

able 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) 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.

(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.)

AMENDMENTS

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

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.

§ 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 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;

(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

(iii) an interest or participation in a commodity pool; or

(D) 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.

(2) Except as provided in subsection (b) of this section, the rights of action authorized by this

subsection and by sections 7(d)(13), 7a-1(b)(1)(E), 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.—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.

(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 sections 7 through 7a-2 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 registered¹ 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 entity² 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.)

REFERENCES IN TEXT

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.

AMENDMENTS

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

¹ So in original. Probably should be preceded by “a”.

² So in original. Probably should be followed by a comma.

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

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.

§ 26. Repealed. Pub. L. 102-546, title IV, § 402(15), Oct. 28, 1992, 106 Stat. 3625

Section, 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.

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.

§ 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 paragraph¹ (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(20) 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(12) 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(4) of this title).

(d) Covered swap agreement

In sections 27 to 27f of this title, the term “covered swap agreement” means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of this title if—

(1) the swap agreement—

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of this title, as in effect on December 21, 2000) at the time the persons enter into the swap agreement; and

(B) is not entered into or executed on a trading facility (as defined in section 1a(33) of this title); or

(2) the swap agreement—

(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of this title);

(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this title;

(C) is entered into only between persons that are eligible contract participants as described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of this title, as in effect on December 21, 2000, at the time the persons enter into the swap agreement; and

(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) of this title).

(Pub. L. 106-554, §1(a)(5) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A-457.)

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 subssecs. (b) and (d), 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1a, 2, 7a-1, 16, 27d, 27f of this title; title 15 section 78c.

¹ So in original. Probably should be “paragraphs”.