

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203, §735(a), struck out subsec. (b) which related to criteria for designation as a contract market.

Subsec. (d). Pub. L. 111-203, §735(b), added subsec. (d) and struck out former subsec. (d) which related to core principles for contract markets.

Subsec. (e)(1). Pub. L. 111-203, §721(e)(4), substituted “section 1a(9)” for “section 1a(4)”.

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.

§ 7a. Repealed. Pub. L. 111-203, title VII, § 734(a), July 21, 2010, 124 Stat. 1718

Section, act Sept. 21, 1922, ch. 369, §5a, as added Pub. L. 106-554, §1(a)(5) [title I, §111], Dec. 21, 2000, 114 Stat. 2763, 2763A-387; amended Pub. L. 110-234, title XIII, §13203(h), May 22, 2008, 122 Stat. 1440; Pub. L. 110-246, §4(a), title XIII, §13203(h), June 18, 2008, 122 Stat. 1664, 2202; Pub. L. 111-203, title VII, §721(e)(5), July 21, 2010, 124 Stat. 1671, related to derivatives transaction execution facilities.

A prior section 7a, act Sept. 21, 1922, ch. 369, §5a, as added June 15, 1936, ch. 545, §7, 49 Stat. 1497; amended Pub. L. 90-258, §12, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, §103(a), (e), (f), title II, §§208-210, title IV, §§406, 407, Oct. 23, 1974, 88 Stat. 1392, 1400, 1401, 1413; Pub. L. 95-405, §§11, 12, Sept. 30, 1978, 92 Stat. 870, 871; Pub. L. 97-444, title II, §§216, 217(a), Jan. 11, 1983, 96 Stat. 2306, 2307; Pub. L. 99-641, title I, §110(2), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102-546, title I, §103, title II, §§201(a), 206(a)(1), 213(a), 217, 222(a), Oct. 28, 1992, 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615, related to duties of contract markets prior to repeal by Pub. L. 106-554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 2010 Amendment note under section 1a of this title.

§ 7a-1. Derivatives clearing organizations

(a) Registration requirement

(1) In general

Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

(i) excluded from this chapter by subsection (a)(1)(C)(i), (c), or (f) of section 2 of this title; or

(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under

the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(B) a swap.

(2) Exception

Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

(b) Voluntary registration

A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this chapter may register with the Commission as a derivatives clearing organization.

(c) Registration of derivatives clearing organizations

(1) Application

A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) Core principles for derivatives clearing organizations

(A) Compliance

(i) In general

To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(ii) Discretion of derivatives clearing organization

Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

(B) Financial resources

(i) In general

Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

(ii) Minimum amount of financial resources

Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(II) enable the derivatives clearing organization to cover the operating costs

of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

(C) Participant and product eligibility

(i) In general

Each derivatives clearing organization shall establish—

(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

(ii) Required procedures

Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

(iii) Requirements

The participation and membership requirements of each derivatives clearing organization shall—

- (I) be objective;
- (II) be publicly disclosed; and
- (III) permit fair and open access.

(D) Risk management

(i) In general

Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(ii) Measurement of credit exposure

Each derivatives clearing organization shall—

(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

(iii) Limitation of exposure to potential losses from defaults

Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

(I) the operations of the derivatives clearing organization would not be disrupted; and

(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

(iv) Margin requirements

The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

(v) Requirements regarding models and parameters

Each model and parameter used in setting margin requirements under clause (iv) shall be—

- (I) risk-based; and
- (II) reviewed on a regular basis.

(E) Settlement procedures

Each derivatives clearing organization shall—

(i) complete money settlements on a timely basis (but not less frequently than once each business day);

(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

(iii) ensure that money settlements are final when effected;

(iv) maintain an accurate record of the flow of funds associated with each money settlement;

(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

(F) Treatment of funds

(i) Required standards and procedures

Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

(ii) Holding of funds and assets

Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

(iii) Permissible investments

Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

(G) Default rules and procedures**(i) In general**

Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

(I) become insolvent; or

(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

(ii) Default procedures

Each derivatives clearing organization shall—

(I) clearly state the default procedures of the derivatives clearing organization;

(II) make publicly available the default rules of the derivatives clearing organization; and

(III) ensure that the derivatives clearing organization may take timely action—

(aa) to contain losses and liquidity pressures; and

(bb) to continue meeting each obligation of the derivatives clearing organization.

(H) Rule enforcement

Each derivatives clearing organization shall—

(i) maintain adequate arrangements and resources for—

(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

(II) the resolution of disputes;

(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

(I) System safeguards

Each derivatives clearing organization shall—

(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

(iii) periodically conduct tests to verify that the backup resources of the deriva-

tives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

(J) Reporting

Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(K) Recordkeeping

Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

(i) in a form and manner that is acceptable to the Commission; and

(ii) for a period of not less than 5 years.

(L) Public information**(i) In general**

Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

(ii) Availability of information

Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(iii) Public disclosure

Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

(M) Information-sharing

Each derivatives clearing organization shall—

(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and

(ii) use relevant information obtained from each agreement described in clause

(i) in carrying out the risk management program of the derivatives clearing organization.

(N) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a derivatives clearing organization shall not—

- (i) adopt any rule or take any action that results in any unreasonable restraint of trade; or
- (ii) impose any material anticompetitive burden.

(O) Governance fitness standards

(i) Governance arrangements

Each derivatives clearing organization shall establish governance arrangements that are transparent—

- (I) to fulfill public interest requirements; and
- (II) to permit the consideration of the views of owners and participants.

(ii) Fitness standards

Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

- (I) directors;
- (II) members of any disciplinary committee;
- (III) members of the derivatives clearing organization;
- (IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and
- (V) any party affiliated with any individual or entity described in this clause.

(P) Conflicts of interest

Each derivatives clearing organization shall—

- (i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and
- (ii) establish a process for resolving conflicts of interest described in clause (i).

(Q) Composition of governing boards

Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

(R) Legal risk

Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.

(3) Orders concerning competition

A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this chapter.

(d) Existing derivatives clearing organizations

A derivatives clearing organization shall be deemed to be registered under this section to

the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before December 21, 2000.

(e) Appointment of trustee

(1) In general

If a proceeding under section 7b of this title results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

(2) Assumption of jurisdiction

If the Commission applies for appointment of a trustee under paragraph (1)—

(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

(f) Linking of regulated clearing facilities

(1) In general

The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.

(2) Coordination

In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

(g) Existing depository institutions and clearing agencies

(1) In general

A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before July 21, 2010—

(A) the depository institution cleared swaps as a multilateral clearing organization; or

(B) the clearing agency cleared swaps.

(2) Conversion of depository institutions

A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) Sharing of information

The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).

(h) Exemptions

The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

(i) Designation of chief compliance officer

(1) In general

Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the derivatives clearing organization;

(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the derivatives clearing organization of the compliance officer with respect to this chapter (including regulations); and

(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).

(B) Requirements

A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(k)¹ Reporting requirements

(1) Duty of derivatives clearing organizations

Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this chapter.

(2) Data collection and maintenance requirements

The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

(A) swaps data reported to swap data repositories; and

(B) swaps traded on swap execution facilities.

(3) Reports on security-based swap agreements to be shared with the Securities and Exchange Commission

(A) In general

A derivatives clearing organization that clears security-based swap agreements (as defined in section 1a(47)(A)(v) of this title) shall, upon request, open to inspection and examination to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and dis-

¹ So in original. No subsec. (j) has been enacted.

closure requirements of section 12 of this title.

(B) Jurisdiction

Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is registered with the Commission.

(4) Information sharing

Subject to section 12 of this title, and upon request, the Commission shall share information collected under paragraph (2) with—

- (A) the Board;
- (B) the Securities and Exchange Commission;
- (C) each appropriate prudential regulator;
- (D) the Financial Stability Oversight Council;
- (E) the Department of Justice; and
- (F) any other person that the Commission determines to be appropriate, including—
 - (i) foreign financial supervisors (including foreign futures authorities);
 - (ii) foreign central banks; and
 - (iii) foreign ministries.

(5) Confidentiality and indemnification agreement

Before the Commission may share information with any entity described in paragraph (4)—

- (A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided; and
- (B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 12 of this title.

(6) Public information

Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13) of this title.

(Sept. 21, 1922, ch. 369, §5b, as added Pub. L. 106-554, §1(a)(5) [title I, §112(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-396; amended Pub. L. 111-203, title VII, §§721(e)(6), 725(a)-(c), (e), (h), July 21, 2010, 124 Stat. 1671, 1685-1687, 1693, 1695.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1)(A)(ii) and (g)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, 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.

PRIOR PROVISIONS

A prior section 5b of act Sept. 21, 1922, was renumbered section 5e, and is classified to section 7b of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §725(a), added subsec. (a) and struck out former subsec. (a) which related

to registration requirement of derivatives clearing organizations.

Pub. L. 111-203, §721(e)(6), substituted “section 1a” for “section 1a(9)” in introductory provisions.

Subsec. (b). Pub. L. 111-203, §725(a), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this chapter by section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization.”

Subsec. (c)(2). Pub. L. 111-203, §725(c), added par. (2) and struck out former par. (2) which related to core principles for derivatives clearing organizations.

Subsec. (f)(1). Pub. L. 111-203, §725(h), inserted at end “In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.”

Subsecs. (g) to (i). Pub. L. 111-203, §725(b), added subsecs. (g) to (i).

Subsec. (k). Pub. L. 111-203, §725(e), added subsec. (k).

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.

CONFLICTS OF INTEREST

Pub. L. 111-203, title VII, §725(d), July 21, 2010, 124 Stat. 1692, provided that: “The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.”

[For definitions of terms used in section 725(d) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

§7a-2. Common provisions applicable to registered entities

(a) Acceptable business practices under core principles

(1) In general

Consistent with the purposes of this chapter, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 7(d) and 7a-1(c)(2) of this title, to describe what would constitute an acceptable business practice under such sections.

(2) Effect of interpretation

An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).

(b) Delegation of functions under core principles

(1) In general

A contract market, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable