

shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 18 of this title.

(2) Nothing in this chapter shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

(3) EXCEPTION.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a of this title, and that does not act as a commodity trading advisor to any commodity pool that is engaged primarily in trading commodity interests.

(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be “engaged primarily” in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.

(Sept. 21, 1922, ch. 369, §4m, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95-405, §8, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title I, §103, Jan. 11, 1983, 96 Stat. 2296; Pub. L. 106-554, §1(a)(5) [title II, §251(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-443; Pub. L. 111-203, title VII, §§721(e)(2), 749(b), July 21, 2010, 124 Stat. 1671, 1747.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (2), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in par. (2), 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. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2010—Par. (3). Pub. L. 111-203, §749(b), inserted heading, designated existing provisions as subpar. (A) and inserted heading, substituted “Paragraph (1)” for “Subsection (1) of this section” and “to any commodity pool that is engaged primarily in trading commodity interests.” for “to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.”, and added subpars. (B) and (C).

Pub. L. 111-203, §721(e)(2), substituted “section 1a” for “section 1a(6)”.

2000—Par. (3). Pub. L. 106-554 added par. (3).

1983—Pub. L. 97-444 designated existing provisions as par. (1) and added par. (2).

1978—Pub. L. 95-405 inserted provisions relating to applicability of this section to commodity trading advisors who are dealers, processors, brokers, or sellers in cash market transactions of specifically listed commodities or nonprofit, voluntary membership, general farm organizations who provide advice on sale or purchase of specifically listed commodities if the advice by the person described in cl. (1) or (2) of this sentence is incidental solely to the conduct to the person's business and that such person be subject to proceedings under section 18 of this title.

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 OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

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.

§ 6n. Registration of commodity trading advisors and commodity pool operators; application; expiration and renewal; record keeping and reports; disclosure; statements of account

(1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this chapter by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the ap-

plicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(3)(A) Every commodity trading advisor and commodity pool operator registered under this chapter shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

(Sept. 21, 1922, ch. 369, §4n, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398;

amended Pub. L. 95-405, §9, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title II, §213, Jan. 11, 1983, 96 Stat. 2305.)

AMENDMENTS

1983—Par. (5). Pub. L. 97-444 struck out par. (5) which authorized Commission, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person was subject to an outstanding order under this chapter denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

Par. (6). Pub. L. 97-444 struck out par. (6) which authorized Commission to deny registration or revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission found that such denial, revocation, or suspension was in the public interest and that such person had been guilty of certain specified activities. See section 12a(2), (3), and (4) of this title.

1978—Par. (2). Pub. L. 95-405, §9(1)-(3), redesignated par. (3) as (2) and substituted "Each registration" for "All registrations" and inserted "or at such other time, not less than one year from the effective date thereof, as the Commission may rule, regulation, or order prescribe," after "June of each year." Former par. (2), which provided that registration under this section becomes effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine, was struck out.

Pars. (3) to (6). Pub. L. 95-405, §9(1), redesignated pars. (4) to (7) as (3) to (6), respectively. Former par. (3) redesignated (2).

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

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.

§ 60. Fraud and misrepresentation by commodity trading advisors, commodity pool operators, and associated persons

(1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator