

chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this chapter or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.

(Sept. 21, 1922, ch. 369, §5f, as added Pub. L. 106-554, §1(a)(5) [title II, §252(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-445.)

### § 7b-2. Privacy

#### (a) Treatment as financial institutions

Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act [15 U.S.C. 6809(3)(B)], any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commission under this chapter with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act [15 U.S.C. 6801 et seq.] with respect to such financial activity.

#### (b) Treatment of CFTC as Federal functional regulator

For purposes of title V of such Act [15 U.S.C. 6801 et seq.], the Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act [15 U.S.C. 6809(2)] and shall prescribe regulations under such title within 6 months after December 21, 2000.

(Sept. 21, 1922, ch. 369, §5g, as added Pub. L. 106-554, §1(a)(5) [title I, §124], Dec. 21, 2000, 114 Stat. 2763, 2763A-411.)

#### REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in text, is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§6801 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

### § 8. Application for designation as contract market or derivatives transaction execution facility; time; suspension or revocation of designation; hearing; review by court of appeals

(a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this chapter, and with a sufficient as-

urance that it will continue to comply with the the<sup>1</sup> requirements of this chapter. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that such contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a-1 of this title or section 7b-1 of this title or that such contract market or derivatives transaction execution facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission or the Commission<sup>2</sup> thereunder. Such suspension or revocation shall only be after a notice to the officers of the contract market or derivatives transaction execution facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evi-

<sup>1</sup> So in original.

<sup>2</sup> So in original. The words "or the Commission" probably should not appear.

dence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(Sept. 21, 1922, ch. 369, §6(a), (b), formerly §6(a), 42 Stat. 1001; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §7(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 90-258, §§14, 15, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a)-(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, §13(1), (2), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97-444, title II, §218, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 98-620, title IV, §402(3), Nov. 8, 1984, 98 Stat. 3357; renumbered §6(a), (b) and amended Pub. L. 102-546, title II, §209(a)(1)-(3), title IV, §402(1)(B), (9)(A), Oct. 28, 1992, 106 Stat. 3606, 3624, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A), (B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-408.)

#### CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 6 of act Sept. 21, 1922. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(iv)], substituted “designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person” for “designate as a ‘contract market’ any board of trade that has made application therefor, such board of trade” in last sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(iii)], in third sentence, substituted “person” for “board of trade” and “180-day period” for “one-year period”.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(ii)], substituted “designation or registration as a contract market or derivatives transaction execution facility within 180 days” for “designation as a contract market within one year” in second sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(i)], in first sentence, substituted “person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration” for “board of trade desiring to be designated a ‘contract market’ shall make application to the Commission for such designation”, “conditions set forth in this chapter” for “above conditions”, and “the requirements of this chapter” for “above requirements”.

Subsec. (b). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(B)(iii)], substituted “person” for “board of trade” in two places in last sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(B)(ii)], in second sentence, substituted “contract market or derivatives transaction execution facility affected” for “board of trade affected”, “person appeals” for “board of trade appeals” and “person will” for “board of trade will”.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(B)(i)], in first sentence, substituted “designation or registration of any contract market or derivatives transaction execution facility on” for “designation of any board of trade as a ‘contract market’ upon”, “contract market or derivatives transaction execution facility” for “board of trade” in two places, and “designation or reg-

istration as set forth in sections 7 through 7a-1 of this title or section 7b-1 of this title” for “designation as set forth in section 7 of this title”.

1992—Pub. L. 102-546, §209(a)(1), (2), designated first par. as subsec. (a) and redesignated former par. (a) as subsec. (b).

Subsec. (a). Pub. L. 102-546, §209(a)(3), substituted “subsection (b)” for “paragraph (a)”.

Subsec. (b). Pub. L. 102-546, §402(9)(A), which directed amendment of first sentence by striking “the Secretary of Agriculture or”, could not be executed because of amendment by Pub. L. 93-463, §103(a). See 1974 Amendment note below.

Pub. L. 102-546, §402(1)(B), substituted “Commission” for “commission” wherever appearing.

1984—Par. (a). Pub. L. 98-620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

1983—Pub. L. 97-444 required approval or denial of application within one year period of filing of application, stay of such period following notification that application was incomplete and deficient until resubmission of application, minimum period prior to acting upon resubmitted application, and specification of grounds for denial of application.

1978—Pub. L. 95-405, §13(1), in provisions before par. (a) inserted “on the record” after “opportunity for a hearing”.

Par. (a). Pub. L. 95-405, §13(2), inserted “on the record” after “upon a hearing”.

1974—Pub. L. 93-463, §103(a), substituted “Commission” for “Secretary of Agriculture” in first par.

Par. (a). Pub. L. 93-463, §103(c), struck out “the Secretary of Agriculture, who shall thereupon notify the other members of” after “The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to”.

Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Because the word “commission” was not capitalized in that phrase in par. (a), section 103(b) did not apply to par. (a) and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258, §14, inserted provision affording any board of trade refused a contract market designation a hearing before the Commission with right to appeal in adverse decision to the court of appeals as provided for in par. (a) of this section at end of first par.

Par. (a). Pub. L. 90-258, §15, amended par. (a) generally, striking out such parts both of first sentence and of proviso of last sentence as described the commission as made up of the Secretary of Agriculture, Secretary of Commerce, and Attorney General (covered in definition of “Commission” in section 2 of this title, including representation of such officials by their designees), extending grounds for suspension or revocation of designation to include violations of any provisions of this chapter or rules, regulations, or orders of the Secretary of Agriculture or commission, requiring delivery of appeal petitions to Secretary of Agriculture rather than any member of the commission, who would notify the other members, and filing of commission records of proceedings on appeal by the Secretary of Agriculture and not the commission, striking out provisions describing Secretary of Agriculture as Chairman (now found in section 2 of this title), superseding such part of proviso of seventh sentence as authorized appeals to the commission from Secretary of Agriculture’s refusal of a contract market designation by provisions of first par. of this section, and striking out such other part as made decision of court on appeal from commission final and binding on the parties.

1958—Pub. L. 85-791 substituted “thereupon file in the court the record in such proceedings, as provided in

section 2112 of title 28” for “forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings including the notice to the board of trade, a copy of the charges, the evidence, and the report and order” in third notice, and struck out “certified and” after “duly” in fourth sentence.

#### CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals” wherever appearing in this section.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

#### 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 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.

### § 9. Exclusion of persons from privilege of “registered entities”; procedure for exclusion; review by court of appeals

If the Commission has reason to believe that any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this chapter, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission or the Commission<sup>1</sup> thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any registered entity, and directing that all registered entities refuse all privileges to such person, until further notice of the Commission, and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be sus-

<sup>1</sup> So in original. The words “or the Commission” probably should not appear.

pending or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission, or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any registered entity and require all registered entities to refuse such person all trading privileges thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation<sup>2</sup> and (4) require restitution to customers of damages proximately caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said registered entities. After the issuance of the order by the Commission, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner’s principal place of business listed on petitioner’s application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8(a)-(d), (h)-(j), 49 Stat. 1498, 1499; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §7(b), Aug. 28, 1958, 72 Stat. 944; Pub. L. 86-507, §1(2), June 11, 1960, 74 Stat. 200; Pub. L. 90-258, §16, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a), (b), (e), title II, §§204(b), 205(b), 212(a)(1), (2), title IV, §408, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1403, 1414; Pub. L. 97-444, title II, §219, Jan. 11, 1983, 96 Stat. 2308; renumbered §6(c) and amended Pub. L. 102-546, title II, §§209(a)(1), 212(b), 223, title IV, §402(1)(C), (6), (9)(B), Oct. 28, 1992, 106 Stat. 3606, 3609, 3617, 3624, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(C)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

#### CODIFICATION

Section is comprised of part of subsec. (c) of section 6 of act Sept. 21, 1922. A further provision of subsec. (c)

<sup>2</sup> So in original. Probably should be followed by a comma.