

(iv) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

(b) 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.

(c) 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.

(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.)

AMENDMENTS

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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 7a-3, 13 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) 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.

(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 se-

curities (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.)

AMENDMENTS

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 1992 AMENDMENT

Section 203(b) of Pub. L. 102-546 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1a, 2, 6a, 6f, 6k, 7a-3, 7b-1, 12a, 13, 16, 19, 25 of this title; title 11 section 761.

§ 6d. Dealing by unregistered futures commission merchants or introducing brokers prohibited; duties in handling customer receipts; rules to avoid duplicative regulations

(a) Registration requirements; duties of merchants in handling customer receipts

It shall be unlawful for any person to engage as futures commission merchant 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 unless—

(1) such person shall have registered, under this chapter, with the Commission as such futures commission merchant or introducing broker and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, if a futures commission merchant, 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) 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, mainte-

¹ So in original. Probably means subsection (a)(2) of this section.