

(Pub. L. 111-203, title V, § 532, July 21, 2010, 124 Stat. 1595.)

### § 8223. Definitions

For purposes of this subchapter, the following definitions shall apply:

#### (1) Ceding insurer

The term “ceding insurer” means an insurer that purchases reinsurance.

#### (2) Domiciliary State

The terms “State of domicile” and “domiciliary State” mean, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

#### (3) NAIC

The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

#### (4) Reinsurance

The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

#### (5) Reinsurer

##### (A) In general

The term “reinsurer” means an insurer to the extent that the insurer—

- (i) is principally engaged in the business of reinsurance;
- (ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and
- (iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

##### (B) Determination

A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

#### (6) State

The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111-203, title V, § 533, July 21, 2010, 124 Stat. 1595.)

## SUBCHAPTER III—RULE OF CONSTRUCTION

### § 8231. Rule of construction

Nothing in this chapter or the amendments made by this subtitle<sup>1</sup> shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this chapter and any amendments to this chapter and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

(Pub. L. 111-203, title V, § 541, July 21, 2010, 124 Stat. 1596.)

#### REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§ 511-542) of title V of Pub. L. 111-203, which enacted

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

this chapter and provisions set out as notes under section 8201 of this title. Subtitle B did not make any amendments.

### § 8232. Severability

If any section or subsection of this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, and the application of the provision to any other person or circumstance, shall not be affected.

(Pub. L. 111-203, title V, § 542, July 21, 2010, 124 Stat. 1596.)

## CHAPTER 109—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

### SUBCHAPTER I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

#### PART A—REGULATORY AUTHORITY

Sec.	
8301.	Definitions.
8302.	Review of regulatory authority.
8303.	Abusive swaps.
8304.	Authority to prohibit participation in swap activities.
8305.	Prohibition against Federal Government bailouts of swaps entities.
8306.	Determining status of novel derivative products.
8307.	Studies.
8308.	Memorandum.

#### PART B—REGULATION OF SWAP MARKETS

8321.	Authority to define terms.
8322.	Authority of FERC.
8323.	Rulemaking on conflict of interest.
8324.	Savings clause.
8325.	International harmonization.

### SUBCHAPTER II—REGULATION OF SECURITY-BASED SWAP MARKETS

8341.	Authority to further define terms.
8342.	Savings clause.
8343.	Rulemaking on conflict of interest.
8344.	Other authority.

### SUBCHAPTER I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

#### PART A—REGULATORY AUTHORITY

### § 8301. Definitions

In this subtitle, the terms “prudential regulator”, “swap”, “swap dealer”, “major swap participant”, “swap data repository”, “associated person of a swap dealer or major swap participant”, “eligible contract participant”, “swap execution facility”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “associated person of a security-based swap dealer or major security-based swap participant” have the meanings given the terms in section 1a of title 7, including any modification of the meanings under section 8321(a) of this title.

(Pub. L. 111-203, title VII, § 711, July 21, 2010, 124 Stat. 1641.)

#### 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.

#### EFFECTIVE DATE

Provisions of subchapter effective on the later of 360 days after July 21, 2010, or, to the extent the provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision, see section 754 of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

#### SHORT TITLE

Pub. L. 111-203, title VII, §701, July 21, 2010, 124 Stat. 1641, provided that: “This title [enacting this chapter, sections 78c-2 to 78c-5, 78j-2, 78m-1, and 78o-10 of this title, and sections 1b, 6b-1, 6r to 6t, 7b-3, 24a, and 26 of Title 7, Agriculture, amending sections 77b, 77b-1, 77e, 77q, 78c, 78c-1, 78f, 78i, 78j, 78m, 78o, 78p, 78q-1, 78s, 78t, 78u-1, 78u-2, 78bb, 78dd, 78mm, 80a-2, and 80b-2 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, enacting provisions set out as notes under section 77b of this title and sections 1a, 2, 6a, 7a-1, 7a-3, and 9 of Title 7, and amending provisions set out as notes under section 78c of this title] may be cited as the ‘Wall Street Transparency and Accountability Act of 2010.’”

#### DEFINITION

For definition of “including” as used in this section, see section 5301 of Title 12, Banks and Banking.

### § 8302. Review of regulatory authority

#### (a) Consultation

##### (1) Commodity Futures Trading Commission

Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this subtitle, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

##### (2) Securities and Exchange Commission

Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the

Securities and Exchange Commission shall consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

#### (3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5 and shall be issued in final form not later than 360 days after July 21, 2010.

#### (4) Applicability

The requirements of paragraphs (1) and (2) shall not apply to an order issued—

(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5.

#### (5) Effect

Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5 (commonly known as the “Administrative Procedure Act”).

#### (6) Rules; orders

In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

#### (7) Treatment of similar products and entities

##### (A) In general

In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

##### (B) Effect

Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

#### (8) Mixed swaps

The Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section 78c(a)(68)(D) of this title, as may be necessary to carry out the purposes of this title.<sup>1</sup>

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