation needed to implement such recommendations and concerning any modifications and rules and regulations needed to improve regulation of such contracts by Commission or any contract market designated by Commission.

§21. Registered futures associations

(a) Registration statement

Any association of persons may be registered with the Commission as a registered futures association pursuant to subsection (b) of this section, under the terms and conditions hereinafter provided in this section, by filing with the Commission for review and approval a registration statement in such form as the Commission may prescribe, setting forth the information, and accompanied by the documents, below specified:

- (1) Data as to its organization, membership, and rules of procedure, and such other information as the Commission may by rules and regulations require as necessary or appropriate in the public interest; and
- (2) Copies of its constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its bylaws, and of any rules or instruments corresponding to the foregoing, whatever the name, hereinafter in this section collectively referred to as the "rules of the association".

(b) Standards for registration; Commission findings

An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that—

- (1) such association is in the public interest and that it will be able to comply with the provisions of this section and the rules and regulations thereunder and to carry out the purposes of this section;
- (2) the rules of the association provide that any person registered under this chapter, registered entity, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this subparagraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carryout the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated within the meaning of "associated person" as set forth in section 6k of this title, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a registered entity or has been and is barred or suspended from being associated with all members of such registered entity, for violation of any rule of such registered entity;
- (3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to

approve or direct, no person shall be admitted to or continued in membership in such association, if such person—

(A) has been and is suspended or expelled from a registered futures association or from a registered entity or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such registered entity, for violation of any rule of such association or registered entity which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade;

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 9 of this title, or expelling or suspending him from membership in a registered futures association or a registered entity, or barring or suspending him from being associated with a futures commission merchant;

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such registered entity or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph;

(4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall become a member and no natural person shall become a person associated with a member, unless such person is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications of such person as the association finds necessary or desirable, and in the case of a member, the financial responsibility of such a member. For the purpose of defining such standards and the application thereof, such rules may—

(A) appropriately classify prospective members (taking into account relevant matters, including type or nature of business done) and persons proposed to be associated with members;

(B) specify that all or any portion of such standard shall be applicable to any such class;

(C) require persons in any such class to pass examinations prescribed in accordance with such rules;

(D) provide that persons in any such class other than prospective members and partners, officers and supervisory employees (which latter term may be defined by such rules and as so defined shall include branch managers of members) of members, may be qualified solely on the basis of compliance with specified standards of training and such other qualifications as the association finds appropriate;

(E) provide that applications to become a member or a person associated with a member shall set forth such facts as the association may prescribe as to the training, experience, and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the applicant and that the association shall adopt procedures for verification of qualifications of the applicant, which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing; and

(F) require any class of persons associated with a member to be registered with the association in accordance with procedures specified by such rules (and any application or document supplemental thereto required by such rules of a person seeking to be registered with such association shall, for the purposes of section 9 of this title, be deemed an application required to be filed under this section);

(5) the rules of the association assure a fair representation of its members in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs;

(6) the rules of the association provide for the equitable allocation of dues among its members, to defray reasonable expenses of administration;

(7) the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, in general, to protect the public interest, and to remove impediments to and perfect the mechanism of free and open futures trading;

(8) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules;

(9) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any person seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of, and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include—

(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted;

(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation;

(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade; and

(D) a statement setting forth the penalty imposed; ¹

In any proceeding to determine whether a person shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are under consideration; that a record shall be kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based;

(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the association, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a registered entity, such procedure shall provide, to the extent appropriate—

(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures

commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation; and ²

(11) such association provides for meaningful representation on the governing board of such association of a diversity of membership interests and provides that no less than 20 percent of the regular voting members of such board be comprised of qualified nonmembers or of persons who are not regulated by such association.³

(12)(A) ⁴ such association provides on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.⁵

(13) A ⁶ major disciplinary committee hearing a disciplinary matter shall include—

(A) qualified persons representing segments of the association membership other than that of the subject of the proceeding; and

(B) where appropriate to carry out the purposes of this paragraph, qualified persons who are not members of the association.

(c) Suspension of registration

The Commission may, after notice and opportunity for hearing, suspend the registration of any futures association if it finds that the rules thereof do not conform to the requirements of the Commission, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements.

(d) Fees and charges

In addition to the fees and charges authorized by section 12a(1) of this title, each person registered under this chapter, who is not a member of a futures association registered pursuant to this section, shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such person is not a member of a registered futures association. The Commission shall establish such additional fees and charges by rules and regulations.

(e) Registered persons not members of registered associations

Any person registered under this chapter, who is not a member of a futures association registered pursuant to this section, in addition to the other requirements and obligations of this chapter and the regulations thereunder shall be subject to such other rules and regulations as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade.

(f) Denial of registration

Upon filing of an application for registration pursuant to subsection (a), the Commission may by order grant such registration if the requirements of this section are satisfied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration.

(g) Withdrawal from registration; notice of withdrawal

A registered futures association may, upon such reasonable notice as the Commission may deem necessary in the public interest, withdraw from registration by filing with the Commission a written notice of withdrawal in such form as the Commission may by rules and regulations prescribe.

(h) Commission review of disciplinary actions taken by registered futures associations

(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this chapter.

(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any

person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

(i) Notice; hearing; findings; cancellation, reduction, or remission of penalties; review by court of appeals

(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

(A) if the Commission finds that—

(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

(iii) such rules are, and were applied in a manner, consistent with the purposes of this chapter,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

(3) In a proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

(A) if the Commission finds that—

(i) the specific grounds on which the denial or bar is based exist in fact;

(ii) the denial or bar is in accordance with the rules of the association; and

(iii) such rules are, and were applied in a manner, consistent with the purposes of this chapter,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for further proceedings.

(4) Any person aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 9 of this title.

(j) Changes or additions to association rules

Every registered futures association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this chapter or the regulations issued pursuant to this chapter, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this chapter or the regulations issued pursuant to this chapter. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection.

(k) Abrogation of association rules; requests to associations by Commission to alter or supplement rules

(1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice and opportunity for hearing, it appears to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or effectuate the purposes of this section.

(2) The Commission may in writing request any registered futures association to adopt any specified alteration or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or to effectuate the purposes of this section, with respect to—

(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member or the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof;

(B) the method for adoption of any change in or addition to the rules of the association;

(C) the method of choosing officers and directors.

(l) Suspension and revocation of registration; expulsion of members; removal of association officers or directors

The Commission is authorized, if such action appears to it to be necessary or appropriate in the public interest or to carry out the purposes of this section—

(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a registered futures association, if the Commission finds that such association has violated any provisions of this chapter or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this chapter;

(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a registered futures association any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person—

(A) has violated any provision of this chapter or any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of this chapter or any rule or regulation thereunder; or

(B) has willfully violated any provision of this chapter, or of any rule, regulation, or order thereunder, or has effected any transaction for any other person who, he had reason to believe, was willfully violating with respect to such transaction any provision of this chapter or rule, regulation, or order; and

(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer or director of a registered futures association who, the Commission finds, has willfully failed to enforce the rules of the association, or has willfully abused his authority.

(m) Rules requiring membership in associations

Notwithstanding any other provision of law, the Commission may approve rules of futures associations that, directly or indirectly, require persons eligible for membership in such associations to become members of at least one such association, upon a determination by the Commission that such rules are necessary or appropriate to achieve the purposes and objectives of this chapter.

(n) Reports to Congress

The Commission shall include in its annual reports to Congress information concerning any futures associations registered pursuant to this section and the effectiveness of such associations in regulating the practices of the members.

(o) Delegation to futures associations of registrative functions; discretionary review by Commission; judicial appeal

(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this chapter with respect to each member of the association other than a registered entity and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to subsection (j), and subject to the provisions of this chapter applicable to registrations granted by the Commission.

(2) In performing any Commission registration function authorized by the Commission under section 12a(10) of this title, this section, or any other applicable provisions of this chapter, a futures association may issue orders (A) to refuse to register any person, (B) to register conditionally any person, (C) to suspend the registration of any person, (D) to place restrictions on the registration of any person, or (E) to revoke the registration of any person. If such an order is the final decision of the futures association, any person against whom the order has been issued may petition the Commission to review the decision. The Commission may on its own initiative or upon petition decline review or grant review and affirm, set aside, or modify such an order of the futures association; and the findings of the futures association as to the facts, if supported by the weight of the evidence, shall be conclusive. Unless the Commission grants review under this section of an order concerning registration issued by a futures association, the order of the futures association shall be considered to be an order issued by the Commission.

(3) Nothing in this section shall affect the Commission's authority to review the granting of a registration application by a registered futures association that is performing any Commission

registration function authorized by the Commission under section 12a(10) of this title, this section, or any other applicable provision of this chapter.

(4) If a person against whom a futures association has issued a registration order under this subsection petitions the Commission to review that order and the Commission declines to take review, such person may file a petition for review with a United States court of appeals, in accordance with section 9 of this title.

(p) Establishment of rules for futures associations; approval by Commission

Notwithstanding any other provision of this section, each futures association registered under this section on January 11, 1983, shall adopt and submit for Commission approval not later than ninety days after such date, and each futures association that applies for registration after such date shall adopt and include with its application for registration, rules of the association that require the association to—

(1) establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of this chapter, supervisors of such persons, and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;

(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce compliance with such requirements, except that such requirements may not be less stringent than those imposed on such firms by this chapter or by Commission regulation;

(3) establish minimum standards governing the sales practices of its members and persons associated therewith for transactions subject to the provisions of this chapter; and

(4) establish special supervisory guidelines to protect the public interest relating to the solicitation by telephone of new futures or options accounts and make such guidelines applicable to those members determined to require such guidelines in accordance with standards established by the Commission consistent with this chapter. Such guidelines may include a requirement that, with respect to a customer with no previous futures or commodity options trading experience, the member may not enter an order for the account of such customer for a period of three days following opening of the account and receipt of a signed acknowledgment by the customer of receipt of a risk disclosure statement.

(q) ⁷ Major disciplinary rule violations

(1) The Commission shall issue regulations requiring each registered futures association to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered futures association.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any member of a registered futures association who is found to have committed any major violation from service on the governing board of any registered futures association or registered entity, or on any disciplinary committee thereof.

(q) ⁷ Program for implementation of rules

Each futures association registered under this section shall develop a comprehensive program that fully implements the rules approved by the Commission under this section as soon as practicable but not later than September 30, 1985, in the case of any futures association registered on January 11, 1983, and not later than two and one-half years after the date of registration in the case of any other futures association registered under this section.

(r) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each futures association registered under this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof), with respect to the application of—

(1) rules of such futures association of the type specified in section 6d(e) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o-3(a) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, §17, as added Pub. L. 93-463, title III, §301, Oct. 23, 1974, 88 Stat. 1406; amended Pub. L. 95-405, §22, Sept. 30, 1978, 92 Stat. 876; Pub. L. 97-444, title II, §§217(b), 233, Jan. 11, 1983, 96 Stat. 2307, 2320; Pub. L. 99-641, title I, §§107, 108, 110(6), (7), Nov. 10, 1986, 100 Stat. 3558, 3559, 3561; Pub. L. 102-546, title II, §§204(a), 206(b), 209(b)(8), 222(c), 228, title IV, §402(12), Oct. 28, 1992, 106 Stat. 3600, 3602, 3607, 3616, 3619, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(24), title II, §251(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410, 2763A-444; Pub. L. 110-234, title XIII, §13105(f), May 22, 2008, 122 Stat. 1434; Pub. L. 110-246, §4(a), title XIII, §13105(f), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111-203, title VII, §749(g), July 21, 2010, 124 Stat. 1748.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2010—Subsec. (r)(1). Pub. L. 111-203 substituted "section 6d(e) of this title" for "section 6d(c) of this title".

2008—Subsec. (r)(1). Pub. L. 110-246, §13105(f), substituted "6d(c)" for "6d(3)".

2000—Subsecs. (b)(2), (3), (10), (o)(1), (q)(2). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(24)], substituted "registered entity" for "contract market" wherever appearing.

Subsec. (r). Pub. L. 106-554, §1(a)(5) [title II, §251(g)], added subsec. (r).

1992—Subsec. (a)(1), (2). Pub. L. 102-546, §402(12)(A), realigned margins.

Subsec. (b)(3). Pub. L. 102-546, §§206(b)(1)(A), (B), 209(b)(8)(A)(i), struck out "or" at end of subpar. (A), in subpar. (B) made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and struck out "or" at end, and in subpar. (D) substituted a semicolon for period at end.

Subsec. (b)(4). Pub. L. 102-546, §§206(b)(1)(B), (C), 209(b)(8)(A)(ii), substituted a semicolon for period at end of subpars. (A) to (D), in subpar. (E) substituted "; and" for period at end, and in subpar. (F) made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and substituted a semicolon for period at end.

Subsec. (b)(5) to (9). Pub. L. 102-546, §206(b)(1)(B), (C), substituted a semicolon for period at end of pars. (5) to (9) and subpars. (A), (B), and (D) of par. (9) and in par. (9)(C) substituted "; and" for period at end.

Subsec. (b)(10). Pub. L. 102-546, §§206(b)(1)(C), 222(c), substituted "(A)" for "(i)" and "voluntary, (B)" for "voluntary and (ii)", inserted ", and" and subpar. (C) after "association", and substituted "; and" for period at end.

Subsec. (b)(11) to (13). Pub. L. 102-546, §206(b)(1)(D), added pars. (11) to (13).

Subsec. (i)(4). Pub. L. 102-546, §228, which directed that "(other than a registered futures association)." be struck out, was executed by striking "(other than a registered futures association)" after "Any person" to reflect the probable intent of Congress.

Pub. L. 102-546, §209(b)(8)(B), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (l)(2)(B). Pub. L. 102-546, §402(12)(B), made technical amendment to reference to this chapter appearing after "violated any provision of" to reflect change in reference to corresponding provision of original act and substituted "; and" for period at end.

Subsec. (o)(4). Pub. L. 102-546, §209(b)(8)(C), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (p)(4). Pub. L. 102-546, §204(a), added par. (4).

Subsec. (q). Pub. L. 102-546, §206(b)(2), added subsec. (q) relating to major disciplinary rules violations.

1986—Subsec. (b)(2). Pub. L. 99-641, §110(6), substituted "within" for "with in" before "the meaning".

Subsec. (h). Pub. L. 99-641, §107, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "If any registered futures association takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any person seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission,

on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection (i) of this section unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments)."

Subsec. (i). Pub. L. 99-641, §107, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows:

"(1) In a proceeding to review disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

"(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

"(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

"(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

"(3) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant to membership therein, or to permit such person to be associated with a member."

Subsec. (j). Pub. L. 99-641, §108, struck out sentence which read as follows: "The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time."

Subsec. (k)(1). Pub. L. 99-641, §110(7), substituted "section" for "title".

1983—Subsec. (b)(4)(E). Pub. L. 97-444, §233(1), inserted ", which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing" after "adopt procedures for verification of qualifications of the applicant".

Subsec. (b)(10). Pub. L. 97-444, §217(b), required association rules to provide for "expeditious" procedure, redesignated cl. (iv) as (ii) and substituted "'customer' as used in this paragraph shall not include another member of the association" for "'customer' as used in this subsection shall not include a futures commission merchant or a floor broker", and struck out clauses "(ii) the procedure shall not be applicable to any claim in excess of \$15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties,".

Subsec. (d). Pub. L. 97-444, §233(2), substituted "section 12a(1) of this title" for "section 12a(4) of this title".

Subsec. (h). Pub. L. 97-444, §233(3), substituted "subsection (i) of this section" for "subsection (k) of this section".

Subsec. (j). Pub. L. 97-444, §233(4), substituted "A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of

such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this chapter or the regulations issued pursuant to this chapter, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this chapter or the regulations issued pursuant to this chapter. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection" for "Any change in or addition to the rules of a registered futures association shall be submitted to the Commission for approval and shall take effect upon the thirtieth day after such approval by the Commission, or upon such earlier date as the Commission may determine, unless the Commission shall enter an order disapproving such change or addition; and the Commission shall enter such an order unless such change or addition appears to the Commission to be consistent with the requirements of this section and the provisions of this chapter".

Subsecs. (o) to (q). Pub. L. 97-444, §233(5), added subsecs. (o), (p), and (q).

1978—Subsec. (b)(3)(B). Pub. L. 95-405, §22(1), struck out "(7 U.S.C. 9)" after "sections 9 and 15 of this title".

Subsec. (b)(10). Pub. L. 95-405, §22(2), substituted "\$15,000" for "\$5,000".

Subsec. (l)(1), (2)(A). Pub. L. 95-405, §22(3), substituted "chapter" for "section" wherever appearing.

Subsecs. (m), (n). Pub. L. 95-405, §22(4), added subsec. (m) and redesignated former subsec. (m) as (n).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

IMPLEMENTATION

Pub. L. 102-546, title II, §204(b), Oct. 28, 1992, 106 Stat. 3600, provided that: "The guidelines required under section 17(p)(4) of the Commodity Exchange Act [7 U.S.C. 21(p)(4)] (as added by subsection (a) of this section) shall be submitted by a futures association registered with the Commodity Futures Trading Commission on the date of enactment of this Act [Oct. 28, 1992] to the Commission for the approval of the Commission not later than one hundred and eighty days after the date of enactment of this Act."

STUDY ON COMPUTERIZED FUTURES TRADING

Pub. L. 102–546, title II, §220(b), (c), Oct. 28, 1992, 106 Stat. 3614, required the Commodity Futures Trading Commission to conduct a study related to trading in futures and options subject to the jurisdiction of the Commission under the Commodity Exchange Act through computers or by other electronic means, and also required the Commission, not later than two years after Oct. 28, 1992, to submit to Congress a report containing the results of the study and any appropriate recommendations.

¹ *So in original. The semicolon probably should be a period.*

² *So in original. The word "and" probably should not appear.*

³ *So in original. The period probably should be a semicolon.*

⁴ *So in original. No subpar. (B) has been enacted.*

⁵ *So in original. The period probably should be "; and".*

⁶ *So in original. Probably should not be capitalized.*

⁷ *Two subsecs. (g) have been enacted.*

§22. Research and information programs; reports to Congress

(a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this chapter.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

(Sept. 21, 1922, ch. 369, §18, as added Pub. L. 93–463, title IV, §416, Oct. 23, 1974, 88 Stat. 1415.)

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§23. Standardized contracts for certain commodities

(a) Margin accounts or contracts and leverage accounts or contracts prohibited except as authorized

Except as authorized under subsection (b), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(b) Permission to enter into contracts for delivery of silver or gold bullion, bulk silver or gold coins, or platinum; rules and regulations

(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a), contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regulations, and orders of the Commission in effect on November 10, 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2).

(c) Survey of persons interested in engaging in transactions of silver and gold, etc.; assistance of futures association; regulations

(1)(A) Not later than 2 years after November 10, 1986, the Commission shall—

(i) with the assistance of a futures association registered under this chapter, conduct a survey concerning the persons interested in engaging in the business of offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1); and

(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this chapter to render such assistance as the Commission shall specify.

(C) Such report shall include the findings and any recommendations of the Commission concerning—

(i) whether such transactions serve an economic purpose;

(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this chapter to perform such responsibilities in connection with such transactions as the Commission may specify; and

(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

(d) Savings provision

This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before November 10, 1986, that was entered into, or the execution of which was confirmed, before November 10, 1986.

(Sept. 21, 1922, ch. 369, §19, as added Pub. L. 95–405, §23, Sept. 30, 1978, 92 Stat. 876; amended Pub. L. 97–444, title II, §234, Jan. 11, 1983, 96 Stat. 2322; Pub. L. 99–641, title I, §109, Nov. 10, 1986, 100 Stat. 3560.)

PRIOR PROVISIONS

Provisions similar to those appearing in subsec. (b) were formerly contained in section 15a of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–641 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2 of this title prior to October 23, 1974, under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract."

Subsec. (b). Pub. L. 99–641 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, under a standardized contract described in subsection (a) of this section, contrary to any rule, regulation, or order of the Commission designed to ensure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing."

Subsec. (c). Pub. L. 99–641 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by rule, regulation, or order made only after notice and opportunity for a hearing. The Commission may set different terms and conditions for such transactions involving different commodities. Notwithstanding any other provision of this section, the Commission may prohibit any transaction for the delivery of any commodity under a standardized contract described in subsection (a) of this section that is not permitted by the rules, regulations and orders of the Commission in effect on December 9, 1982, if the Commission determines that any such transactions would be contrary to the public interest."

Subsec. (d). Pub. L. 99–641, in amending section generally, added subsec. (d).

1983—Subsec. (c). Pub. L. 97–444, §234(1), substituted "shall regulate" for "may prohibit or regulate" and authorized Commission prohibition of transactions for delivery of commodities under a standardized contract that was not permitted by the rules, regulations and orders of the Commission in effect on Dec. 9, 1982, where transactions are determined to be contrary to the public interest.

Subsec. (d). Pub. L. 97–444, §234(2), struck out subsec. (d) which provided for regulation of transactions in accordance with applicable provisions of this chapter where Commission determined the transactions under subsecs. (b) and (c) of this section were contracts for future delivery within the meaning of this chapter.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§24. Customer property with respect to commodity broker debtors; definitions

(a) Regulations respecting commodity broker debtors

Notwithstanding title 11, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11, by rule or regulation—

- (1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;
- (2) that certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;
- (3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter, including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation;
- (4) any persons to which customer property and commodity contracts may be transferred under section 766 of title 11; and
- (5) how the net equity of a customer is to be determined.

(b) Definitions

As used in this section, the terms "commodity broker", "commodity contract", "customer", "customer property", "member property", "net equity", and "security" have the meanings assigned such terms for the purposes of subchapter IV of chapter 7 of title 11.

(c) Portfolio margining accounts

The Commission shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of subchapter IV of chapter 7 of title 11.

(Sept. 21, 1922, ch. 369, §20, formerly §19, as added Pub. L. 95–598, title III, §302, Nov. 6, 1978, 92 Stat. 2673; renumbered and amended Pub. L. 97–222, §20, July 27, 1982, 96 Stat. 241; Pub. L. 111–203, title VII, §713(c), July 21, 2010, 124 Stat. 1647.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

1982—Subsec. (a)(3). Pub. L. 97–222, §20(b), inserted ", including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

EFFECTIVE DATE

Section effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§24a. Swap data repositories

(a) Registration requirement

(1) Requirement; authority of derivatives clearing organization

(A) In general

It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

(B) Registration of derivatives clearing organizations

A derivatives clearing organization may register as a swap data repository.

(2) Inspection and examination

Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

(3) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

- (i) the requirements and core principles described in this section; and
- (ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of swap data repository

Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this section.

(b) Standard setting

(1) Data identification

(A) In general

In accordance with subparagraph (B), the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

(B) Requirement

In carrying out subparagraph (A), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

(2) Data collection and maintenance

The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

(3) Comparability

The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

(c) Duties

A swap data repository shall—

- (1) accept data prescribed by the Commission for each swap under subsection (b);
- (2) confirm with both counterparties to the swap the accuracy of the data that was submitted;
- (3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;
- (4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and
(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13) of this title;
- (5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities;
- (6) maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity; and
- (7) on a confidential basis pursuant to section 12 of this title, upon request, and after notifying the Commission of the request, make available swap data obtained by the swap data repository, including individual counterparty trade and position data, to—
 - (A) each appropriate prudential regulator;
 - (B) the Financial Stability Oversight Council;
 - (C) the Securities and Exchange Commission;
 - (D) the Department of Justice; and
 - (E) any other person that the Commission determines to be appropriate, including—
 - (i) foreign financial supervisors (including foreign futures authorities);
 - (ii) foreign central banks;
 - (iii) foreign ministries; and
 - (iv) other foreign authorities; and

(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of

the responsibilities and obligations of the organization.

(d) Confidentiality agreement

Before the swap data repository may share information with any entity described in subsection (c) (7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided.

(e) Designation of chief compliance officer

(1) In general

Each swap data repository shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

- (A) report directly to the board or to the senior officer of the swap data repository;
- (B) review the compliance of the swap data repository with respect to the requirements and core principles described in this section;
- (C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;
- (D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;
- (E) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;
- (F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—
 - (i) compliance office review;
 - (ii) look-back;
 - (iii) internal or external audit finding;
 - (iv) self-reported error; or
 - (v) validated complaint; and
- (G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

- (i) the compliance of the swap data repository of the chief compliance officer with respect to this chapter (including regulations); and
- (ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

(B) Requirements

A compliance report under subparagraph (A) shall—

- (i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and
- (ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(f) Core principles applicable to swap data repositories

(1) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a swap data repository shall not—

(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or
(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

(2) Governance arrangements

Each swap data repository shall establish governance arrangements that are transparent—

- (A) to fulfill public interest requirements; and
(B) to support the objectives of the Federal Government, owners, and participants.

(3) Conflicts of interest

Each swap data repository shall—

- (A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and
(B) establish a process for resolving conflicts of interest described in subparagraph (A).

(4) Additional duties developed by Commission

(A) In general

The Commission may develop 1 or more additional duties applicable to swap data repositories.

(B) Consideration of evolving standards

In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

(C) Additional duties for Commission designees

The Commission shall establish additional duties for any registrant described in section 1a(48) of this title in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the swap data repository.

(g) Required registration for swap data repositories

Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

(h) Rules

The Commission shall adopt rules governing persons that are registered under this section.

(Sept. 21, 1922, ch. 369, §21, as added Pub. L. 111–203, title VII, §728, July 21, 2010, 124 Stat. 1697; amended Pub. L. 114–94, div. G, title LXXXVI, §86001(b), Dec. 4, 2015, 129 Stat. 1797.)

PRIOR PROVISIONS

A prior section 21 of act Sept. 21, 1922, ch. 369, as added by Pub. L. 96–276, §7, June 17, 1980, 94 Stat. 542, related to silver markets activity and was set out as a note under section 4a of this title prior to repeal by Pub. L. 102–546, title IV, §402(13), Oct. 28, 1992, 106 Stat. 3625.

AMENDMENTS

2015—Subsec. (c)(7). Pub. L. 114–94, §86001(b)(1)(A), substituted "swap" for "all" in introductory provisions.

Subsec. (c)(7)(E)(iv). Pub. L. 114–94, §86001(b)(1)(B), added cl. (iv).

Subsec. (d). Pub. L. 114–94, §86001(b)(2), added subsec. (d) and struck out former subsec. (d) which related to confidentiality and indemnification agreement.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, see section 86001(d) of Pub. L. 114–94, set out as a note under section 7a–1 of this title.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§25. Private rights of action

(a) Actual damages; actionable transactions; exclusive remedy

(1) Any person (other than a registered entity or registered futures association) who violates this chapter or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this chapter shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person—

(A) who received trading advice from such person for a fee;

(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity) or any swap; or who deposited with or paid to such person money, securities, or property (or incurred debt in lieu thereof) in connection with any order to make such contract or any swap;

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 6c of this title (other than an option purchased or sold on a registered entity or other board of trade);

(ii) a contract subject to section 23 of this title; or ¹

(iii) an interest or participation in a commodity pool; or

(iv) a swap; or

(D) who purchased or sold a contract referred to in subparagraph (B) hereof or swap if the violation constitutes—

(i) the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after July 21, 2010; or

(ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.

(2) Except as provided in subsection (b), the rights of action authorized by this subsection and by sections 7(d)(13), 7a–1(c)(2)(H), and 21(b)(10) of this title shall be the exclusive remedies under this chapter available to any person who sustains loss as a result of any alleged violation of this chapter. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

(3) In any action arising from a violation in the execution of an order on the floor of a registered entity, the person referred to in paragraph (1) shall be liable for—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) where the violation is willful and intentional, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation,

such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) of this title or regulations of the Commission.

(B) SWAPS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to such agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

- (i) to meet the definition of a swap under section 1a of this title; or
- (ii) to be cleared in accordance with section 2(h)(1) of this title.

(5) LEGAL CERTAINTY FOR LONG-TERM SWAPS ENTERED INTO BEFORE JULY 21, 2010.—

(A) EFFECT ON SWAPS.—Unless specifically reserved in the applicable swap, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the swap.

(B) POSITION LIMITS.—Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader's position is increased after the effective date of such position limit rule, regulation, or order.

(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 6(a) of this title shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this chapter.

(b) Liabilities of organizations and individuals; bad faith requirement; exclusive remedy

(1)(A) A registered entity that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by section 7, 7a-1, 7a-2, 7b-3, or 24a of this title, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any registered entity that in enforcing any such bylaw, rule, regulation, or resolution violates this chapter or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such registered entity to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions.

(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 21 of this title or in enforcing any such bylaw or rule violates this chapter or any Commission rule, regulation, or order shall be liable for actual damages sustained by a person that engaged in any transaction specified in subsection (a) of this section to the extent of such person's actual losses that

resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaw or rule.

(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of registered ² entity or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the chapter in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such registered entity or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the registered entity ³ registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this chapter available to any person who sustains a loss as a result of (A) the alleged failure by a registered entity or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is alleged to have violated this chapter, or any Commission rule, regulation, or order.

(c) Jurisdiction; statute of limitations; venue; process

The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action shall be brought not later than two years after the date the cause of action arises. Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs. Process in such action may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) Dates of application to actions

The provisions of this section shall become effective with respect to causes of action accruing on or after the date of enactment of the Futures Trading Act of 1982 [January 11, 1983]: *Provided*, That the enactment of the Futures Trading Act of 1982 shall not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.

(Sept. 21, 1922, ch. 369, §22, as added Pub. L. 97–444, title II, §235, Jan. 11, 1983, 96 Stat. 2322; amended Pub. L. 102–546, title II, §§211, 222(d), title IV, §402(14), Oct. 28, 1992, 106 Stat. 3607, 3616, 3625; Pub. L. 106–554, §1(a)(5) [title I, §§120, 123(a)(25)], Dec. 21, 2000, 114 Stat. 2763, 2763A–404, 2763A–410; Pub. L. 110–234, title XIII, §§13105(i), 13203(n), May 22, 2008, 122 Stat. 1435, 1441; Pub. L. 110–246, §4(a), title XIII, §§13105(i), 13203(n), June 18, 2008, 122 Stat. 1664, 2197, 2203; Pub. L. 111–203, title VII, §§738(c), 739, 749(h), 753(c), July 21, 2010, 124 Stat. 1728, 1729, 1748, 1754.)

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a)(5), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15 and Tables.

The Futures Trading Act of 1982, referred to in subsec. (d), is Pub. L. 97–444, Jan. 11, 1983, 96 Stat. 2294, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title of 1983 Amendment note set out under section 1 of this title and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111–203, §749(h)(1)(B), which directed insertion of "or any swap" after "such contract", was executed by making the insertion after "such contract" the second time appearing, to reflect the probable intent of Congress.

Pub. L. 111–203, §749(h)(1)(A), inserted "or any swap" after "commodity".

Subsec. (a)(1)(C)(iv). Pub. L. 111–203, §749(h)(2), added cl. (iv).

Subsec. (a)(1)(D). Pub. L. 111–203, §753(c), added subpar. (D) and struck out former subpar. (D) which read as follows: "who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract."

Subsec. (a)(4), (5). Pub. L. 111–203, §739, added pars. (4) and (5) and struck out former par. (4). Prior to amendment, text of par. (4) read as follows: "No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants, and no hybrid instrument sold to any investor, shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, transaction, or instrument under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, transaction, or instrument to comply with the terms or conditions of an exemption or exclusion from any provision of this chapter or regulations of the Commission."

Subsec. (a)(6). Pub. L. 111–203, §738(c), added par. (6).

Subsec. (b)(1)(A). Pub. L. 111–203, §749(h)(3), substituted "section 7, 7a–1, 7a–2, 7b–3, or 24a of this title" for "section 2(h)(7) of this title or sections 7 through 7a–2 of this title".

2008—Subsec. (a)(2). Pub. L. 110–246, §13105(i), substituted "7a–1(c)(2)(H)" for "7a–1(b)(1)(E)".

Subsec. (b)(1)(A). Pub. L. 110–246, §13203(n), inserted "section 2(h)(7) of this title or" before "sections 7 through 7a–2".

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(i)(I)], substituted "registered entity" for "contract market, clearing organization of a contract market, licensed board of trade," in introductory provisions.

Subsec. (a)(1)(C)(i). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(i)(II)], substituted "registered entity" for "contract market".

Subsec. (a)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(ii)], substituted "sections 7(d)(13), 7a–1(b)(1)(E)," for "sections 7a(11)".

Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(iii)], substituted "registered entity" for "contract market" in introductory provisions.

Subsec. (a)(4). Pub. L. 106–554, §1(a)(5) [title I, §120], added par. (4).

Subsec. (b)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(i)], substituted "registered entity that fails" for "contract market or clearing organization of a contract market that fails", "sections 7 through 7a–2 of this title" for "section 7a(8) and section 7a(9) of this title", "registered entity that in" for "contract market, clearing organization of a contract market, or licensed board of trade that in", and "registered entity to the" for "contract market or licensed board of trade to the".

Subsec. (b)(3). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(ii)], substituted "employee of registered entity" for "employee of a contract market, clearing organization, licensed board of trade," and "such registered entity" for "such contract market, licensed board of trade".

Subsec. (b)(4). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(iii)], substituted "registered entity" for "contract market, licensed board of trade, clearing organization,".

Subsec. (b)(5). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(iv)], substituted "registered entity" for "contract market, licensed board of trade, clearing organization,".

1992—Subsec. (a)(1). Pub. L. 102–546, §402(14)(A), substituted "subparagraphs" for "clauses" in introductory provisions and "subparagraph" for "clause" in subpar. (D).

Subsec. (a)(2). Pub. L. 102–546, §402(14)(B), made technical amendment to reference to section 21(b)(10) of this title to correct reference to corresponding section of original act.

Subsec. (a)(3). Pub. L. 102–546, §222(d), added par. (3).

Subsec. (c). Pub. L. 102–546, §211, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 738(c), 739, and 749(h) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Amendment by section 753(c) of Pub. L. 111–203 effective on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to Pub. L. 111–203 takes effect [see 76 F.R. 41398, effective Aug. 15, 2011], see section 753(d) of Pub. L. 111–203, set out as a note under section 9 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(n) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

¹ So in original. The word "or" probably should not appear.

² So in original. Probably should be preceded by "a".

³ So in original. Probably should be followed by a comma.

§26. Commodity whistleblower incentives and protection

(a) Definitions

In this section:

(1) Covered judicial or administrative action

The term "covered judicial or administrative action" means any judicial or administrative action brought by the Commission under this chapter that results in monetary sanctions exceeding \$1,000,000.

(2) Fund

The term "Fund" means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).

(3) Monetary sanctions

The term "monetary sanctions", when used with respect to any judicial or administrative action means—

(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

(B) any monies deposited into a disgorgement fund or other fund pursuant to section 7246(b) of title 15, as a result of such action or any settlement of such action.

(4) Original information

The term "original information" means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the

whistleblower is a source of the information.

(5) Related action

The term "related action", when used with respect to any judicial or administrative action brought by the Commission under this chapter, means any judicial or administrative action brought by an entity described in subclauses (I) through (VI) of subsection (h)(2)(C) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

(6) Successful resolution

The term "successful resolution", when used with respect to any judicial or administrative action brought by the Commission under this chapter, includes any settlement of such action.

(7) Whistleblower

The term "whistleblower" means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of this chapter to the Commission, in a manner established by rule or regulation by the Commission.

(b) Awards

(1) In general

In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) Payment of awards

Any amount paid under paragraph (1) shall be paid from the Fund.

(c) Determination of amount of award; denial of award

(1) Determination of amount of award

(A) Discretion

The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

(B) Criteria

In determining the amount of an award made under subsection (b), the Commission—

(i) shall take into consideration—

(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

(III) the programmatic interest of the Commission in deterring violations of the 1 chapter (including regulations under the 1 chapter) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

(ii) shall not take into consideration the balance of the Fund.

(2) Denial of award

No award under subsection (b) shall be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

- (i) a appropriate regulatory agency;
- (ii) the Department of Justice;
- (iii) a registered entity;
- (iv) a registered futures association;
- (v) a self-regulatory organization as defined in section 78c(a) of title 15; or
- (vi) a law enforcement organization;

(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;

(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

(d) Representation

(1) Permitted representation

Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) Required representation

(A) In general

Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

(B) Disclosure of identity

Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

(e) No contract necessary

No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission, by rule or regulation.

(f) Appeals

(1) In general

Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission.

(2) Appeals

Any determination described in paragraph (1) may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.

(3) Review

The court shall review the determination made by the Commission in accordance with section 7064 ² of title 5.

(g) Commodity Futures Trading Commission Customer Protection Fund

(1) Establishment

There is established in the Treasury of the United States a revolving fund to be known as the "Commodity Futures Trading Commission Customer Protection Fund".

(2) Use of Fund

The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

- (A) the payment of awards to whistleblowers as provided in subsection (a); and
- (B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this chapter, or the rules and regulations thereunder.

(3) Deposits and credits

There shall be deposited into or credited to the Fund:

(A) Monetary sanctions

Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed to victims of a violation of this chapter or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds \$100,000,000.

(B) Additional amounts

If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under this chapter that is based on information provided by a whistleblower.

(C) Investment income

All income from investments made under paragraph (4).

(4) Investments

(A) Amounts in Fund may be invested

The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.

(B) Eligible investments

Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

(C) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(5) Reports to Congress

Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on—

- (A) the Commission's whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;
- (B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;
- (C) the balance of the Fund at the beginning of the preceding fiscal year;
- (D) the amounts deposited into or credited to the Fund during the preceding fiscal year;
- (E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;
- (F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);

(H) the balance of the Fund at the end of the preceding fiscal year; and

(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

(h) Protection of whistleblowers

(1) Prohibition against retaliation

(A) In general

No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

(i) in providing information to the Commission in accordance with subsection (b); or

(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

(B) Enforcement

(i) Cause of action

An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5.

(ii) Subpoenas

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

(iii) Statute of limitations

An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

(C) Relief

Relief for an individual prevailing in an action brought under subparagraph (B) shall include

(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(ii) the amount of back pay otherwise owed to the individual, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(2) Confidentiality

(A) In general

Except as provided in subparagraphs (B) and (C), the Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(B) Effect

Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants

in the course of an ongoing criminal investigation.

(C) Availability to government agencies

(i) In general

Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this chapter and protect customers and in accordance with clause (ii), be made available to—

- (I) the Department of Justice;
- (II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;
- (III) a registered entity, registered futures association, or self-regulatory organization as defined in section 78c(a) of title 15;
- (IV) a State attorney general in connection with any criminal investigation;
- (V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and
- (VI) a foreign futures authority.

(ii) Maintenance of information

Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

(iii) Study on impact of FOIA exemption on Commodity Futures Trading Commission

(I) Study

The Inspector General of the Commission shall conduct a study—

(aa) on whether the exemption under section 552(b)(3) of title 5 (known as the Freedom of Information Act) established in paragraph (2)(A) aids whistleblowers in disclosing information to the Commission;

(bb) on what impact the exemption has had on the public's ability to access information about the Commission's regulation of commodity futures and option markets; and

(cc) to make any recommendations on whether the Commission should continue to use the exemption.

(II) Report

Not later than 30 months after July 21, 2010, the Inspector General shall—

(aa) submit a report on the findings of the study required under this clause to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives; and

(bb) make the report available to the public through publication of a report on the website of the Commission.

(3) Rights retained

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

(i) Rulemaking authority

The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(j) Implementing rules

The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after July 21, 2010.

(k) Original information

Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after July 21, 2010.

(l) Awards

A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this chapter, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to July 21, 2010.

(m) Provision of false information

A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18.

(n) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes

(1) Waiver of rights and remedies

The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

(2) Predispute arbitration agreements

No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

(Sept. 21, 1922, ch. 369, §23, as added Pub. L. 111–203, title VII, §748, July 21, 2010, 124 Stat. 1739.)

PRIOR PROVISIONS

A prior section 26, act Sept. 21, 1922, ch. 369, §23, as added Jan. 11, 1983, Pub. L. 97–444, title II, §236, 96 Stat. 2324, provided for special studies to be conducted by Commission, Board of Governors of Federal Reserve System, and Securities and Exchange Commission, prior to repeal by Pub. L. 102–546, title IV, §402(15), Oct. 28, 1992, 106 Stat. 3625.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

¹ *So in original. Probably should be "this".*

² *So in original. Probably should be "section 706".*

§27. Definitions

(a) Bank

In sections 27 to 27f of this title, the term "bank" means—

- (1) any depository institution (as defined in section 1813(c) of title 12);
- (2) any foreign bank or branch or agency of a foreign bank (each as defined in section 3101 of title 12);
- (3) any Federal or State credit union (as defined in section 1752 of title 12);
- (4) any corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];

(5) any corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.];

(6) any trust company; or

(7) any subsidiary of any entity described in paragraph ¹(1) through (6) of this subsection, if the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 78c of title 15) or a futures commission merchant (as defined in section 1a of this title).

(b) Identified banking product

In sections 27 to 27f of this title, the term "identified banking product" shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of sections 27 to 27f of this title—

(1) the term "bank" shall have the meaning given in subsection (a) of this section; and

(2) the term "qualified investor" means eligible contract participant (as defined in section 1a of this title, as in effect on December 21, 2000).

(c) Hybrid instrument

In sections 27 to 27f of this title, the term "hybrid instrument" means an identified banking product not excluded by section 27a of this title, offered by a bank, having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities (as defined in section 1a of this title).

(Pub. L. 106–554, §1(a)(5) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A–457; Pub. L. 111–203, title VII, §§721(e)(9), 725(g)(1)(B), July 21, 2010, 124 Stat. 1672, 1694.)

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25 of the Federal Reserve Act, referred to in subsec. (a)(5), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (b), is section 206 of Pub. L. 106–102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

2010—Subsec. (a)(7). Pub. L. 111–203, §721(e)(9)(A), substituted "section 1a" for "section 1a(20)".

Subsec. (b)(2). Pub. L. 111–203, §721(e)(9)(B), substituted "section 1a" for "section 1a(12)".

Subsec. (c). Pub. L. 111–203, §721(e)(9)(C), substituted "section 1a" for "section 1a(4)".

Subsec. (d). Pub. L. 111–203, §725(g)(1)(B), struck out subsec. (d) which defined covered swap agreement.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

SHORT TITLE

For short title of sections 27 to 27f of this title as the "Legal Certainty for Bank Products Act of 2000", see section 1(a)(5) [title IV, §401] of Pub. L. 106–554, set out as a Short Title of 2000 Amendment note under section 1 of this title.

¹*So in original. Probably should be "paragraphs".*

§27a. Exclusion of identified banking product

(a) Exclusion

Except as provided in subsection (b) or (c)—

(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

(2) the definitions of "security-based swap" in section 3(a)(68) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68)] and "security-based swap agreement" in section 1a(47)(A)(v) of the Commodity Exchange Act [7 U.S.C. 1a(47)(A)(v)] and section 3(a)(78) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(78)] do not include any identified bank product.

(b) Exception

An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

(1) would meet the definition of a "swap" under section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a[47]) or a "security-based swap" under that ¹ section 3(a)(68) of the Securities Exchange Act of 1934; and

(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(c) Exception

The exclusions in subsection (a) shall not apply to an identified bank product that—

(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

(2) meets the definition of swap in section 1a(47) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(Pub. L. 106–554, §1(a)(5) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A–458; Pub. L. 111–203, title VII, §725(g)(2), July 21, 2010, 124 Stat. 1694.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a)(1), (b)(2), and (c)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(2) and (c)(3), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(2) and (c)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

2010—Pub. L. 111–203 amended section generally. Prior to amendment, text read as follows: "No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product if—

"(1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

"(2) the product was not prohibited by the Commodity Exchange Act and not regulated by the Commodity Futures Trading Commission as a contract of sale of a commodity for future delivery (or an option on such a contract) or an option on a commodity, on or before December 5, 2000."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

[So in original.](#)

§27b. Repealed. Pub. L. 111–203, title VII, §725(g)(1)(A), July 21, 2010, 124 Stat. 1694

Section, Pub. L. 106–554, §1(a)(5) [title IV, §404], Dec. 21, 2000, 114 Stat. 2763, 2763A–459, related to exclusion of certain identified banking products offered by banks after Dec. 5, 2000.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§27c. Exclusion of certain other identified banking products

(a) In general

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a banking product if the product is a hybrid instrument that is predominantly a banking product under the predominance test set forth in subsection (b).

(b) Predominance test

A hybrid instrument shall be considered to be predominantly a banking product for purposes of this section if—

(1) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument substantially contemporaneously with delivery of the hybrid instrument;

(2) the purchaser or holder of the hybrid instrument is not required to make under the terms of the instrument, or any arrangement referred to in the instrument, any payment to the issuer in addition to the purchase price referred to in paragraph (1), whether as margin, settlement payment, or otherwise during the life of the hybrid instrument or at maturity;

(3) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(4) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) Mark-to-market margining requirement

For purposes of subsection (b)(3) of this title, mark-to-market margining requirements shall not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(Pub. L. 106–554, §1(a)(5) [title IV, §405], Dec. 21, 2000, 114 Stat. 2763, 2763A–459.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a) and (b)(4), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§27d. Administration of the predominance test

(a) In general

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not regulate, a hybrid instrument, unless the Commission determines, by or under a rule issued in accordance with this section, that—

- (1) the action is necessary and appropriate in the public interest;
- (2) the action is consistent with the Commodity Exchange Act [7 U.S.C. 1 et seq.] and the purposes of the Commodity Exchange Act; and
- (3) the hybrid instrument is not predominantly a banking product under the predominance test set forth in section 27c(b) of this title.

(b) Consultation

Before commencing a rulemaking or making a determination pursuant to a rule issued under sections 27 to 27f of this title, the Commodity Futures Trading Commission shall consult with and seek the concurrence of the Board of Governors of the Federal Reserve System concerning—

- (1) the nature of the hybrid instrument; and
- (2) the history, purpose, extent, and appropriateness of the regulation of the hybrid instrument under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and under appropriate banking laws.

(c) Objection to Commission regulation

(1) Filing of petition for review

The Board of Governors of the Federal Reserve System may obtain review of any rule or determination referred to in subsection (a) in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the rule or determination, a written petition requesting that the rule or determination be set aside. Any proceeding to challenge any such rule or determination shall be expedited by the court.

(2) Transmittal of petition and record

A copy of a petition described in paragraph (1) shall be transmitted as soon as possible by the Clerk of the court to an officer or employee of the Commodity Futures Trading Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the rule or determination under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(3) Exclusive jurisdiction

On the date of the filing of a petition under paragraph (1), the court shall have jurisdiction, which shall become exclusive on the filing of the materials set forth in paragraph (2), to affirm and enforce or to set aside the rule or determination at issue.

(4) Standard of review

The court shall determine to affirm and enforce or set aside a rule or determination of the Commodity Futures Trading Commission under this section, based on the determination of the court as to whether—

(A) the subject product is predominantly a banking product; and

(B) making the provision or provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.] at issue applicable to the subject instrument is appropriate in light of the history, purpose, and extent of regulation under such Act, sections 27 to 27f of this title, and under the appropriate banking laws, giving deference neither to the views of the Commodity Futures Trading Commission nor the Board of Governors of the Federal Reserve System.

(5) Judicial stay

The filing of a petition by the Board pursuant to paragraph (1) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of the determination).

(6) Other authority to challenge

Any aggrieved party may seek judicial review pursuant to section 6(c) of the Commodity Exchange Act [7 U.S.C. 9] of a determination or rulemaking by the Commodity Futures Trading Commission under this section.

(Pub. L. 106–554, §1(a)(5) [title IV, §406], Dec. 21, 2000, 114 Stat. 2763, 2763A–459.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a), (b)(2), and (c)(4)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§27e. Repealed. Pub. L. 111–203, title VII, §725(g)(1)(A), July 21, 2010, 124 Stat. 1694

Section, Pub. L. 106–554, §1(a)(5) [title IV, §407], Dec. 21, 2000, 114 Stat. 2763, 2763A–461, related to exclusion of covered swap agreements.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§27f. Contract enforcement

(a) Hybrid instruments

No hybrid instrument shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, a hybrid instrument under any provision of Federal or State law, based solely on the failure of the hybrid instrument to satisfy the predominance test set forth in section 27c(b) of this title or to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any regulation of the Commodity Futures Trading Commission.

(b) Preemption

Sections 27 to 27f of this title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of a hybrid instrument that is predominantly a banking product. (Pub. L. 106–554, §1(a)(5) [title IV, §408], Dec. 21, 2000, 114 Stat. 2763, 2763A–461; Pub. L. 111–203, title VII, §725(g)(1)(C), July 21, 2010, 124 Stat. 1694.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (a), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203, §725(g)(1)(C)(ii), (iii), redesignated subsec. (c) as (b) and struck out former subsec. (b). Text of subsec. (b) read as follows: "No covered swap agreement shall be void, voidable, or unenforceable, and no party to a covered swap agreement shall be entitled to rescind, or recover any payment made with respect to, a covered swap agreement under any provision of Federal or State law, based solely on the failure of the covered swap agreement to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission."

Subsec. (c). Pub. L. 111–203, §725(g)(1)(C)(iii), redesignated subsec. (c) as (b).

Pub. L. 111–203, §725(g)(1)(C)(i), substituted "in the case of" for "in the case of—", struck out par. (1) designation before "a hybrid", substituted "product." for "product; or", and struck out par. (2) which read as follows: "a covered swap agreement."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2D - INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER II - INVESTMENT ADVISERS

Sec. 80b-4a - Prevention of misuse of nonpublic information

From the U.S. Government Publishing Office, www.gpo.gov

§80b–4a. Prevention of misuse of nonpublic information

Every investment adviser subject to section 80b–4 of this title shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of this chapter or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the rules or regulations thereunder, of material, nonpublic information by such investment adviser or any person associated with such investment adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this chapter or the Securities Exchange Act of 1934 (or the rules or regulations thereunder) of material, nonpublic information.

(Aug. 22, 1940, ch. 686, title II, §204A, as added Pub. L. 100–704, §3(b)(2), Nov. 19, 1988, 102 Stat. 4680.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

EFFECTIVE DATE

Section not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704 set out as an Effective Date of 1988 Amendment note under section 78o of this title.

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2D - INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER II - INVESTMENT ADVISERS

Sec. 80b-5 - Investment advisory contracts

From the U.S. Government Publishing Office, www.gpo.gov

§80b-5. Investment advisory contracts

(a) Compensation, assignment, and partnership-membership provisions

No investment adviser registered or required to be registered with the Commission shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed on or after November 1, 1940, 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) Compensation prohibition inapplicable to certain compensation computations

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 subchapter I of this chapter, or
 - (B) any other person (except a trust, governmental plan, collective trust fund, or separate account referred to in section 80a-3(c)(11) of this title), 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;

(3) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this subchapter, 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 80a-60(a)(4)(B)(iii) of this title is satisfied, and (B) the business development company does not have outstanding any option, warrant, or right issued pursuant to section 80a-60(a)(4)(B) of this title and does not have a profit-sharing plan described in section 80a-56(n) of this title;

(4) apply to an investment advisory contract with a company excepted from the definition of an investment company under section 80a-3(c)(7) of this title; or

(5) apply to an investment advisory contract with a person who is not a resident of the United States.

(c) Measurement of changes in compensation

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) "Investment advisory contract" defined

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 subchapter I of this chapter.

(e) Exempt persons and transactions

The Commission, by rule or regulation, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (a)(1), if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protections of subsection (a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with this section. With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after July 21, 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000.

(f) Authority to restrict mandatory pre-dispute arbitration

The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

(Aug. 22, 1940, ch. 686, title II, §205, 54 Stat. 852; Pub. L. 86–750, §7, Sept. 13, 1960, 74 Stat. 887; Pub. L. 91–547, §25, Dec. 14, 1970, 84 Stat. 1432; Pub. L. 96–477, title II, §203, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 100–181, title VII, §703, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104–290, title II, §210, Oct. 11, 1996, 110 Stat. 3436; Pub. L. 111–203, title IV, §418, title IX, §§921(b), 928, July 21, 2010, 124 Stat. 1579, 1841, 1852; Pub. L. 115–141, div. S, title VIII, §802(b)(1), Mar. 23, 2018, 132 Stat. 1140.)

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115–141 substituted "section 80a–60(a)(4)(B)(iii) of this title" for "section 80a–60(a)(3)(B)(iii) of this title" and "section 80a–60(a)(4)(B) of this title" for "section 80a–60(a)(3)(B) of this title".

2010—Subsec. (a). Pub. L. 111–203, §928, in introductory provisions, substituted "registered or required to be registered with the Commission" for ", unless exempt from registration pursuant to section 80b–3(b) of this title," and struck out "make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to" after "shall" and "to" after "in any way".

Subsec. (e). Pub. L. 111–203, §418, inserted at end "With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after July 21, 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000."

Subsec. (f). Pub. L. 111–203, §921(b), added subsec. (f).

1996—Subsec. (b)(4), (5). Pub. L. 104–290, §210(1), added pars. (4) and (5).

Subsec. (e). Pub. L. 104–290, §210(2), added subsec. (e).

1987—Pub. L. 100–181 completely revised and expanded provisions on investment advisory contracts, changing structure of section from a single unlettered paragraph to one consisting of four subsections lettered (a) to (d).

1980—Pub. L. 96–477 provided that par. (1) of this section was not to apply with respect to any investment advisory contract between an investment adviser and a business development company so long as the compensation provided for in such contract did not exceed 20 per cent of the realized capital gains upon the funds of the business development company and such business development company did not have outstanding any option, warrant, or right issued pursuant to section 80a–60(a)(3)(B) of this title and did not have a profit-sharing plan.

1970—Pub. L. 91–547 substituted reference to section "80b–3(b)" for "80b–3" of this title in first sentence, redesignated as second sentence former third sentence, designating existing provisions as cl. (A) and adding cl. (B) and items (i) and (ii) and provision respecting compensation based on asset value of company or fund under management averaged over a specified period in relation to investment record of an index of securities or such other measure of investment performance specified by Commission rules, regulations, or orders, inserted third sentence provision respecting point from which compensation is to be measured, substituted in fourth, formerly third, sentence "paragraphs (2) and (3) of this section" for "this section" and in definition of "investment advisory contract" the words "account of another person other than an investment company registered under subchapter I of this chapter" for "account for a person other than an investment company".

1960—Pub. L. 86–750 substituted "unless exempt from registration pursuant to" for "registered under".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 921(b) and 928 of 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.

Amendment by section 418 of Pub. L. 111–203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30(1) of Pub. L. 91–547, set out as a note under section 80a–52 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.

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2D - INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER II - INVESTMENT ADVISERS

Sec. 80b-3 - Registration of investment advisers

From the U.S. Government Publishing Office, www.gpo.gov

§80b–3. Registration of investment advisers

(a) Necessity of registration

Except as provided in subsection (b) and section 80b–3a of this title, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

(b) Investment advisers who need not be registered

The provisions of subsection (a) shall not apply to—

(1) any investment adviser, other than an investment adviser who acts as an investment adviser to any private fund, all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies;

(3) any investment adviser that is a foreign private adviser;

(4) any investment adviser that is a charitable organization, as defined in section 80a–3(c)(10)(D) of this title, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title; or

(C) a trust or other donative instrument described in section 80a–3(c)(10)(B) of this title, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of title 26, any person or entity eligible to establish and maintain such a plan under title 26, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 80a–3(c)(14) of this title;

(6)(A) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 80b–2(a)(11) of this title, and that does not act as an investment adviser to—

(i) an investment company registered under subchapter I of this chapter; or

(ii) a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election; or

(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after July 21, 2010,

the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission;

(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title, who solely advises—

(A) small business investment companies that are licensees under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending; or

(8) any investment adviser, other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title, who solely advises—

(A) rural business investment companies (as defined in section 2009cc of title 7); or

(B) companies that have submitted to the Secretary of Agriculture an application in accordance with section 2009cc-3(b) of title 7 that—

(i) have received from the Secretary of Agriculture a letter of conditions, which has not been revoked; or

(ii) are affiliated with 1 or more rural business investment companies described in subparagraph (A).

(c) Procedure for registration; filing of application; effective date of registration; amendment of registration

(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal office, principal place of business, and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied and that the applicant is not prohibited from registering as an investment adviser under section 80b-3a of this title. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

(d) Other acts prohibited by subchapter

Any provision of this subchapter (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(e) Censure, denial, or suspension of registration; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of ¹ substantially equivalent foreign statute.

(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, 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.

(5) has willfully violated any provision of 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.], subchapter I of this chapter, this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(6) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of 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.], subchapter I of this chapter, this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person, if—

(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;

(8) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign financial ² regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision; or

(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(f) Bar or suspension from association with investment adviser; notice and hearing

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, 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 or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

(g) Registration of successor to business of investment adviser

Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (c) or subsection (e) of this section, shall deny registration to or revoke or suspend the registration of such successor.

(h) Withdrawal of registration

Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 80b-3a of this title, the Commission shall by order cancel the registration of such person.

(i) Money penalties in administrative proceedings

(1) Authority of Commission

(A) In general

In any proceeding instituted pursuant to subsection (e) or (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(i) has willfully violated any provision of 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.], subchapter I of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(iii) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein; or

(iv) has failed reasonably to supervise, within the meaning of subsection (e)(6), with a view to preventing violations of the provisions of this subchapter and the rules and regulations thereunder, another person who commits such a violation, if such other person is subject to his supervision; ³

(B) Cease-and-desist proceedings

In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

(2) Maximum amount of penalty

(A) First tier

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for a natural person or \$50,000 for any other person.

(B) Second tier

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(3) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;
(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in subsection (e)(2);

(E) the need to deter such person and other persons from committing such acts or omissions;
and

(F) such other matters as justice may require.

(4) Evidence concerning ability to pay

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(j) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(k) Cease-and-desist proceedings

(1) Authority of Commission

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) Temporary order

(A) In general

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the

Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 80b–11(c) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) Applicability

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(4) Review of temporary orders

(A) Commission review

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal office or place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) Exclusive review

Section 80b–13 of this title shall not apply to a temporary order entered pursuant to this section.

(5) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under paragraph (1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is

authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(l) Exemption of venture capital fund advisers

(1) In general

No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this subchapter with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after July 21, 2010, the Commission shall issue final rules to define the term "venture capital fund" for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(2) Advisers of SBICS

For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title).

(3) Advisers of RBICS

For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated as a business development company pursuant to section 80a-53 of this title).

(m) Exemption of and reporting by certain private fund advisers

(1) In general

The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of ⁴ such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than \$150,000,000.

(2) Reporting

The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(3) Advisers of SBICS

For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title) shall be excluded from the limit set forth in paragraph (1).

(4) Advisers of RBICS

For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title) shall be excluded from the limit set forth in paragraph (1).

(n) Registration and examination of mid-sized private fund advisers

In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.

(Aug. 22, 1940, ch. 686, title II, §203, 54 Stat. 850; Pub. L. 86–750, §§2–5, Sept. 13, 1960, 74 Stat. 885, 886; Pub. L. 91–547, §24, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 94–29, §29(1)–(4), June 4, 1975, 89 Stat. 166–169; Pub. L. 96–477, title II, §202, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 99–571, title I, §102(m), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100–181, title VII, §702, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101–429, title IV, §401, Oct. 15, 1990, 104 Stat. 946; Pub. L. 101–550, title II, §205(b), (c), Nov. 15, 1990, 104 Stat. 2719, 2720; Pub. L. 104–62, §5, Dec. 8, 1995, 109 Stat. 685; Pub. L. 104–290, title III, §§303(b), (d), 305, title V, §508(d), Oct. 11, 1996, 110 Stat. 3438, 3439, 3448; Pub. L. 105–353, title III, §301(d)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 106–554, §1(a)(5) [title II, §209(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–436; Pub. L. 107–204, title VI, §604(b), (c) (2), July 30, 2002, 116 Stat. 796; Pub. L. 109–291, §4(b)(3)(C), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111–203, title IV, §§403, 407, 408, title IX, §§925(b), 929P(a)(4), 985(e)(1), July 21, 2010, 124 Stat. 1571, 1574, 1575, 1851, 1864, 1935; Pub. L. 114–94, div. G, title LXXIV, §§74001, 74002, Dec. 4, 2015, 129 Stat. 1786; Pub. L. 115–417, §2, Jan. 3, 2019, 132 Stat. 5438.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(7), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(2)(B), (4)–(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2019—Subsec. (b)(6)(B). Pub. L. 115–417, §2(1)(A), realigned margin and substituted semicolon for period at end.

Subsec. (b)(8). Pub. L. 115–417, §2(1)(B), (C), added par. (8).

Subsec. (l)(3). Pub. L. 115–417, §2(2), added par. (3).

Subsec. (m)(4). Pub. L. 115–417, §2(3), added par. (4).

2015—Subsec. (l). Pub. L. 114–94, §74001, designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (m)(3). Pub. L. 114–94, §74002, added par. (3).

2010—Subsec. (b)(1). Pub. L. 111–203, §403(1), inserted ", other than an investment adviser who acts as an investment adviser to any private fund," after "any investment adviser".

Subsec. (b)(3). Pub. L. 111–203, §403(2), added par. (3) and struck out former par. (3) which read as follows: "any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under subchapter I of this chapter, or a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this subchapter, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner;".

Subsec. (b)(5). Pub. L. 111–203, §403(3), struck out "or" at end.

Subsec. (b)(6). Pub. L. 111–203, §403(4), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (b)(7). Pub. L. 111–203, §403(5), added par. (7).

Subsec. (c)(1)(A). Pub. L. 111–203, §985(e)(1)(A), substituted "principal office, principal place of business, and" for "principal business office and".

Subsec. (f). Pub. L. 111–203, §925(b), substituted "12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or

nationally recognized statistical rating organization," for "twelve months or bar any such person from being associated with an investment adviser,".

Subsec. (i)(1). Pub. L. 111–203, §929P(a)(4), designated existing provisions as subpar. (A) and inserted heading, inserted "that such penalty is in the public interest and" before "that such person—" in introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, and realigned margins, struck out concluding provisions which read "and that such penalty is in the public interest.", and added subpar. (B).

Subsec. (k)(4)(B). Pub. L. 111–203, §985(e)(1)(B), substituted "principal office or place of business" for "principal place of business" in concluding provisions.

Subsec. (l). Pub. L. 111–203, §407, added subsec. (l).

Subsecs. (m), (n). Pub. L. 111–203, §408, added subsecs. (m) and (n).

2006—Subsec. (e)(2)(B), (4). Pub. L. 109–291 inserted "credit rating agency," after "transfer agent,".

2002—Subsec. (e)(7). Pub. L. 107–204, §604(b)(1), added par. (7) and struck out former par. (7) which read as follows: "is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person."

Subsec. (e)(9). Pub. L. 107–204, §604(b)(2), (3), added par. (9).

Subsec. (f). Pub. L. 107–204, §604(c)(2), substituted "(8), or (9)" for "or (8)" and inserted "or (3)" after "paragraph (2)".

2000—Subsec. (b)(6). Pub. L. 106–554 added par. (6).

1998—Subsec. (e)(8)(B). Pub. L. 105–353 inserted "or" after semicolon at end.

1996—Subsec. (a). Pub. L. 104–290, §303(d), which directed substitution of "subsection (b) and section 80b–3a of this title" for "subsection (b) of this section", was executed by making the substitution for "subsection (b)" to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 104–290, §508(d), added par. (5).

Subsec. (c)(2). Pub. L. 104–290, §303(b)(1), inserted "and that the applicant is not prohibited from registering as an investment adviser under section 80b–3a of this title" after "satisfied" in closing provisions.

Subsec. (e)(3) to (5). Pub. L. 104–290, §305(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 104–290, §305(b)(1), substituted "this paragraph" for "this paragraph (5)".

Pub. L. 104–290, §305(a)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (e)(7), (8). Pub. L. 104–290, §305(a)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f). Pub. L. 104–290, §305(b)(2), substituted "paragraph (1), (5), (6), or (8) of subsection (e)" for "paragraph (1), (4), (5), or (7) of subsection (e) of this section" and "paragraph (4)" for "paragraph (3)" and substituted "subsection (e)" for "said subsection (e)" in two places.

Subsec. (h). Pub. L. 104–290, §303(b)(2), substituted "existence," for "existence or" and inserted "or is prohibited from registering as an investment adviser under section 80b–3a of this title," after "investment adviser,".

Subsec. (i)(1)(D). Pub. L. 104–290, §305(b)(3), substituted "subsection (e)(6)" for "subsection (e)(5)".

1995—Subsec. (b)(4). Pub. L. 104–62 added par. (4).

1990—Subsec. (e)(2). Pub. L. 101–550, §205(b)(1), inserted "or of a substantially equivalent crime by a foreign court of competent jurisdiction" after "misdemeanor".

Subsec. (e)(2)(A). Pub. L. 101–550, §205(b)(2), inserted "any substantially equivalent activity however denominated by the laws of the relevant foreign government," after "burglary,".

Subsec. (e)(2)(B). Pub. L. 101–550, §205(b)(3), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," and "or any substantially equivalent statute or regulation" after "Commodity Exchange Act".

Subsec. (e)(2)(C). Pub. L. 101–550, §205(b)(4), inserted "or substantially equivalent activity however denominated by the laws of the relevant foreign government" after "securities".

Subsec. (e)(2)(D). Pub. L. 101–550, §205(b)(5), inserted ", or a violation of substantially equivalent foreign statute" after "title 18".

Subsec. (e)(3). Pub. L. 101–550, §205(b)(3), (6), inserted "foreign person performing a function substantially equivalent to any of the above," after "transfer agent," "or any substantially equivalent statute or regulation" after "Commodity Exchange Act" wherever appearing, ", including any foreign court of competent jurisdiction", and "foreign entity substantially equivalent to any of the above," after "insurance company,".

Subsec. (e)(5). Pub. L. 101–550, §205(b)(7), inserted "the Commodity Exchange Act" after "this subchapter,".

Subsec. (e)(7). Pub. L. 101–550, §205(b)(8), added par. (7).

Subsec. (f). Pub. L. 101–550, §205(c), substituted "paragraph (1), (4), (5), or (7)" for "paragraph (1), (4), or (5)".

Subsecs. (i) to (k). Pub. L. 101–429 added subsecs. (i) to (k).

1987—Subsec. (e)(2)(B). Pub. L. 100–181, §702(1), inserted "transfer agent," after "fiduciary,".

Subsec. (e)(3). Pub. L. 100–181, §702(2), inserted "transfer agent," after "government securities dealer,".

Subsec. (f). Pub. L. 100–181, §702(3), inserted ", seeking to become associated, or, at the time of the alleged misconduct, associated" before "or seeking to become associated".

Subsec. (g). Pub. L. 100–181, §702(4), substituted "subsection (c) or subsection (e)" for "subsection (d)".

1986—Subsec. (e)(2)(B). Pub. L. 99–571, §102(m)(1), substituted "government securities broker, government securities dealer, fiduciary, or entity or person required to be registered under the Commodity Exchange Act" for "or fiduciary".

Subsec. (e)(3). Pub. L. 99–571, §102(m)(2), inserted par. (3) and struck out former par. (3) which read as follows: "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, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, 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."

Subsec. (e)(4). Pub. L. 99–571, §102(m)(3), inserted reference to Commodity Exchange Act.

1980—Subsec. (b)(3). Pub. L. 96–477 required investment advisers to business development companies to register under this section and provided that for purposes of determining the number of clients of an investment adviser under par. (3), no shareholders, partners, or beneficial owners of business development companies were to be deemed to be clients of an investment adviser unless such person qualified as a client apart from his status in connection with the business development company.

1975—Subsec. (c). Pub. L. 94–29, §29(1), inserted provision authorizing the Commission to require a balance sheet certified by an independent public accountant and other financial statements which, as the Commission specifies, may be certified, and substituted provisions directing the Commission either to grant the registration within forty-five days or institute proceedings to determine whether registration should be denied, directing the Commission to grant registration if it finds that the requirements of this section are satisfied, and requiring the Commission to deny registration if it does not make such a finding or finds that if the applicant were registered its registration would be subject to suspension or revocation for provisions directing that registration be effective thirty days after receipt of the application by the Commission except as otherwise provided and making allowances for amendment of the application.

Subsec. (e). Pub. L. 94–29, §29(2), added the placing of limitations on the activities of investment advisers to the enumeration of sanctions available to the Commission as set out in the provisions preceding par. (1), inserted references in par. (2)(A) to the taking of a false oath, the making of a false report, bribery, perjury, burglary, and conspiracy to commit such offenses, expanded par. (2)(B) to include municipal securities dealers, banks, insurance companies, and fiduciaries, inserted references in par. (2)(C) to larceny, theft, robbery, extortion, forgery, counterfeiting, and fraudulent concealment, inserted references in par. (2)(D) to section 152 and chapters 25 and 47 of title 18, and inserted reference to the rules of the Municipal Securities Rulemaking Board in pars. (4) and (5).

Subsec. (f). Pub. L. 94–29, §29(3), added the placing of limitations on the activities of persons associated or seeking to become associated with an investment adviser to the enumeration of sanctions available to the Commission.

Subsecs. (g), (h). Pub. L. 94–29, §29(4), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g), covering the postponement of the effective day of registration by the commencement of a proceeding to deny registration, was struck out.

1970—Subsec. (b). Pub. L. 91–547, §24(a), struck out "investment companies and" before "insurance companies" in par. (2) and struck out "does not hold" after "clients and who" and inserted "neither hold" and "nor acts as an investment adviser to any investment company registered under subchapter I of this chapter" in par. (3).

Subsec. (c)(1)(F). Pub. L. 91–547, §24(b), substituted "any person associated with such investment adviser" for "any partner, officer, director thereof, or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser" and reference to subsec. "(e)" for "(d)".

Subsecs. (d), (e). Pub. L. 91–547, §24(c), (d), added subsec. (d), redesignated former subsec. (d) as (e), and in amending its provisions, inserted reference to "censure" in two places and substituted "such investment adviser or any person associated with such investment adviser" for "(1) such investment adviser, whether prior

or subsequent to becoming such, or (2) any partner, officer, or director thereof, or any person performing similar functions, or (3) any person directly or indirectly controlling or controlled by such investment adviser, whether prior or subsequent to becoming such," in introductory text preceding par. (1), formerly cl. (A), redesignated as pars. (1) to (5) former cls. (A) to (E), redesignated as items (A) to (D) of par. (2) former items (i) to (iv), striking out ", as heretofore or hereafter amended" after "Title 18", substituted in par. (3) "an affiliated person" for "as an affiliated person", in par. (4) included reference to subchapter I of this chapter and struck out "as any of such statutes heretofore have been or hereafter may be amended" after "this subchapter", in par. (5) included reference to subchapter I of this chapter, struck out "as any of such statutes heretofore have been or hereafter may be amended" after "this subchapter", inserted provision respecting disciplining an investment adviser for failure reasonably to supervise, with a view to preventing violations of statutes, rules, and regulations, another person who commits such a violation if such other person is subject to his supervision, including subpars. (A) and (B) respecting failure to supervise a person, and inserted par. (6). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91-547, §24(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 91-547, §24(c), redesignated former subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 91-547, §24(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1960—Subsec. (c)(1)(F). Pub. L. 86-750, §2, substituted "or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (d)" for "person performing similar function or controlling person thereof (i) within ten years of the filing of such application has been convicted of any felony or misdemeanor of the character described in paragraph (1) of subsection (d) of this section, or (ii) is permanently or temporarily enjoined by an order, judgment or decree of the character described in paragraph (2) of said subsection (d) and in each case the facts relating to such conviction or injunction".

Subsec. (c)(2). Pub. L. 86-750, §3(a), substituted "a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment supervisory services" for "a statement as to whether such investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services".

Subsec. (d). Pub. L. 86-750, §3(b), among other changes, limited the period of suspension to twelve months, included people controlled by the adviser, provided that the ten year period within which convictions are counted be measured from the filing of the application or after specified felonies or misdemeanors, increased the number of offenses by including willful, false or misleading statements as to any material fact, or omissions thereof, in any application for registration or report filed with the Commission, embezzlement, fraudulent conversion, and misappropriation of funds or securities, violations of sections 1341, 1342 or 1343 of title 18, willful violations of, or aiding, abetting, counseling, commanding, inducing or procuring the violation of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, and any amendment or rule or regulation thereunder.

Subsec. (e). Pub. L. 86-750, §4, substituted provisions postponing the effective date of registration for ninety days at commencement of a proceeding to deny registration, or until final determination whether such registration should be denied, whichever was first, and authorizing the Commission after notice and opportunity for hearing, to postpone said effective date beyond the ninety-day period or final determination, provided that upon request of any interested party, made more than ninety days after such postponement, the Commission shall consider the postponement's continuation, for provisions prohibiting postponement of the effective date of registration upon a proceeding to deny registration, unless the Commission found it in the public interest to do so, and which limited said postponement to three months.

Subsec. (g). Pub. L. 86-750, §5, substituted "existence" for "business".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(b), 929P(a)(4), and 985(e)(1) of 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.

Amendment by sections 403, 407, and 408 of Pub. L. 111-203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission,

and except as otherwise provided, see section 419 of Pub. L. 111–203, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 303(b), (d) and 305 of Pub. L. 104–290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as a note under section 80b–2 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101–429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

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 1970 AMENDMENT

Amendment by Pub. L. 91–547 effective Dec. 14, 1970, except that amendment by section 24(a) of Pub. L. 91–547 effective on expiration of one year after Dec. 14, 1970, see section 30 (introductory text and par. (1)) of Pub. L. 91–547, set out as a note under section 80a–52 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.

¹ *So in original. Probably should be "of a".*

² *So in original. Probably should be "financial".*

³ *So in original. The semicolon probably should be a period.*

⁴ *So in original. The word "of" probably should not appear.*

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2D - INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER II - INVESTMENT ADVISERS

Sec. 80b-15 - Validity of contracts

From the U.S. Government Publishing Office, www.gpo.gov

§80b–15. Validity of contracts

(a) Waiver of compliance as void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Rights affected by invalidity

Every contract made in violation of any provision of this subchapter and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of any provision of this subchapter, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision.

(Aug. 22, 1940, ch. 686, title II, §215, 54 Stat. 856.)

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.

15 U.S.C.

United States Code, 2019 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2D - INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER II - INVESTMENT ADVISERS

Sec. 80b-6 - Prohibited transactions by investment advisers

From the U.S. Government Publishing Office, www.gpo.gov

§80b–6. Prohibited transactions by investment advisers

It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction; or

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

(Aug. 22, 1940, ch. 686, title II, §206, 54 Stat. 852; Pub. L. 86–750, §§8, 9, Sept. 13, 1960, 74 Stat. 887; Pub. L. 111–203, title IX, §985(e)(2), July 21, 2010, 124 Stat. 1935.)

AMENDMENTS

2010—Par. (3). Pub. L. 111–203 inserted "or" at end.

1960—Pub. L. 86–750, §8, struck out "registered under section 80b–3 of this title" from introductory text.

Par. (4). Pub. L. 86–750, §9, added par. (4).

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.



Displaying title 17, up to date as of 9/23/2021. Title 17 was last amended 9/01/2021.

Title 17

§ 275.206(4)-1 Investment adviser marketing.

As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b-6(4)), it is unlawful for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), directly or indirectly, to disseminate any advertisement that violates any of paragraphs (a) through (d) of this section.

- (a) **General prohibitions.** An advertisement may not:
- (1) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;
 - (2) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission;
 - (3) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;
 - (4) Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;
 - (5) Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;
 - (6) Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or
 - (7) Otherwise be materially misleading.
- (b) **Testimonials and endorsements.** An advertisement may not include any testimonial or endorsement, and an adviser may not provide compensation, directly or indirectly, for a testimonial or endorsement, unless the investment adviser complies with the conditions in paragraphs (b)(1) through (3) of this section, subject to the exemptions in paragraph (b)(4) of this section.
- (1) **Required disclosures.** The investment adviser discloses, or reasonably believes that the person giving the testimonial or endorsement discloses, the following at the time the testimonial or endorsement is disseminated:
 - (i) Clearly and prominently:
 - (A) That the testimonial was given by a current client or investor, and the *endorsement* was given by a person other than a current client or investor, as applicable;
 - (B) That cash or non-cash compensation was provided for the *testimonial* or *endorsement*, if applicable; and
 - (C) A brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person;

- (ii) The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the *testimonial* or *endorsement*; and
 - (iii) A description of any material conflicts of interest on the part of the person giving the *testimonial* or *endorsement* resulting from the investment adviser's relationship with such person and/or any compensation arrangement.
- (2) **Adviser oversight and compliance.** The investment adviser must have:
 - (i) A reasonable basis for believing that the testimonial or endorsement complies with the requirements of this section, and
 - (ii) A written agreement with any person giving a testimonial or endorsement that describes the scope of the agreed-upon activities and the terms of compensation for those activities.
- (3) **Disqualification.** An investment adviser may not compensate a person, directly or indirectly, for a testimonial or endorsement if the adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is an ineligible person at the time the testimonial or endorsement is disseminated. This paragraph shall not disqualify any person for any matter(s) that occurred prior to May 4, 2021, if such matter(s) would not have disqualified such person under § 275.206(4)-3(a)(1)(ii) of this chapter, as in effect prior to May 4, 2021.
- (4) **Exemptions.**
 - (i) A testimonial or endorsement disseminated for no compensation or *de minimis* compensation is not required to comply with paragraphs (b)(2)(ii) and (3) of this section;
 - (ii) A testimonial or endorsement by the investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director or employee of such a person is not required to comply with paragraphs (b)(1) and (2)(ii) of this section, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the investment adviser documents such person's status at the time the testimonial or endorsement is disseminated;
 - (iii) A testimonial or endorsement by a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is not required to comply with:
 - (A) Paragraph (b)(1) of this section if the testimonial or endorsement is a recommendation subject to § 240.15l-1 of this chapter (Regulation Best Interest) under that Act;
 - (B) Paragraphs (b)(1)(ii) and (iii) of this section if the testimonial or endorsement is provided to a person that is not a retail customer (as that term is defined in § 240.15l-1 of this chapter (Regulation Best Interest) under the Securities Exchange Act of 1934 (15 U.S.C. 78o(a))); and
 - (C) Paragraph (b)(3) of this section if the broker or dealer is not subject to statutory disqualification, as defined under section 3(a)(39) of that Act; and
 - (iv) A testimonial or endorsement by a person that is covered by rule 506(d) of Regulation D under the Securities Act of 1933 (§ 230.506(d) of this chapter) with respect to a rule 506 securities offering under the Securities Act of 1933 (§ 230.506 of this chapter) and

whose involvement would not disqualify the offering under that rule is not required to comply with paragraph (b)(3) of this section.

- (c) **Third-party ratings.** An advertisement may not include any third-party rating, unless the investment adviser:
- (1) Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result; and
 - (2) Clearly and prominently discloses, or the investment adviser reasonably believes that the third-party rating clearly and prominently discloses:
 - (i) The date on which the rating was given and the period of time upon which the rating was based;
 - (ii) The identity of the third party that created and tabulated the rating; and
 - (iii) If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.
- (d) **Performance.** An investment adviser may not include in any advertisement:
- (1) Any presentation of gross performance, unless the advertisement also presents net performance:
 - (i) With at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and
 - (ii) Calculated over the same time period, and using the same type of return and methodology, as the gross performance.
 - (2) Any performance results, of any portfolio or any composite aggregation of related portfolios, in each case other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.
 - (3) Any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the Commission.
 - (4) Any related performance, unless it includes all related portfolios; provided that related performance may exclude any related portfolios if:
 - (i) The advertised performance results are not materially higher than if all related portfolios had been included; and
 - (ii) The exclusion of any related portfolio does not alter the presentation of any applicable time periods prescribed by paragraph (d)(2) of this section.
 - (5) Any extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.
 - (6) Any hypothetical performance unless the investment adviser:
 - (i) Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement;

- (ii) Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and
 - (iii) Provides (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions; Provided that the investment adviser need not comply with the other conditions on performance in paragraphs (d)(2), (4), and (5) of this section.
- (7) Any predecessor performance unless:
- (i) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;
 - (ii) The accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors;
 - (iii) All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods prescribed in paragraph (d)(2) of this section; and
 - (iv) The advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.
- (e) **Definitions.** For purposes of this section:
- (1) **Advertisement** means:
- (i) Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser, but does not include:
 - (A) Extemporaneous, live, oral communications;
 - (B) Information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or
 - (C) A communication that includes hypothetical performance that is provided:
 - (1) In response to an unsolicited request for such information from a prospective or current client or investor in a private fund advised by the investment adviser; or
 - (2) To a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication; and
 - (ii) Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.

- (2) ***De minimis compensation*** means compensation paid to a person for providing a *testimonial* or *endorsement* of a total of \$1,000 or less (or the equivalent value in non-cash compensation) during the preceding 12 months.
- (3) A *disqualifying Commission action* means a Commission opinion or order barring, suspending, or prohibiting the person from acting in any capacity under the Federal securities laws.
- (4) A *disqualifying event* is any of the following events that occurred within ten years prior to the person disseminating an endorsement or testimonial:
- (i) A conviction by a court of competent jurisdiction within the United States of any felony or misdemeanor involving conduct described in paragraph (2)(A) through (D) of section 203(e) of the Act;
 - (ii) A conviction by a court of competent jurisdiction within the United States of engaging in, any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the Act;
 - (iii) The entry of any final order by any entity described in paragraph (9) of section 203(e) of the Act, or by the U.S. Commodity Futures Trading Commission or a self-regulatory organization (as defined in the Form ADV Glossary of Terms)), of the type described in paragraph (9) of section 203(e) of the Act;
 - (iv) The entry of an order, judgment or decree described in paragraph (4) of section 203(e) of the Act, and still in effect, by any court of competent jurisdiction within the United States; and
 - (v) A Commission order that a person cease and desist from committing or causing a violation or future violation of:
 - (A) Any scienter-based anti-fraud provision of the Federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and § 240.10b-5 of this chapter, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)), and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or
 - (B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);
 - (vi) A disqualifying event does not include an event described in paragraphs (e)(4)(i) through (v) of this section with respect to a person that is also subject to:
 - (A) An order pursuant to section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-9) with respect to such event; or
 - (B) A Commission opinion or order with respect to such event that is not a disqualifying Commission action; provided that for each applicable type of order or opinion described in paragraphs (e)(4)(vi)(A) and (B) of this section:
 - (1) The person is in compliance with the terms of the order or opinion, including, but not limited to, the payment of disgorgement, prejudgment interest, civil or administrative penalties, and fines; and
 - (2) For a period of ten years following the date of each order or opinion, the advertisement containing the testimonial or endorsement must include a statement that the person providing the testimonial or endorsement is subject to a Commission order or opinion regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the Commission's website.

- (5) **Endorsement** means any statement by a person other than a current client or investor in a private fund advised by the investment adviser that:
- (i) Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons;
 - (ii) Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or
 - (iii) Refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.
- (6) **Extracted performance** means the performance results of a subset of investments extracted from a portfolio.
- (7) **Gross performance** means the performance results of a portfolio (or portions of a *portfolio* that are included in extracted performance, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio.
- (8) **Hypothetical performance** means performance results that were not actually achieved by any portfolio of the investment adviser.
- (i) Hypothetical performance includes, but is not limited to;
 - (A) Performance derived from model portfolios;
 - (B) Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and
 - (C) Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement, however:
 - (ii) Hypothetical performance does not include:
 - (A) An interactive analysis tool where a client or investor, or prospective client, or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices; provided that the investment adviser:
 - (1) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;
 - (2) Explains that the results may vary with each use and over time;
 - (3) If applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and
 - (4) Discloses that the tool generates outcomes that are hypothetical in nature; or
 - (B) Predecessor performance that is displayed in compliance with paragraph (d)(7) of this section.

- (9) **Ineligible person** means a person who is subject to a disqualifying Commission action or is subject to any disqualifying event, and the following persons with respect to the ineligible person:
- (i) Any employee, officer, or director of the ineligible person and any other individuals with similar status or functions within the scope of association with the ineligible person;
 - (ii) If the ineligible person is a partnership, all general partners; and
 - (iii) If the ineligible person is a limited liability company managed by elected managers, all elected managers.
- (10) **Net performance** means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio, including, if applicable, advisory fees, advisory fees paid to underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. For purposes of this rule, net performance:
- (i) May reflect the exclusion of custodian fees paid to a bank or other third-party organization for safekeeping funds and securities; and/or
 - (ii) If using a model fee, must reflect one of the following:
 - (A) The deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted; or
 - (B) The deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated.
- (11) **Portfolio** means a group of investments managed by the investment adviser. A portfolio may be an account or a private fund and includes, but is not limited to, a portfolio for the account of the investment adviser or its advisory affiliate (as defined in the Form ADV Glossary of Terms).
- (12) **Predecessor performance** means investment performance achieved by a group of investments consisting of an account or a private fund that was not advised at all times during the period shown by the investment adviser advertising the performance.
- (13) **Private fund** has the same meaning as in section 202(a)(29) of the Act.
- (14) **Related performance** means the performance results of one or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation of all portfolios falling within stated criteria.
- (15) **Related portfolio** means a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement.
- (16) **Supervised person** has the same meaning as in section 202(a)(25) of the Act.
- (17) **Testimonial** means any statement by a current client or investor in a private fund advised by the investment adviser:
- (i) About the client or investor's experience with the investment adviser or its supervised persons;
 - (ii) That directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or

(iii) That refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.

(18) **Third-party rating** means a rating or ranking of an investment adviser provided by a person who is not a related person (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business.

[86 FR 17319, Mar. 5, 2021]