

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

core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.

(2) Responsibility

A contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

(3) Noncompliance

If a contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this chapter, the contract market, derivatives transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.

(c) New contracts, new rules, and rule amendments

(1) In general

A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

(2) Rule review

The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this chapter (including regulations under this chapter).

(3) Stay of certification for rules

(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

(i) withdraws the stay prior to that time; or

(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this chapter (including regulations under this chapter).

(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

(4) Prior approval

(A) In general

A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) Prior approval required

Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10)¹ of this title (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) Deadline

If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(5) Approval

(A) Rules

The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this chapter (including regulations).

(B) Contracts and instruments

The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this chapter (including regulations).

(C) Special rule for review and approval of event contracts and swaps contracts

(i) Event contracts

In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the

¹ So in original. Probably should be "section 1a(9)".

price, rate, value, or levels of a commodity described in section 1a(2)(i)² of this title), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

- (I) activity that is unlawful under any Federal or State law;
- (II) terrorism;
- (III) assassination;
- (IV) war;
- (V) gaming; or
- (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

(ii) Prohibition

No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

(iii) Swaps contracts

(I) In general

In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

(II) Requirements

Any such criteria, conditions, or rules shall consider—

- (aa) the financial integrity of the derivatives clearing organization; and
- (bb) any other factors which the Commission determines may be appropriate.

(iv) Deadline

The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.

(d) Repealed. Pub. L. 111-203, title VII, § 745(c), July 21, 2010, 124 Stat. 1737

(e) Reservation of emergency authority

Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 12a(9) of this title.

(f) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or

conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 780(b) of title 15 (except paragraph (11) thereof) with respect to the application of—

- (1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 6d(e) of this title involving security futures products; and
- (2) similar rules of national securities associations registered pursuant to section 780-3(a) of title 15 and national securities exchanges registered pursuant to section 78f(g) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, § 5c, as added and amended Pub. L. 106-554, § 1(a)(5) [title I, § 113, title II, § 251(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-399, 2763A-444; Pub. L. 110-234, title XIII, §§ 13105(e), (f), 13203(i)-(k), May 22, 2008, 122 Stat. 1434, 1440, 1441; Pub. L. 110-246, § 4(a), title XIII, §§ 13105(e), (f), 13203(i)-(k), June 18, 2008, 122 Stat. 1664, 2196, 2202, 2203; Pub. L. 111-203, title VII, §§ 717(d), 721(e)(7), 745, 749(c), July 21, 2010, 124 Stat. 1652, 1671, 1735, 1747.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(5)(A), was in the original “this subtitle”, and was translated as reading “this Act” to reflect the probable intent of Congress.

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.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203, § 749(c)(1), struck out “, 7a(d),” after “7(d)” and “and section 2(h)(7) of this title with respect to significant price discovery contracts,” before “to describe”.

Subsec. (a)(2). Pub. L. 111-203, § 745(a), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.”

Subsec. (c). Pub. L. 111-203, § 745(b), added subsec. (c) and struck out former subsec. (c) which related to new contracts, new rules, and rule amendments and Commission approval upon certification of compliance with this chapter.

Subsec. (c)(1). Pub. L. 111-203, § 717(d), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(2)(B). Pub. L. 111-203, § 721(e)(7), substituted “section 1a(9)” for “section 1a(4)”.

Subsec. (d). Pub. L. 111-203, § 745(c), struck out subsec. (d) which related to violation of core principles.

Subsec. (f)(1). Pub. L. 111-203, § 749(c)(2), substituted “section 6d(e) of this title” for “section 6d(c) of this title”.

2008—Subsec. (a)(1). Pub. L. 110-246, § 13203(i), which directed amendment of par. (1) by inserting “, and section 2(h)(7) of this title with respect to significant price discovery contracts,” after “, and 7a-1(d)(2) of this title”, was executed by making the insertion after “, and 7a-1(c)(2) of this title” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, § 13105(e). See below.

Pub. L. 110-246, § 13105(e), substituted “7a-1(c)(2)” for “7a-1(d)(2)”.

² So in original. There is no section “1a(2)(i)” in this title.

Subsec. (b)(1). Pub. L. 110-246, §13203(j)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity."

Subsec. (b)(2), (3). Pub. L. 110-246, §13203(j)(2), (3), substituted "contract market, derivatives transaction execution facility, or electronic trading facility" for "contract market or derivatives transaction execution facility" wherever appearing.

Subsec. (d)(1). Pub. L. 110-246, §13203(k), which directed amendment of par. (1) by inserting "or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility," after "7a-1(d)(2)", was executed by making the insertion after "7a-1(c)(2)" in introductory provisions to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, §13105(e). See below.

Pub. L. 110-246, §13105(e), substituted "7a-1(c)(2)" for "7a-1(d)(2)" in introductory provisions.

Subsec. (f)(1). Pub. L. 110-246, §13105(f), substituted "6d(c)" for "6d(3)".

2000—Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §251(h)], added subsec. (f).

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 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 section 13203(i)–(k) 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.

§ 7a-3. Repealed. Pub. L. 111-203, title VII, § 734(a), July 21, 2010, 124 Stat. 1718

Section, act Sept. 21, 1922, ch. 369, §5d, as added Pub. L. 106-554, §1(a)(5) [title I, §114], Dec. 21, 2000, 114 Stat. 2763, 2763A-401, related to exempt boards of trade.

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.

§ 7b. Suspension or revocation of designation as registered entity

The failure of a registered entity to comply with any provision of this chapter, or any regulation or order of the Commission under this chapter, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity, in accordance with the procedures and subject to the judicial review provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §5e, formerly §5b, as added June 15, 1936, ch. 545, §7, 49 Stat. 1498; amended Pub. L. 90-258, §13, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102-546, title II, §209(b)(3), Oct. 28, 1992, 106 Stat. 3607; renumbered §5e and amended Pub. L. 106-554, §1(a)(5) [title I, §§110(1), 115], Dec. 21, 2000, 114 Stat. 2763, 2763A-384, 2763A-402; Pub. L. 110-234, title XIII, §13203(l), May 22, 2008, 122 Stat. 1441; Pub. L. 110-246, §4(a), title XIII, §13203(l), June 18, 2008, 122 Stat. 1664, 2203; Pub. L. 111-203, title VII, §749(d), July 21, 2010, 124 Stat. 1747.)

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.

AMENDMENTS

2010—Pub. L. 111-203 struck out "or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," after "or revocation of designation as a registered entity,".

2008—Pub. L. 110-246, §13203(l), inserted ", or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," after "designation as a registered entity".

2000—Pub. L. 106-554, §1(a)(5) [title I, §115], amended section generally. Prior to amendment, section read as follows: "The failure or refusal of any board of trade to comply with any of the provisions of this chapter, or any of the rules, regulations, or orders of the Commission or the commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a 'contract market' in accordance with the procedure and subject to the judicial review provided in section 8(b) of this title."

1992—Pub. L. 102-546 substituted reference to section 8(b) of this title for reference to section 8 of this title.

1974—Pub. L. 93-463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section 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 substituted "rules, regulations, or orders of the Secretary of Agriculture or the commission" for "rules and regulations of the Secretary of Agriculture".

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 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.