

Par. (17). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market” in two places.

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (9) as (17).

Pars. (18), (19). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated pars. (10) and (11) as (18) and (19), respectively.

Par. (20). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (12) as (20).

Par. (20)(A). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market”.

Par. (21). Pub. L. 106-554, §1(a)(5) [title I, §101(5)], added par. (21).

Par. (22). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (13) as (22).

Par. (23). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market”.

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (14) as (23).

Par. (24). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(B)], substituted “registered entity” for “contract market” wherever appearing in heading and text and inserted concluding provisions.

Pub. L. 106-554, §1(a)(5) [title I, §101(6)], added par. (24) and struck out heading and text of former par. (24). Text read as follows: “The term ‘member of a contract market’ means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a contract market or given members’ trading privileges thereon.”

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (15) as (24).

Pars. (25) to (27). Pub. L. 106-554, §1(a)(5) [title I, §101(6)], added pars. (25) to (27).

Par. (28). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (16) as (28).

Pars. (29) to (33). Pub. L. 106-554, §1(a)(5) [title I, §101(7)], added pars. (29) to (33).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by sections 13201(a) and 13203(a), (b) of Pub. L. 110-246 effective June 18, 2008, see section 13204(a) of Pub. L. 110-246, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 403 of Pub. L. 102-546 provided that: “Except as otherwise specifically provided in this Act [enacting this section and section 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title], this Act and the amendments made by this Act shall become effective on the date of enactment of this Act [Oct. 28, 1992].”

§ 2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce

(a) Jurisdiction of Commission; Commodity Futures Trading Commission

(1) Jurisdiction of Commission

(A) In general

The Commission shall have exclusive jurisdiction, except to the extent otherwise pro-

vided in subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section, with respect to accounts, agreements (including any transaction 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”), and transactions involving contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

(B) Liability of principal for act of agent

The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(C) Designation of boards of trade as contract markets; contracts for future delivery; security futures products; filing with Board of Governors of Federal Reserve System; judicial review

Notwithstanding any other provision of law—

(i) This chapter shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 77b(1)¹ of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)] on January 11, 1983), including any group or index of such securities, or any interest therein or based on the value thereof.

(ii) This chapter shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction 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 guar-

¹ See References in Text note below.

anty”) and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however,* That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 77c of title 15 or section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(56)] and section 1a of this title subject to all rules and regulations applicable to security futures products under this chapter and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)].

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under or² section 3(a)(12) of the Securities

Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)(I) Notwithstanding any other provision of this chapter, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)].

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 12a(9) of this title to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the dele-

² So in original. The word “or” probably should not appear.

gation of authority under subclause III,³ under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(D) Jurisdiction and authority of Securities and Exchange Commission over security futures; requirements for security futures trading; periodic or special examinations by Commission representatives

(i) Notwithstanding any other provision of this chapter, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)], section 77b(a)(16) of title 15, section 80a-2(a)(52) of title 15, and section 80b-2(a)(27) of title 15, options on security futures, and persons effecting transactions in security futures and options thereon, and this chapter shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction 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”), contracts, and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this title: *Provided, however*, That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l].

(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has

arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 [15 U.S.C. 78q-1] for the payment and delivery of the securities underlying the security futures product.

(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)], or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

(VI) The security futures product is subject to a prohibition against dual trading in section 6j of this title and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78k(a)] and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and the rules and regulations thereunder.

(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any mar-

³ So in original. Probably should be subclause “(III)”.

ket on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has in place such procedures.

(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such audit trails.

(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such coordinated trading halts.

(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)], except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

(I) the transaction is conducted on or subject to the rules of a board of trade that—

(aa) has been designated by the Commission as a contract market in such security futures product; or

(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this chapter, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after December 21, 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this chapter and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commis-

sion merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of

trade shall not be required to meet the criterion specified in clause (i)(IV).

(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(III) For purposes of this clause, the term “compliance date” means the later of—

(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] and any national securities associations registered pursuant to section 15A(a) of such Act [15 U.S.C. 78o-3(a)]; or

(bb) 2 years after the date on which trading in any security futures product commences under this chapter.

(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).

(E) Obligation to address security futures products traded on foreign exchanges

(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.

(F) Security futures products traded on foreign boards of trade

(i) Nothing in this chapter is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

(ii) Nothing in this chapter is intended to prohibit any eligible contract participant located in the United States from purchasing

or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.

(2) Establishment of Commodity Futures Trading Commission; composition; terms of Commissioners

(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this chapter; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.

Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) Vacancies

A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) Executive Director

The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6) Powers and Functions of Chairman

(A) Except as otherwise provided in this paragraph and in paragraphs (4) and (5) of this subsection, the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determination as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7) Appointment and compensation

(A) In general

The Commission may appoint and fix the compensation of such officers, attorneys,

economists, examiners, and other employees as may be necessary for carrying out the functions of the Commission under this chapter.

(B) Rates of pay

Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to chapter 51 or subchapter III of chapter 53 of title 5.

(C) Comparability

(i) In general

The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are provided by any agency referred to in section 1833b(a) of title 12 or could be provided by such an agency under applicable provisions of law (including rules and regulations).

(ii) Consultation

In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to in section 1833b(a) of title 12.

(8) Conflict of interest

No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this chapter during his term of office, nor shall he participate, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the Commission.

(9) Liaison with Department of Agriculture; communications with Department of the Treasury, Federal Reserve Board, and Securities and Exchange Commission; application by a board of trade for designation as a contract market for future delivery of securities

(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keep-

ing such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation or registration as a contract market or derivatives transaction execution facility involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate or register a board of trade as a contract market or derivatives transaction execution facility based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title) with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, registration, suspension, revocation, or action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(10) Transmittal of budget requests and legislative recommendations to congressional committees

(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall

concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.

(11) Seal

The Commission shall have an official seal, which shall be judicially noticed.

(12) Rules and regulations

The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(b) Transaction in interstate commerce

For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State, with the expectation that they will end their transit, after purchase, in another, including in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(c) Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities

(1) In general

Except as provided in paragraph (2), nothing in this chapter (other than section 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, or 16(e)(2)(B) of this title) governs

or applies to an agreement, contract, or transaction in—

- (A) foreign currency;
- (B) government securities;
- (C) security warrants;
- (D) security rights;
- (E) resales of installment loan contracts;
- (F) repurchase transactions in an excluded commodity; or
- (G) mortgages or mortgage purchase commitments.

(2) Commission jurisdiction

(A) Agreements, contracts, and transactions traded on an organized exchange

This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

- (i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange; or
- (ii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)].

(B) Agreements, contracts, and transactions in retail foreign currency

(i) This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

- (I) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); and
- (II) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

(aa) a financial institution;

(bb)(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5); or

(BB) an associated person of a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) concerning the financial or securities activities of which the broker or dealer makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

(cc)(AA) a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a(20) of this title, is

registered under this chapter, is not a person described in item (bb) of this subclause, and maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph; or

(BB) an affiliated person of a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a(20) of this title, is registered under this chapter, and is not a person described in item (bb) of this subclause, if the affiliated person maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is not a person described in such item (bb), and the futures commission merchant makes and keeps records under section 6f(c)(2)(B) of this title concerning the futures and other financial activities of the affiliated person;

(dd) an insurance company described in section 1a(12)(A)(ii) of this title, or a regulated subsidiary or affiliate of such an insurance company;

(ee) a financial holding company (as defined in section 1841 of title 12);

(ff) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i))); or

(gg) a retail foreign exchange dealer that maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is registered in such capacity with the Commission, subject to such terms and conditions as the Commission shall prescribe, and is a member of a futures association registered under section 21 of this title.

(ii) The dollar amount that applies for purposes of this clause is—

(I) \$10,000,000, beginning 120 days after the date of the enactment of this clause;

(II) \$15,000,000, beginning 240 days after such date of enactment; and

(III) \$20,000,000, beginning 360 days after such date of enactment.

(iii) Notwithstanding items (cc) and (gg) of clause (i)(II) of this subparagraph, agreements, contracts, or transactions described in clause (i) of this subparagraph shall be subject to subsection (a)(1)(B) of this section and sections 6(b), 6b, 6c(b), 6o, 9, 15, and 13b of this title (except to the extent that sections 9, 15, and 13b of this title prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 13a-1, 13a-2, 12(a), 13c(a), and 13c(b) of this title if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or retail foreign exchange dealer, or an affiliated person of a futures commission merchant registered under this

chapter that is not also a person described in any of item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II) of this subparagraph.

(iv)(I) Notwithstanding items (cc) and (gg) of clause (i)(II), a person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (dd), (ee), or (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in any of item (aa) through (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(v) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with agreements, contracts, or transactions described in clause (i) which are offered, or entered into, by a person described in item (cc) or (gg) of clause (i)(II).

(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—

(aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II)); and

(bb) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(II) Subclause (I) of this clause shall not apply to—

(aa) a security that is not a security futures product; or

(bb) a contract of sale that—

(AA) results in actual delivery within 2 days; or

(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(ii)(I) Agreements, contracts, or transactions described in clause (i) of this subparagraph shall be subject to subsection (a)(1)(B) of this section and sections 6(b), 6b, 6c(b), 6o, 9, 15, and 13b of this title (except to the extent that sections 9, 15, and 13b of this title prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 13a-1, 13a-2, 12(a), 13c(a), and 13c(b) of this title.

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II); or

(bb) any such person's associated persons.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of or to accomplish any of the purposes of this chapter in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph if the agreements, contracts, or transactions are offered, or entered into, by a person that is not described in item (aa) through (ff) of subparagraph (B)(i)(II).

(iii)(I) A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in item (aa) through (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(iv) Sections 6(b) and 6b of this title shall apply to any agreement, contract, or transaction described in clause (i) of this subparagraph as if the agreement, contract, or

transaction were a contract of sale of a commodity for future delivery.

(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this chapter over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

(vi) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this chapter with respect to security futures products and persons effecting transactions in security futures products.

(d) Excluded derivative transactions

(1) In general

Nothing in this chapter (other than section 7a-1 or 16(e)(2)(B) of this title⁴ governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

(2) Electronic trading facility exclusion

Nothing in this chapter (other than section 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, or 16(e)(2)(B) of this title) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction 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;

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of this title⁵ at the time at which the persons enter into the agreement, contract, or transaction; and

(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.

(e) Excluded electronic trading facilities

(1) In general

Nothing in this chapter (other than section 16(e)(2)(B) of this title) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of subsection (d)(2), (g), or (h)(3) of this section.

(2) Effect on authority to establish and operate

Nothing in this chapter shall prohibit a board of trade designated by the Commission

as a contract market or derivatives transaction execution facility, or operating as an exempt board of trade from establishing and operating an electronic trading facility excluded under this chapter pursuant to paragraph (1).

(3) Effect on transactions

No failure by an electronic trading facility to limit transactions as required by paragraph (1) of this subsection or to comply with subsection (h)(5) of this section shall in itself affect the legality, validity, or enforceability of an agreement, contract, or transaction entered into or traded on the electronic trading facility or cause a participant on the system to be in violation of this chapter.

(4) Special rule

A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.

(f) Exclusion for qualifying hybrid instruments

(1) In general

Nothing in this chapter (other than section 16(e)(2)(B) of this title) governs or is applicable to a hybrid instrument that is predominantly a security.

(2) Predominance

A hybrid instrument shall be considered to be predominantly a security if—

(A) 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;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) 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 this chapter.

(3) Mark-to-market margining requirements

For the purposes of paragraph (2)(C), mark-to-market margining requirements do 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.

(g) Excluded swap transactions

No provision of this chapter (other than section 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, or 16(e)(2) of this title) shall apply to or govern any agreement, con-

⁴ So in original. Probably should be followed by a closing parenthesis.

⁵ So in original. The closing parenthesis probably should not appear.

tract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) subject to individual negotiation by the parties; and

(3) not executed or traded on a trading facility.

(h) Legal certainty for certain transactions in exempt commodities

(1) Except as provided in paragraph (2), nothing in this chapter shall apply to a contract, agreement, or transaction in an exempt commodity which—

(A) is entered into solely between persons that are eligible contract participants at the time the persons enter into the agreement, contract, or transaction; and

(B) is not entered into on a trading facility.

(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

(A) sections 7a-1 and 16(e)(2)(B) of this title;

(B) sections 6b, 6o, 9, 15, 13b, 13a-1, 13a-2, and 12a of this title, and the regulations of the Commission pursuant to section 6c(b) of this title proscribing fraud in connection with commodity option transactions, to the extent the agreement, contract, or transaction is not between eligible commercial entities (unless one of the entities is an instrumentality, department, or agency of a State or local governmental entity) and would otherwise be subject to such sections and regulations; and

(C) sections 9, 15, 13b, 13a-1, 13a-2, 12a, and 13(a)(2) of this title, to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and the agreement, contract, or transaction would otherwise be subject to such sections.

(3) Except as provided in paragraphs (4) and (7), nothing in this chapter shall apply to an agreement, contract, or transaction in an exempt commodity which is—

(A) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; and

(B) executed or traded on an electronic trading facility.

(4) An agreement, contract, or transaction described in paragraph (3) of this subsection shall be subject to—

(A) sections 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, and 16(e)(2)(B) of this title;

(B) sections 6b and 6o of this title and the regulations of the Commission pursuant to section 6c(b) of this title proscribing fraud and, for a significant price discovery contract, requiring large trader reporting, in connection with commodity option transactions to the extent the agreement, contract, or transaction would otherwise be subject to such sections and regulations;

(C) sections 9, 15, and 13(a)(2) of this title, to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and to the extent the agreement, contract, or transaction would otherwise be subject to such sections;

(D) such rules, regulations, and orders as the Commission may issue to ensure timely compliance with any of the provisions of this chapter applicable to a significant price discovery contract traded on or executed on any electronic trading facility; and

(E) such other provisions of this chapter as are applicable by their terms to significant price discovery contracts or to registered entities or electronic trading facilities with respect to significant price discovery contracts.

(5) An electronic trading facility relying on the exemption provided in paragraph (3) shall—

(A) notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in paragraph (3), which notice shall include—

(i) the name and address of the facility and a person designated to receive communications from the Commission;

(ii) the commodity categories that the facility intends to list or otherwise make available for trading on the facility in reliance on the exemption set forth in paragraph (3);

(iii) certifications that—

(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of section 12a(2) of this title;

(II) the facility will comply with the conditions for exemption under this paragraph; and

(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and

(iv) the identity of any derivatives clearing organization to which the facility transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the facility in reliance on the exemption set forth in paragraph (3);

(B)(i)(I) provide the Commission with access to the facility's trading protocols and electronic access to the facility with respect to transactions conducted in reliance on the exemption set forth in paragraph (3); or

(II) provide such reports to the Commission regarding transactions executed on the facility in reliance on the exemption set forth in paragraph (3) as the Commission may from time to time request to enable the Commission to satisfy its obligations under this chapter;

(ii) maintain for 5 years, and make available for inspection by the Commission upon request, records of activities related to its business as an electronic trading facility exempt under paragraph (3), including—

(I) information relating to data entry and transaction details sufficient to enable the Commission to reconstruct trading activity on the facility conducted in reliance on the exemption set forth in paragraph (3); and

(II) the name and address of each participant on the facility authorized to enter into transactions in reliance on the exemption set forth in paragraph (3); and

(iii) upon special call by the Commission, provide to the Commission, in a form and manner and within the period specified in the special call, such information related to its business as an electronic trading facility exempt under paragraph (3), including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption set forth in paragraph (3), as the Commission may determine appropriate—

(I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4) or to make the determination described in subparagraph (B) of paragraph (7);

(II) to evaluate a systemic market event; or

(III) to obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities;

(C)(i) upon receipt of any subpoena issued by or on behalf of the Commission to any foreign person who the Commission believes is conducting or has conducted transactions in reliance on the exemption set forth in paragraph (3) on or through the electronic trading facility relating to the transactions, promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner reasonable under the circumstances, or as specified by the Commission; and

(ii) if the Commission has reason to believe that a person has not timely complied with a subpoena issued by or on behalf of the Commission pursuant to clause (i), and the Commission in writing has directed that a facility relying on the exemption set forth in paragraph (3) deny or limit further transactions by the person, the facility shall deny that person further trading access to the facility or, as applicable, limit that person's access to the facility for liquidation trading only;

(D) comply with the requirements of this paragraph applicable to the facility and require that each participant, as a condition of trading on the facility in reliance on the exemption set forth in paragraph (3), agree to comply with all applicable law;

(E) have a reasonable basis for believing that participants authorized to conduct transactions on the facility in reliance on the exemption set forth in paragraph (3) are eligible commercial entities; and

(F) not represent to any person that the facility is registered with, or designated, recognized, licensed, or approved by the Commission.

(6) A person named in a subpoena referred to in paragraph (5)(C) that believes the person is or may be adversely affected or aggrieved by action

taken by the Commission under this section, shall have the opportunity for a prompt hearing after the Commission acts under procedures that the Commission shall establish by rule, regulation, or order.

(7) SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

(A) IN GENERAL.—An agreement, contract, or transaction conducted in reliance on the exemption in paragraph (3) shall be subject to the provisions of subparagraphs (B) through (D), under such rules and regulations as the Commission shall promulgate, provided that the Commission determines, in its discretion, that the agreement, contract, or transaction performs a significant price discovery function as described in subparagraph (B).

(B) SIGNIFICANT PRICE DISCOVERY DETERMINATION.—In making a determination whether an agreement, contract, or transaction performs a significant price discovery function, the Commission shall consider, as appropriate:

(i) PRICE LINKAGE.—The extent to which the agreement, contract, or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market or a derivatives transaction execution facility, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

(ii) ARBITRAGE.—The extent to which the price for the agreement, contract, or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market or derivatives transaction execution facility, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

(iii) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts, or transactions being traded or executed on the electronic trading facility.

(iv) MATERIAL LIQUIDITY.—The extent to which the volume of agreements, contracts, or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts, or transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in paragraph (3).

(v) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule as relevant to determine whether an agreement, contract, or transaction serves a significant price discovery function.

(C) CORE PRINCIPLES APPLICABLE TO SIGNIFICANT PRICE DISCOVERY CONTRACTS.—

(i) IN GENERAL.—An electronic trading facility on which significant price discovery contracts are traded or executed shall, with respect to those contracts, comply with the core principles specified in this subparagraph.

(ii) CORE PRINCIPLES.—The electronic trading facility shall have reasonable discretion (including discretion to account for differences between cleared and uncleared significant price discovery contracts) in establishing the manner in which it complies with the following core principles:

(I) CONTRACTS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The electronic trading facility shall list only significant price discovery contracts that are not readily susceptible to manipulation.

(II) MONITORING OF TRADING.—The electronic trading facility shall monitor trading in significant price discovery contracts to prevent market manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(III) ABILITY TO OBTAIN INFORMATION.—The electronic trading facility shall—

(aa) establish and enforce rules that will allow the electronic trading facility to obtain any necessary information to perform any of the functions described in this subparagraph;

(bb) provide the information to the Commission upon request; and

(cc) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(IV) POSITION LIMITATIONS OR ACCOUNTABILITY.—The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts, and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.

(V) EMERGENCY AUTHORITY.—The electronic trading facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority—

(aa) to liquidate open positions in a significant price discovery contract; and

(bb) to suspend or curtail trading in a significant price discovery contract.

(VI) DAILY PUBLICATION OF TRADING INFORMATION.—The electronic trading facility

shall make public daily information on price, trading volume, and other trading data to the extent appropriate for significant price discovery contracts⁶

(VII) COMPLIANCE WITH RULES.—The electronic trading facility shall monitor and enforce compliance with any rules of the electronic trading facility applicable to significant price discovery contracts, including the terms and conditions of the contracts and any limitations on access to the electronic trading facility with respect to the contracts.

(VIII) CONFLICT OF INTEREST.—The electronic trading facility, with respect to significant price discovery contracts, shall—

(aa) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(bb) establish a process for resolving the conflicts of interest.

(IX) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this chapter, the electronic trading facility, with respect to significant price discovery contracts, shall endeavor to avoid—

(aa) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

(bb) imposing any material anti-competitive burden on trading on the electronic trading facility.

(D) IMPLEMENTATION.—

(i) CLEARING.—The Commission shall take into consideration differences between cleared and uncleared significant price discovery contracts when reviewing the implementation of the core principles by an electronic trading facility.

(ii) REVIEW.—As part of the Commission's continual monitoring and surveillance activities, the Commission shall, not less frequently than annually, evaluate, as appropriate, all the agreements, contracts, or transactions conducted on an electronic trading facility in reliance on the exemption provided in paragraph (3) to determine whether they serve a significant price discovery function as described in subparagraph (B) of this paragraph.

(i) Application of commodity futures laws

(1) No provision of this chapter shall be construed as implying or creating any presumption that—

(A) any agreement, contract, or transaction that is excluded from this chapter under subsection (c), (d), (e), (f), or (g) of this section or title IV of the Commodity Futures Modernization Act of 2000 [7 U.S.C. 27 to 27f], or exempted under subsection (h) of this section or section 6(c) of this title; or

(B) any agreement, contract, or transaction, not otherwise subject to this chapter, that is not so excluded or exempted,

is or would otherwise be subject to this chapter.

(2) No provision of, or amendment made by, the Commodity Futures Modernization Act of

⁶ So in original. Probably should be followed by a period.

2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 7a of this title (to the extent provided in section 7a(g) of this title), 7a-1 of this title, or 7a-3 of this title.

(Sept. 21, 1922, ch. 369, § 2, 42 Stat. 998; June 15, 1936, ch. 545, §§ 2, 3, 49 Stat. 1491; Apr. 7, 1938, ch. 108, 52 Stat. 205; Oct. 9, 1940, ch. 786, § 1, 54 Stat. 1059; Aug. 28, 1954, ch. 1041, title VII, § 710(a), 68 Stat. 913; July 26, 1955, ch. 382, § 1, 69 Stat. 375; Pub. L. 90-258, § 1, Feb. 19, 1968, 82 Stat. 26; Pub. L. 90-418, July 23, 1968, 82 Stat. 413; Pub. L. 93-463, title I, § 101(a), title II, §§ 201, 202, Oct. 23, 1974, 88 Stat. 1389, 1395; Pub. L. 95-405, § 2, Sept. 30, 1978, 92 Stat. 865; Pub. L. 97-444, title I, § 101, title II, §§ 201, 202, Jan. 11, 1983, 96 Stat. 2294, 2297, 2298; Pub. L. 99-641, title I, § 110(1), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102-546, title II, §§ 209(b)(1), 215, 226, title IV, § 404(b), title V, § 501, Oct. 28, 1992, 106 Stat. 3606, 3611, 3618, 3628; Pub. L. 106-554, § 1(a)(5) [title I, §§ 102-105(b), 106, 107, 123(a)(2), title II, § 251(a), (b), (i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A-376 to 2763A-379, 2763A-382, 2763A-405, 2763A-436, 2763A-441, 2763A-445; Pub. L. 107-171, title X, § 10702(a), May 13, 2002, 116 Stat. 516; Pub. L. 110-234, title XIII, §§ 13101(a), 13201(b), 13203(c)-(f), May 22, 2008, 122 Stat. 1427, 1436, 1439; Pub. L. 110-246, § 4(a), title XIII, §§ 13101(a), 13201(b), 13203(c)-(f), June 18, 2008, 122 Stat. 1664, 2189, 2198, 2201.)

REFERENCES IN TEXT

Section 77b(1) of title 15, referred to in subsec. (a)(1)(C)(i), was redesignated section 77b(a)(1) of title 15 by Pub. L. 104-290, title I, § 106(a)(1), Oct. 11, 1996, 110 Stat. 3424.

The Securities Exchange Act of 1934, referred to in subsec. (a)(1)(D)(i)(VI), (iii)(II), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The date of the enactment of this clause and such date of enactment, referred to in subsec. (c)(2)(B)(ii), are the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

The Commodity Futures Modernization Act of 2000, referred to in subsec. (i)(1)(A), (2), is H.R. 5660, as enacted by Pub. L. 106-554, § 1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A-365. Title IV of the Act, known as the Legal Certainty for Bank Products Act of 2000, is classified to sections 27 to 27f of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of this title, and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Subsec. (a)(1)(B) of this section was formerly classified to section 4 of this title. Subsec. (a)(1)(C) of this section was formerly classified to section 2a of this title. Subsec. (a)(2) to (11) of this section was formerly classified to section 4a of this title. Subsec. (b) of this section was formerly classified to section 3 of this title.

AMENDMENTS

2008—Subsec. (a)(1)(A). Pub. L. 110-246, § 13203(c), inserted “(including significant price discovery contracts)” after “future delivery”.

Subsec. (c)(2)(B), (C). Pub. L. 110-246, § 13101(a), added subpars. (B) and (C) and struck out former subpars. (B)

and (C) which related to: in subpar. (B), applicability of chapter to an agreement, contract, or transaction in foreign currency that was a contract of sale of a commodity for future delivery or an option on such a contract and was offered to, or entered into with, a person who was not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person was a financial institution, a registered broker or dealer or a registered futures commission merchant, an associated person of a registered broker or dealer or an affiliated person of a registered futures commission merchant, an insurance company or a regulated subsidiary or affiliate of such an insurance company, a financial holding company, or an investment bank holding company; and, in subpar. (C), applicability of sections 6b, 6c(b), 9, 12(a), 13a-1, 13a-2, 13b, and 15 of this title to agreements, contracts, or transactions described in former subpar. (B).

Subsec. (h)(3). Pub. L. 110-246, § 13203(d), substituted “paragraphs (4) and (7)” for “paragraph (4)” in introductory provisions.

Subsec. (h)(4)(B). Pub. L. 110-246, § 13203(e)(1), inserted “and, for a significant price discovery contract, requiring large trader reporting,” after “proscribing fraud”.

Subsec. (h)(4)(D), (E). Pub. L. 110-246, § 13203(e)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: “such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.”

Subsec. (h)(5)(B)(iii)(I). Pub. L. 110-246, § 13203(f), inserted “or to make the determination described in subparagraph (B) of paragraph (7)” after “paragraph (4)”.

Subsec. (h)(7). Pub. L. 110-246, § 13201(b), added par. (7).

2002—Subsec. (a)(7) to (12). Pub. L. 107-171 added par. (7) and redesignated former pars. (7) to (11) as (8) to (12), respectively.

2000—Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(A)], inserted section catchline.

Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(A)], inserted headings for subsec. (a) and par. (1).

Subsec. (a)(1)(A). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(II)], substituted “contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title” for “contract market designated pursuant to section 7 of this title”.

Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(I)], which directed substitution of “subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section” for “subparagraph (B) of this subparagraph”, was executed by making the substitution for “subparagraph (B) of this paragraph” to reflect the probable intent of Congress.

Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(A)], inserted heading and struck out “(i)” before “The Commission shall have”.

Subsec. (a)(1)(A)(ii). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(III)], struck out cl. (ii) which read as follows: “Nothing in this chapter shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.”

Subsec. (a)(1)(B). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(IV)], redesignated subsec. (a)(1)(A)(iii) as subsec. (a)(1)(B) and inserted heading. Former subsec. (a)(1)(B) redesignated (a)(1)(C).

Subsec. (a)(1)(C). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(ii)(I)], redesignated subpar. (B) as (C).

Subsec. (a)(1)(C)(i). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(A)(iii)], substituted “or the derivatives transaction execution facility, and the applicable contract, meet” for “making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets” in introductory provisions.

Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(A)(ii)], which directed insertion of “, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery,” after “contracts) for future delivery”, was executed by making the insertion in the proviso in introductory provisions to reflect the probable intent of Congress.

Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(A)(i)], inserted “or register a derivatives transaction execution facility that trades or executes,” after “contract market in,” in introductory provisions.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(iii). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(A)(iv)], added subcl. (III) and struck out former subcl. (III) which read as follows: “Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.”

Subsec. (a)(1)(C)(iii). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(B), (C)], added cl. (iii) and struck out former cl. (iii) which read as follows: “Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph.”

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(iv). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(C), (D)], redesignated cl. (v) as (iv) and struck out former cl. (iv) which related to consultation by the Commission with, and the authority of, the Securities and Exchange Commission with respect to approval of any application by a Board of Trade for designation as a contract market with respect to any contract of sale (or option of such contract) for future delivery of a group or index of securities.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(v). Pub. L. 106-554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v), added subcls. (I) to (V), and struck out former subcls. (I) to (IV) which required any contract market in a stock index futures contract (or option thereon) to file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin for the stock index futures contract (or option thereon), authorized the Board to request any contract market to set the margins at certain levels, authorized the Board to delegate its authority under this clause to the Commission, and preserved the authority of the Commission to raise temporary emergency margin levels.

Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(D)], redesignated cl. (v) as (iv).

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(II), (III)], struck out “section 77c of title 15” after “exempted security under”, inserted “or subparagraph (D)” after “subparagraph”, and adjusted margins.

Subsec. (a)(1)(C)(vi). Pub. L. 106-554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v).

Pub. L. 106-554, §1(a)(5) [title II, §251(b)(1)], redesignated subcl. (V) as (VI).

Subsec. (a)(1)(D). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(2)], added subpar. (D).

Subsec. (a)(1)(E). Pub. L. 106-554, §1(a)(5) [title II, §251(i)], added subpar. (E).

Subsec. (a)(1)(F). Pub. L. 106-554, §1(a)(5) [title II, §251(j)], added subpar. (F).

Subsec. (a)(2) to (6). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(7). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(C), (E)], substituted “registered entity” for “contract market” and adjusted margins.

Subsec. (a)(8). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(8)(B)(ii). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(D)(iii)], in last sentence, substituted “designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title)” for “designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 12a(9) of this title” and “designation, registration, suspension, revocation, or action” for “designation, suspension, revocation, or emergency action”.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(D)(ii)], substituted “designate or register a board of trade as a contract market or derivatives transaction execution facility” for “designate a board of trade as a contract market” in second sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(D)(i)], substituted “designation or registration as a contract market or derivatives transaction execution facility” for “designation as a contract market” in first sentence.

Subsec. (a)(9). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (c). Pub. L. 106-554, §1(a)(5) [title I, §102], added subsec. (c).

Subsec. (d). Pub. L. 106-554, §1(a)(5) [title I, §103], added subsec. (d).

Subsec. (e). Pub. L. 106-554, §1(a)(5) [title I, §104], added subsec. (e).

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title I, §105(a)], added subsec. (f).

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title I, §105(b)], added subsec. (g).

Subsec. (h). Pub. L. 106-554, §1(a)(5) [title I, §106], added subsec. (h).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title I, §107], added subsec. (i).

1992—Subsec. (a)(1)(A). Pub. L. 102-546, §404(b)(2)–(7), redesignated cls. (i) and (ii) of former third sentence as subcls. (I) and (II), respectively, designated former fifth sentence as cl. (ii), designated former eighth sentence as cl. (iii), and struck out former sixth, seventh, and ninth through last sentences, which included definitions of “future delivery”, “board of trade”, “interstate commerce”, “cooperative association of producers”, “member of a contract market”, “futures commission merchant”, “introducing broker”, “floor broker”, “the Commission”, “commodity trading advisor”, and “commodity pool operator”. See section 1a of this title.

Pub. L. 102-546, §404(b)(1), which directed the substitution of “(i) The Commission” for the words “For the purposes” and all that followed through “; *Provided*, That the Commission”, was executed by making the substitution for the first and second sentences and the third sentence through the words “; *Provided*, That the Commission”, to reflect the probable intent of Congress. Prior to amendment, the first, second, and third sentences included definitions of “contract of sale”, “person”, and “commodity”. See section 1a of this title.

Subsec. (a)(1)(B)(iv)(I). Pub. L. 102-546, §209(b)(1)(A), made technical amendment to reference to section 9 of this title appearing in penultimate sentence to reflect change in reference to corresponding section of original act.

Subsec. (a)(1)(B)(iv)(II). Pub. L. 102-546, §209(b)(1)(B), substituted "section 8(b)" for "section 8".

Subsec. (a)(1)(B)(vi). Pub. L. 102-546, §501, added cl. (vi).

Subsec. (a)(2)(A). Pub. L. 102-546, §215, substituted second and third sentences for "The Commission shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall seek to establish and maintain a balanced Commission, including, but not limited to, persons of demonstrated knowledge in futures trading or its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights and interests covered by this chapter."

Subsec. (a)(9)(C). Pub. L. 102-546, §226, added subpar. (C).

1986—Subsec. (a)(1)(B)(iv)(I). Pub. L. 99-641 substituted "Securities and Exchange Commission" for "Securities Exchange Commission" before "otherwise agree".

1983—Subsec. (a)(1). Pub. L. 97-444, §101, designated existing provisions as subpar. (A), inserted in third sentence, first proviso, ", except to the extent otherwise provided in subparagraph (B) of this paragraph," after "exclusive jurisdiction", and added subpar. (B).

Subsec. (a)(1)(A). Pub. L. 97-444, §201, inserted definition of "introducing broker" and, in revising definition of "commodity trading advisor", included any person advising others through electronic media; substituted provision respecting advising others "as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 6c of this title, or any leverage transaction authorized under section 23 of this title, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing" for provision respecting advising others "as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities"; excluded in item (i) any person acting as an employee of any bank or trust company; substituted in cl. (ii) "news reporter, news columnist, or news editor of the print or electronic media" for "newspaper reporter, newspaper columnist, newspaper editor"; substituted in cl. (iv) "the publisher or producer of any print or electronic data of general and regular dissemination, including its employees" for "the publisher of any bona fide newspaper magazine, or business or financial publication of general and regular circulation including their employees"; inserted item (v); redesignated as items (vi) and (vii) former items (v) and (vi); and authorized Commission to effectuate purposes of definition by rule or regulation by including within definition any person advising as to the value of commodities or issuing reports or analyses concerning commodities.

Subsec. (a)(7). Pub. L. 97-444, §202, struck out "(A)" after "(7)" and struck out subpar. (B) which prohibited any representative activities before the Commission for a one year period upon termination of employment occurring on a day more than four months after Sept. 30, 1978, of any Commissioner or employee of the Commission having a GS-16 or higher classified position excepted from the competitive service because of its confidential or policymaking character.

1978—Subsec. (a)(1). Pub. L. 95-405, §2(1), substituted "section 23 of this title" for "section 15a of this title".

Subsec. (a)(2). Pub. L. 95-405, §2(2)-(5), designated existing provisions as subpar. (A) and substituted "five

Commissioners" for "a chairman and four other Commissioners", "(i)" for "(A)", and "(ii)" for "(B)", and added subpar. (B).

Subsec. (a)(5). Pub. L. 95-405, §2(6), struck out ", by and with the advice and consent of the Senate," after "by the Commission".

Subsec. (a)(6)(A). Pub. L. 95-405, §2(7), inserted "according to budget categories, plans, programs, and priorities established and approved by the Commission," after "expenditure of funds,".

Subsec. (a)(6)(B). Pub. L. 95-405, §2(8), substituted ", plans, priorities, and budgets approved by the Commission" for "of the Commission".

Subsec. (a)(7). Pub. L. 95-405, §2(9), (10), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(8). Pub. L. 95-405, §2(11)-(13), designated existing provisions as subpar. (A), substituted "maintain" for "establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining", and added subpar. (B).

Subsec. (a)(9)(A), (B). Pub. L. 95-405, §2(14), (15), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

1974—Subsec. (a). Pub. L. 93-463, §101(a), designated existing provisions as par. (1), substituted "Commodity Futures Trading Commission established under paragraph (2) of this subsection" for "Commodity Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, or an official or employee of each of the executive departments concerned, designated by the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, respectively; and the Secretary of Agriculture or his designee shall serve as Chairman", and added pars. (2) to (11).

Subsec. (a)(1). Pub. L. 93-463, §§201, 202, struck out "onions," after "eggs," in definition of "commodity" and inserted provisions to that definition to include as commodities all other goods and articles, except onions as provided in section 13-1 of this title, and all services, rights, and interests in which contracts for the future delivery are presently or in the future dealt in, and inserted definitions for "commodity trading advisor" and "commodity pool operator".

1968—Subsec. (a). Pub. L. 90-418 extended definition of "commodity" in third sentence to include frozen concentrated orange juice.

Pub. L. 90-258, §1(c), provided in last sentence for representation on the Commission of Secretary of Agriculture, Secretary of Commerce, and Attorney General by an official or employee designated from executive department concerned and for service of Secretary of Agriculture or his designee as Chairman.

Pub. L. 90-258, §1(b), substituted in definition of "floor broker" in penultimate sentence "purchase or sell for any other person" for "engage in executing for others any order for the purchase or sale of" and struck out provision for receipt or acceptance of any commission or other compensation for services as a floor broker.

Pub. L. 90-258, §1(a), extended definition of "commodity" in third sentence to include livestock and livestock products.

1955—Subsec. (a). Act July 26, 1955, extended "commodity" to onions.

1954—Subsec. (a). Act Aug. 28, 1954, extended "commodity" to wool.

1940—Subsec. (a). Act Oct. 9, 1940, extended "commodity" to fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans and soybean meal.

1938—Subsec. (a). Act Apr. 7, 1938, extended "commodity" to wool tops.

1936—Subsec. (a). Act June 15, 1936, substituted "commodity", "any commodity", or "commodities", as the case may require, for "grain" wherever appearing, and "any cash commodity" for "cash grain", substituted

sentence defining “commodity” for sentence defining “grain”, and inserted definitions of “cooperative association of producers”, “member of a contract market”, “futures commission merchant”, “floor broker”, and “the commission.”

Subsec. (b). Act June 15, 1936, §2, substituted “commodity” and “commodities”, as the case may require, for “grain” wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Pub. L. 110-234, title XIII, §13101(b), May 22, 2008, 122 Stat. 1432, and Pub. L. 110-246, §4(a), title XIII, §13101(b), June 18, 2008, 122 Stat. 1664, 2194, provided that: “The following provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended by subsection (a) of this section [amending this section], shall be effective 120 days after the date of the enactment of this Act [June 18, 2008] or at such other time as the Commodity Futures Trading Commission shall determine:

“(1) Subparagraphs (B)(i)(II)(gg), (B)(iv), and (C)(iii) of section 2(c)(2) [7 U.S.C. 2(c)(2)].

“(2) The provisions of section 2(c)(2)(B)(i)(II)(cc) [7 U.S.C. 2(c)(2)(B)(i)(II)(cc)] that set forth adjusted net capital requirements, and the provisions of such section that require a futures commission merchant to be primarily or substantially engaged in certain business activities.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

Pub. L. 110-234, title XIII, §13204, May 22, 2008, 122 Stat. 1441, and Pub. L. 110-246, §4(a), title XIII, §13204, June 18, 2008, 122 Stat. 1664, 2203, provided that:

“(a) IN GENERAL.—Except as provided in this section, this subtitle [subtitle B (§§13201–13204) of title XIII of Pub. L. 110-246, amending this section and sections 1a, 6a, 6g, 6i, 7a, 7a-2, 7b, 8, and 25 of this title] shall become effective on the date of enactment of this Act [June 18, 2008].

“(b) SIGNIFICANT PRICE DISCOVERY STANDARDS RULE-MAKING.—

“(1) The Commodity Futures Trading Commission shall—

“(A) not later than 180 days after the date of the enactment of this Act [June 18, 2008], issue a proposed rule regarding the implementation of section 2(h)(7) of the Commodity Exchange Act [7 U.S.C. 2(h)(7)]; and

“(B) not later than 270 days after the date of enactment of this Act [June 18, 2008], issue a final rule regarding the implementation.

“(2) In its rulemaking pursuant to paragraph (1) of this subsection, the Commission shall include the standards, terms, and conditions under which an electronic trading facility will have the responsibility to notify the Commission that an agreement, contract, or transaction conducted in reliance on the exemption provided in section 2(h)(3) of the Commodity Exchange Act [7 U.S.C. 2(h)(3)] may perform a price discovery function.

“(c) SIGNIFICANT PRICE DISCOVERY DETERMINATIONS.—With respect to any electronic trading facility operating on the effective date of the final rule issued pursuant to subsection (b)(1), the Commission shall complete a review of the agreements, contracts, and transactions of the facility not later than 180 days after that effective date to determine whether any such agreement, contract, or transaction performs a significant price discovery function.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

EFFECTIVE DATE OF 1983 AMENDMENT

Section 239 of Pub. L. 97-444 provided that: “This Act [see Short Title of 1983 Amendment note set out under section 1 of this title] shall be effective upon the date of enactment of this Act [Jan. 11, 1983], except that sections 207, 212, and 231 of this Act [amending sections 6d, 6k, and 18 of this title] shall be effective one hundred and twenty days after the date of enactment of this Act, or such earlier date as the Commodity Futures Trading Commission shall prescribe by regulation.”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 28 of Pub. L. 95-405 provided that: “Except as otherwise provided in this Act, the provisions of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] shall become effective October 1, 1978.”

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-463, title IV, §418, Oct. 23, 1974, 88 Stat. 1415, provided that:

“(a) Except as otherwise provided specifically in this Act [see Short Title of 1974 Amendment note set out under section 1 of this title], the effective date of this Act shall be the 180th day after enactment [Oct. 23, 1974]. The Commission referred to in section 101 [Commodity Futures Trading Commission] is hereby established effective immediately on enactment of this Act. Sections 102 and 410 [amending sections 5108, 5314, 5315, and 5316 of Title 5, Government Organization and Employees] shall be effective immediately on enactment of this Act. Activities necessary to implement the changes effected by this Act may be carried out after the date of enactment and before as well as after the 180th day thereafter. Activities to be carried out after the date of enactment and before the 180th day thereafter may include, but are not limited to the following: Designation of boards of trade as contract markets, registration of futures commission merchants, floor brokers, and other persons required to be registered under the Act [this chapter], approval or modification of bylaws, rules, regulations, and resolutions of contract markets, and issuance of regulations, effective on or after the 180th day after enactment; appointment and compensation of the members of the Commission; hiring and compensation of staff; and conducting of investigations and hearings. Nothing in this Act shall limit the authority of the Secretary of Agriculture or the Commodity Exchange Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended, prior to the 180th day after enactment of this Act.

“(b) Funds appropriated for the administration of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], may be used to implement this Act immediately after the date of enactment of this Act [Oct. 23, 1974].”

EFFECTIVE DATE OF 1968 AMENDMENT

Section 28 of Pub. L. 90-258 provided that: “This Act [enacting sections 12b, 13b, 13c, and 17b, and amending this section and sections 6a, 6b, 6d, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 12, 12-1, 12a, 13, and 13a of this title] shall become effective one hundred and twenty days after enactment [Feb. 19, 1968].”

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act July 26, 1955, provided that: “This Act [amending this section] shall take effect sixty days after the date of its enactment [July 26, 1955].”

EFFECTIVE DATE OF 1954 AMENDMENT

Section 710(b) of act Aug. 28, 1954, which provided that the amendment of this section by act Aug. 28, 1954, was effective 60 days after Aug. 28, 1954, was repealed by Pub. L. 103-130, §3(a), Nov. 1, 1993, 107 Stat. 1369, eff. Dec. 31, 1995.

EFFECTIVE DATE OF 1940 AMENDMENT

Section 2 of act Oct. 9, 1940, provided that: “This Act [amending this section] shall take effect sixty days after the date of its enactment [Oct. 9, 1940].”

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

SEPARABILITY OF 1974 AMENDMENT

Pub. L. 93-463, title IV, §413, Oct. 23, 1974, 88 Stat. 1414, provided that: “If any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.”

PORTFOLIO MARGINING AND SECURITY INDEX ISSUES

Pub. L. 110-234, title XIII, §13106, May 22, 2008, 122 Stat. 1435, and Pub. L. 110-246, §4(a), title XIII, §13106, June 18, 2008, 122 Stat. 1664, 2197, provided that:

“(a) The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission shall work to ensure that the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or both, as appropriate, have taken the actions required under subsection (b).

“(b) The SEC, the CFTC, or both, as appropriate, shall take action under their existing authorities to permit—

“(1) by September 30, 2009, risk-based portfolio margining for security options and security futures products (as defined in section 1a(32) of the Commodity Exchange Act [7 U.S.C. 1a(32)]); and

“(2) by June 30, 2009, the trading of futures on certain security indexes by resolving issues related to foreign security indexes.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

STUDY REGARDING RETAIL SWAPS

Pub. L. 106-554, §1(a)(5) [title I, §105(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-379, provided that:

“(1) IN GENERAL.—The Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a study of issues involving the offering of swap agreements to persons other than eligible contract participants (as defined in section 1a of the Commodity Exchange Act [7 U.S.C. 1a]).

“(2) MATTERS TO BE ADDRESSED.—The study shall address—

“(A) the potential uses of swap agreements by persons other than eligible contract participants;

“(B) the extent to which financial institutions are willing to offer swap agreements to persons other than eligible contract participants;

“(C) the appropriate regulatory structure to address customer protection issues that may arise in connection with the offer of swap agreements to persons other than eligible contract participants; and

“(D) such other relevant matters deemed necessary or appropriate to address.

“(3) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 21, 2000], a report on the findings and conclusions of the study required by paragraph (1) shall be submitted to Congress, together with such recommendations for legislative action as are deemed necessary and appropriate.”

EDUCATIONAL EVENTS AND SYMPOSIA

Pub. L. 106-78, title VI, Oct. 22, 1999, 113 Stat. 1160, provided in part: “That for fiscal year 2000 and there-

after, the Commission [Commodity Futures Trading Commission] is authorized to charge reasonable fees to attendees of Commission sponsored educational events and symposia to cover the Commission’s costs of providing those events and symposia, and notwithstanding 31 U.S.C. 3302, said fees shall be credited to this account, to be available without further appropriation.”

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105-277, div. A, §101(a) [title VI], Oct. 21, 1998, 112 Stat. 2681, 2681-24.

Pub. L. 105-86, title VI, Nov. 18, 1997, 111 Stat. 2104.

Pub. L. 104-180, title VI, Aug. 6, 1996, 110 Stat. 1596.

Pub. L. 104-37, title VI, Oct. 21, 1995, 109 Stat. 327.

Pub. L. 103-330, title VI, Sept. 30, 1994, 108 Stat. 2466.

NON-ABATEMENT OF PENDING PROCEEDINGS

Pub. L. 93-463, title IV, §412, Oct. 23, 1974, 88 Stat. 1414, provided that: “Pending proceedings under existing law shall not be abated by reason of any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], in effect prior to the effective date of this Act [see Effective Date of 1974 Amendment note above].”

§§ 2a to 4a. Transferred

CODIFICATION

Section 2a, act Sept. 21, 1922, ch. 369, §2(a)(1)(C), formerly §2(a)(1)(B), as added Pub. L. 97-444, title I, §101(a)(3), Jan. 11, 1983, 96 Stat. 2294, and amended and renumbered, which related to designation of boards of trade as contract markets and approval by and jurisdiction of Commodity Futures Trading Commission and Securities and Exchange Commission, was transferred to section 2(a)(1)(C) of this title.

Section 3, act Sept. 21, 1922, ch. 369, §2(b), 42 Stat. 998, as amended, which related to transactions in interstate commerce, was transferred to section 2(b) of this title.

Section 4, act Sept. 21, 1922, ch. 369, §2(a)(1)(B), formerly §2(a), 42 Stat. 998, as amended and renumbered, which related to liability of principal for act of agent, was transferred to section 2(a)(1)(B) of this title.

Section 4a, act Sept. 21, 1922, ch. 369, §2(a)(2)-(11), as added Pub. L. 93-463, title I, §101(a)(3), Oct. 23, 1974, 88 Stat. 1389, and amended, which related to the Commodity Futures Trading Commission, was transferred to section 2(a)(2) to (11) of this title.

§ 5. Findings and purpose

(a) Findings

The transactions subject to this chapter are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) Purpose

It is the purpose of this chapter to serve the public interests described in subsection (a) of this section through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other