

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 Repealed.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).

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

(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.

§ 27a. Exclusion of identified banking products commonly offered on or before December 5, 2000

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, 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 [7 U.S.C. 1 et seq.] 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.

(Pub. L. 106-554, §1(a)(5) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A-458.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, 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.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 27b. Exclusion of certain identified banking products offered by banks after December 5, 2000

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, an identified banking product which had not been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law if—

(1) the product has no payment indexed to the value, level, or rate of, and does not provide for the delivery of, any commodity (as defined in section 1a(4) of the Commodity Exchange Act [7 U.S.C. 1a(4)]); or

(2) the product or commodity is otherwise excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(Pub. L. 106-554, §1(a)(5) [title IV, §404], Dec. 21, 2000, 114 Stat. 2763, 2763A-459.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, 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.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 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) of this section.

(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.

SECTION REFERRED TO IN OTHER SECTIONS

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