

1974—Pub. L. 93-463, §§ 103(e), 204(b), 205(b), 212(a)(1), (2), 408, substituted “it” for “he”, inserted “or any person associated therewith as described in section 6k of this title,” after “futures commission merchant” wherever appearing, inserted “commodity trading advisor, commodity pool operator” before “or as floor broker” wherever appearing, inserted provision for the assessment of civil penalties of not more than \$100,000 for each violation, set a limit of fifteen days after the issuance of an order within which period the person against whom the order was issued must file with the court of appeals his petition that the order be set aside, and substituted “an Administrative Law Judge” and “Administrative Law Judge” for “a referee” and “referee”, respectively.

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

1968—Pub. L. 90-258 amended first sentence generally, providing for denial of trading privileges to persons other than contract markets and suspension or revocation of registration of futures commission merchants and floor brokers, who are manipulating or have attempted to manipulate prices, for willful, material, misstatements in, or omissions from, reports or registration statements, and for violations of orders of Secretary of Agriculture or commission, and authorizing the Secretary to prohibit such persons from trading on or subject to rules of any contract market.

1960—Pub. L. 86-507 inserted “or by certified mail” after “registered mail”.

1958—Pub. L. 85-791 substituted “transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28” for “served upon the Secretary of Agriculture by delivering such copy to him and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received” in seventh sentence, and substituted “petition” for “transcript” in eighth sentence.

1936—Act June 15, 1936, among other changes, amended section by inserting provisions relating to the service of complaints and penalties for violations of this chapter.

CHANGE OF NAME

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

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 741(b)(3) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§ 711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

Pub. L. 111-203, title VII, § 753(d), July 21, 2010, 124 Stat. 1754, provided that:

“(1) The amendments made by this section [amending this section and sections 13b and 25 of this title] shall take effect on the date on which the final rule promul-

gated by the Commodity Futures Trading Commission [see 76 F.R. 41398, effective Aug. 15, 2011] pursuant to this Act [see Tables for classification] takes effect.

“(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section.”

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, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

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

§ 9a. Assessment of money penalties

(1) In determining the amount of the money penalty assessed under section 9 of this title, the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under section 9 of this title shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by section 9 of this title has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under section 9 of this title takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(Sept. 21, 1922, ch. 369, §6(e), formerly §6(d), as added Pub. L. 93-463, title II, §212(a)(3), Oct. 23, 1974, 88 Stat. 1403; renumbered §6(e) and amended Pub. L. 102-546, title II, §209(a)(1), (5), Oct. 28, 1992, 106 Stat. 3606; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409; Pub. L. 111-203, title VII, §741(b)(11), July 21, 2010, 124 Stat. 1732.)

CODIFICATION

Section is comprised of subsec. (e) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (f), and (g) of section 6 are classified to sections 13b, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Pars. (4), (5). Pub. L. 111-203 added pars. (4) and (5).

2000—Pars. (2)(A), (3)(A). Pub. L. 106-554 substituted “the privileges of all registered entities” for “trading on all contract markets”.

1992—Pub. L. 102-546 amended section generally. Prior to amendment, section read as follows: “In determining the amount of the money penalty assessed under sections 9 and 15 of this title, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market—the appropriateness of such penalty to the size of the business of the person charged, the extent of such person’s ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market—the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 9b. Rules prohibiting deceptive and other abusive telemarketing acts or practices

(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 6102(a) of title 15, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this chapter in connection with such person’s business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this chapter provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 6102(a) of title 15; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(Sept. 21, 1922, ch. 369, §6(f), as added Pub. L. 103-297, §3(e)(2), Aug. 16, 1994, 108 Stat. 1547.)

CODIFICATION

Section is comprised of subsec. (f) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), and (g) of section 6 are classified to sections 13b, 9a, and 9c of this title, respectively.

§ 9c. Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to section 9 and 13b of this title against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.