

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) Board of trade

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

(3) Commission

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

(4) 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 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.

(5) Commodity pool operator

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.

(6) 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 di-

rectly 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 made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility;

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

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

(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).

(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.

(7) Contract of sale

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

(8) 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 agricul-

tural 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 non-member business in determining the compliance of any such association with this chapter.

(9) 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 multi-lateral 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.

(10) 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.

(11) 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 (12)(A) that, in connection with its business—

(i) has a demonstrable ability, directly or through separate contractual arrange-

ments, 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.

(12) 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);
- (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 depart-

ment 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 (11)(A) of this section; (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$25,000,000 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) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));¹

(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 or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has total assets in an amount 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)

¹ So in original. The semicolon probably should be preceded by an additional closing parenthesis.

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.

(13) 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.

(14) Exempt commodity

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

(15) 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).

(16) Floor broker

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.

(17) Floor trader

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.

(18) 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.

(19) Future delivery

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

(20) Futures commission merchant

The term “futures commission merchant” means an individual, association, partnership, corporation, or trust that—

(A) is 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; and

(B) in or in connection with such solicitation or acceptance of orders, 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.

(21) 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.

(22) 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,² 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.

(23) Introducing broker

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.

(24) 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.

(25) 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 cal-

ulation 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. 78l];

(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

²So in original. Probably should be capitalized.

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.

(26) 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”.

(27) 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.

(28) Person

The term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(29) 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 transaction execution facility registered under section 7a of this title;

(C) a derivatives clearing organization registered under section 7a-1 of this title; and

(D) a board of trade designated as a contract market under section 7b-1 of this title.

(30) 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)).

(31) 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 Ex-

change 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.

(32) Security futures product

The term “security futures product” means a security future or any put, call, straddle, option, or privilege on any security future.

(33) 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 by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

(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.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in pars. (6)(B)(v) and (12)(A)(vi), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended, 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 par. (11)(B)(ii)(bb), 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 Investment Company Act of 1940, referred to in par. (12)(A)(iii), 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 par. (12)(A)(vi)(II)(aa), (B)(ii), 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, 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 par. (12)(A)(viii)(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, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Section 25A of the Federal Reserve Act, referred to in par. (15)(B), 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.

AMENDMENTS

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

Section 403 of Pub. L. 102-546 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].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 6m, 6o-1, 7, 7a, 7a-1, 7a-2, 27, 27b of this title; title 15 section 78f.

§ 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 pro-