

sion and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap. In making the determination required under this subparagraph, the Commissions jointly shall consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

**(B) Regulations**

If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption for stable value contracts from the definition of swap is appropriate and in the public interest. The Commissions shall issue regulations implementing the determinations required under this paragraph. Until the effective date of such regulations, and notwithstanding any other provision of this title,<sup>1</sup> the requirements of this title<sup>1</sup> shall not apply to stable value contracts.

**(C) Legal certainty**

Stable value contracts in effect prior to the effective date of the regulations described in subparagraph (B) shall not be considered swaps.

**(2) Definition**

For purposes of this subsection, the term “stable value contract” means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 1002(3) of title 29, including plans described in section 1002(32) of title 29) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of title 26) that is maintained by an eligible employer described in section 457(e)(1)(A) of title 26, an arrangement described in section 403(b) of title 26, or a qualified tuition program (as defined in section 529 of title 26).

(Pub. L. 111-203, title VII, § 719, July 21, 2010, 124 Stat. 1654.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (a)(1), (2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

This title, referred to in subsecs. (a)(1), (2), and (d)(1)(B), is title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

**§ 8308. Memorandum**

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after July 21, 2010, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the 2 agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than July 21, 2010, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

(Pub. L. 111-203, title VII, § 720, July 21, 2010, 124 Stat. 1657.)

PART B—REGULATION OF SWAP MARKETS

**§ 8321. Authority to define terms**

**(a) Authority to define terms**

The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term “commercial risk”; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

**(b) Modification of definitions**

To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms “swap”, “swap dealer”, “major swap participant”, and “eligible contract participant”.

(Pub. L. 111-203, title VII, § 721(b), (c), July 21, 2010, 124 Stat. 1670.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle A (§§ 711-754) of title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c-2 of this title, and sections 1b, 6b-1, 6r to 6t, 7b-3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13-1, 13a-1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a-1, 7a-3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in subsec. (a)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is

classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

#### CODIFICATION

Section is comprised of subssecs. (b) and (c) of section 721 of Pub. L. 111-203, which were redesignated as subssecs. (a) and (b), respectively, of this section for purposes of codification.

### § 8322. Authority of FERC

Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act [7 U.S.C. 1 et seq.] made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to section 824v of title 16 and section 717c-1 of this title that existed prior to July 21, 2010.

(Pub. L. 111-203, title VII, §722(g), July 21, 2010, 124 Stat. 1674.)

#### REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in text, is title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

### § 8323. Rulemaking on conflict of interest

#### (a) In general

In order to mitigate conflicts of interest, not later than 180 days after July 21, 2010, the Commodity Futures Trading Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 1841 of title 12) with total consolidated assets of \$50,000,000,000 or more, a nonbank financial company (as defined in section 5311 of title 12) supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

#### (b) Purposes

The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a derivatives clearing organization, contract market, or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

#### (c) Considerations

In adopting rules pursuant to this section, the Commodity Futures Trading Commission shall

consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

(Pub. L. 111-203, title VII, §726, July 21, 2010, 124 Stat. 1695.)

#### DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

### § 8324. Savings clause

Notwithstanding any other provision of this title,<sup>1</sup> nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority granted by Federal law other than this title.<sup>1</sup>

(Pub. L. 111-203, title VII, §741(c), July 21, 2010, 124 Stat. 1732.)

#### REFERENCES IN TEXT

This title, referred to in text, is title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This subtitle, referred to in text, is subtitle A (§§711-754) of title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c-2 of this title, and sections 1b, 6b-1, 6r to 6t, 7b-3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13-1, 13a-1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a-1, 7a-3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

#### DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

### § 8325. International harmonization

(a) In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators (as that term is defined in section 1a(39) of title 7), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and

<sup>1</sup> See References in Text note below.