

(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.

**§ 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.

**§ 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.

**§ 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 se-