

out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITION

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

§ 78d-9. Report on oversight of national securities associations

(a) Report required

Not later than 2 years after July 21, 2010, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 78o-3 of this title with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the regulatory enforcement or rulemaking by such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

(4) the arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations;

(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

(A) the methods of funding;

(B) the sufficiency of funds;

(C) how funds are invested by the national securities association pending use; and

(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

(8) the policies regarding the employment of former employees of national securities associations by regulated entities;

(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

(10) the transparency of governance and activities of the national securities associations; and

(11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members;¹

¹ So in original. The semicolon probably should be a period.

(b) Reimbursements for cost of reports

(1) Reimbursements required

The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

(2) Crediting and use of reimbursements

Such reimbursements shall—

(A) be credited to the appropriation account “Salaries and Expenses, Government Accountability Office” current when the payment is received; and

(B) remain available until expended.

(Pub. L. 111-203, title IX, §964, July 21, 2010, 124 Stat. 1910.)

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

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

§ 78e. Transactions on unregistered exchanges

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as national securities exchange under section 78f of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

(June 6, 1934, ch. 404, title I, §5, 48 Stat. 885.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 78f. National securities exchanges

(a) Registration; application

An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other infor-

mation and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determination by Commission requisite to registration of applicant as a national securities exchange

An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this chapter, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair pro-

cedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(9)(A) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 78n(h) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(i) the right of dissenting limited partners to one of the following:

(I) an appraisal and compensation;

(II) retention of a security under substantially the same terms and conditions as the original issue;

(III) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(IV) the use of a committee of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(V) other comparable rights that are prescribed by rule by the exchange and that are designed to protect dissenting limited partners;

(ii) the right not to have their voting power unfairly reduced or abridged;

(iii) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(iv) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

(B) As used in this paragraph, the term “dissenting limited partner” means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for pur-

poses of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 78l of this title from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 78l of this title from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

(c) Denial of membership in national exchanges; denial of association with member; conditions; limitation of membership

(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience,

and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided, however*, That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further*, That the Commission, in accordance with the provisions of section 78s(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(d) Discipline of national securities exchange members and persons associated with members; summary proceedings

(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of

paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e) Commissions, allowances, discounts, and other fees

(1) On and after June 4, 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided, however*, That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further*, That the Commission, in accordance with the provisions of section 78s(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this chapter.

(2) Notwithstanding the provisions of section 78s(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this chapter.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its mem-

bers for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in section 78y(a) of this title, a reviewing Court may set aside an order of the Commission under section 78s(b) of this title approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) Compliance of non-members with exchange rules

The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(g) Notice registration of security futures product exchanges

(1) Registration required

An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)) [7 U.S.C. 1 et seq.], that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(C)].

(2) Registration by notice filing

(A) Form and content

An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under subsection (a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(B) Immediate effectiveness

Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the

Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

(C) Termination

Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) Public availability

The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

(4) Exemption of exchanges from specified provisions

(A) Transaction exemptions

An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this chapter and the rules thereunder:

- (i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.
- (ii) Section 78h of this title.
- (iii) Section 78k of this title.
- (iv) Subsections (d), (f), and (k)¹ of section 78q of this title.
- (v) Subsections (a), (f), and (h) of section 78s of this title.

(B) Rule change exemptions

An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 78s(b) of this title, except that—

- (i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 78s(b)(7) of this title;
- (ii) such exchange shall file pursuant to sections 78s(b)(1) and 78s(b)(2) of this title proposed rule changes related to margin, except for changes resulting in higher margin levels; and
- (iii) such exchange shall file pursuant to section 78s(b)(1) of this title proposed rule changes that have been abrogated by the Commission pursuant to section 78s(b)(7)(C) of this title.

(5) Trading in security futures products

(A) In general

Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

- (i) 1 year after December 21, 2000; or
- (ii) such date that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] has met the requirements set forth in section 78o-3(k)(2) of this title.

(B) Principal-to-principal transactions

Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

(i) the transaction is entered into—

(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(18)(B)(ii) of the Commodity Exchange Act [7 U.S.C. 1a(18)(B)(ii)]; and

(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(18) [7 U.S.C. 1a(18)(A), (B)(ii), (C)]) at the time at which the persons enter into the agreement, contract, or transaction; and

(ii) the transaction is entered into on or after the later of—

(I) 8 months after December 21, 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] has met the requirements set forth in section 78o-3(k)(2) of this title.

(h) Trading in security futures products

(1) Trading on exchange or association required

It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title.

(2) Listing standards required

Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 78s(b) of this title and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(D)(i)].

(3) Requirements for listing standards and conditions for trading

Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 78l of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

¹ See References in Text note below.

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 78o-3(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 78o-3(a) of this title effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 78k(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this chapter and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 78g(c)(2)(B) of this title, except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a se-

curity futures product when it deems such action to be necessary or appropriate.

(4) Authority to modify certain listing standard requirements

(A) Authority to modify

The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(B) Authority to grant exemptions

The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) Requirements for other persons trading security future products

It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 78o-3(a) of this title) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 78o-3(a) of this title or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

(6) Deferral of options on security futures trading

No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after December 21, 2000, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under

the provisions of this chapter and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(7) Deferral of linked and coordinated clearing

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 78o-3(a) of this title may trade a security futures product that does not—

(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act [7 U.S.C. 2(a)(1)(D)(i)(IV)].

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term “compliance date” means the later of—

(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 78o-3(a) of this title, and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 78o-3(a) of this title; or

(ii) 2 years after the date on which trading in any security futures product commences under this chapter.

(i) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 78o(b) of this title (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 78o(c)(3)(B) of this title involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to subsection (g) and national securities associations registered pursuant to section 78o-3(k) of this title involving security futures products.

(j) Procedures and rules for security future products

A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in subsection (h)(5)(A) and adopt the rules specified in subparagraphs (B) and (C) of subsection (h)(5) not later than 8

months after the date of receipt of a request from an alternative trading system for such implementation and rules.

(k) Rules relating to security futures products traded on foreign boards of trade

(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

(l) Security-based swaps

It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

(June 6, 1934, ch. 404, title I, § 6, 48 Stat. 885; Pub. L. 94-29, § 4, June 4, 1975, 89 Stat. 104; Pub. L. 100-181, title III, §§ 309-312, Dec. 4, 1987, 101 Stat. 1255; Pub. L. 103-202, title III, § 303(b), Dec. 17, 1993, 107 Stat. 2365; Pub. L. 106-554, § 1(a)(5) [title II, §§ 202(a), 206(a), (i), (k)(2), (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A-416, 2763A-426, 2763A-433, 2763A-434; Pub. L. 111-203, title VII, §§ 721(e)(8), 734(b)(2), 763(e), title IX, § 957, July 21, 2010, 124 Stat. 1671, 1718, 1777, 1906.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) to (e), (g)(4)(A), (h)(3)(G), (7)(C)(ii), and (i), was in the original “this title”. This chapter, referred to in subsec. (h)(6), was in the original “this Act”. See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (b)(10)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

The Commodity Exchange Act, referred to in subsecs. (g)(1)(A) and (h)(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. Section 1a(2) of Title 7 was redesignated section 1a(6) by Pub. L. 111-203, title VII, § 721(a)(1), July 21, 2010, 124 Stat. 1658. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

Subsection (k) of section 78q of this title, referred to in subsec. (g)(4)(A)(iv), was redesignated subsec. (j) by Pub. L. 111-203, title VI, § 617(a)(2), July 21, 2010, 124 Stat. 1616.

AMENDMENTS

2010—Subsec. (b)(9). Pub. L. 111-203, § 957(1), designated introductory provisions and subpars. (A) to (D) as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and realigned margins, redesignated former cls. (i) to (v) of

subpar. (A) as subcls. (I) to (V), respectively, of cl. (i) and realigned margins, and designated concluding provisions as subpar. (B).

Subsec. (b)(10). Pub. L. 111-203, §957(2), added par. (10).
 Subsec. (g)(1)(A). Pub. L. 111-203, §734(b)(2), substituted “that has been designated” for “that—(i) has been designated” and “and” for “or” at end and struck out cl. (ii) which read as follows: “is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act and such registration is not suspended by the Commodity Futures Trading Commission; and”.

Subsec. (g)(5)(B)(i)(I). Pub. L. 111-203, §721(e)(8)(A), substituted “section 1a(18)(B)(ii)” for “section 1a(12)(B)(ii)”.

Subsec. (g)(5)(B)(i)(II). Pub. L. 111-203, §721(e)(8)(B), substituted “section 1a(18)” for “section 1a(12)”.

Subsec. (l). Pub. L. 111-203, §763(e), added subsec. (l).
 2000—Subsec. (g). Pub. L. 106-554, §1(a)(5) [title II, §202(a)], added subsec. (g).

Subsec. (h). Pub. L. 106-554, §1(a)(5) [title II, §206(a)], added subsec. (h).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title II, §206(i)], added subsec. (i).

Subsec. (j). Pub. L. 106-554, §1(a)(5) [title II, §206(k)(2)], added subsec. (j).

Subsec. (k). Pub. L. 106-554, §1(a)(5) [title II, §206(l)], added subsec. (k).

1993—Subsec. (b)(9). Pub. L. 103-202 added par. (9).

1987—Subsec. (c)(2). Pub. L. 100-181, §309, substituted “protection of investors shall” for “protection shall”.

Subsec. (c)(3)(A). Pub. L. 100-181, §310, substituted “associated” for “association”.

Subsec. (c)(4). Pub. L. 100-181, §311, substituted “may limit (A)” for “may (A) limit”.

Subsec. (e)(1). Pub. L. 100-181, §312(1), substituted “paragraph (3) of this subsection” for “paragraph (4) of this section”.

Subsec. (e)(3), (4). Pub. L. 100-181, §312(2), (3), redesignated par. (4) as (3) and, in subpar. (E), substituted “fixing” for “fixes” in introductory provisions, “subparagraph (A) of this paragraph” for “paragraph (4)(A) of this subsection” in cl. (1), and “subparagraph (B) of this paragraph” for “paragraph (4)(B) of this subsection” in cl. (2), and struck out former par. (3) which read as follows: “Until December 31, 1976, the Commission, on a regular basis, shall file with the Speaker of the House and the President of the Senate information concerning the effect on the public interest, protection of investors, and maintenance of fair and orderly markets of the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members of any national securities exchange for effecting transactions on such exchange.”

1975—Pub. L. 94-29 restructured the entire section and, in addition, authorized the Commission to require an exchange to file such documents and information as it deems necessary or appropriate in the public interest or for the protection of investors and to prescribe the form and substance of an exchange’s application for registration, expanded to eight the number of explicit statutory requirements that must be satisfied before an exchange may be registered as a national securities exchange, set forth the authority of a national securities exchange to admit or deny persons membership or association with members, prescribed exchange procedures for instituting disciplinary actions, denying membership, and summarily suspending members or persons associated with members, specified the authority of national securities exchanges to impose schedules or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for transacting business on the exchange, and empowered the Commission to regulate any broker or dealer who effects transactions on an exchange on a regular basis but who is not a member of that exchange and any person who effects transactions on an exchange without the services of another person acting as broker.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 957 of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided,

see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by sections 721(e)(8) and 734(b)(2) of 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 Title 7, Agriculture.

Amendment by section 763(e) of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) 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 B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-202, title III, §304, Dec. 17, 1993, 107 Stat. 2367, provided that:

“(a) EFFECTIVE DATE.—

“(1) IN GENERAL.—The amendments made by section 303 [amending this section and section 780-3 of this title] shall become effective 12 months after the date of enactment of this Act [Dec. 17, 1993].

“(2) RULEMAKING AUTHORITY.—Notwithstanding paragraph (1), the authority of the Securities and Exchange Commission, a registered securities association, and a national securities exchange to commence rulemaking proceedings for the purpose of issuing rules pursuant to the amendments made by section 303 is effective on the date of enactment of this Act.

“(3) REVIEW OF FILINGS PRIOR TO EFFECTIVE DATE.—Prior to the effective date of regulations promulgated pursuant to this title [amending this section and sections 78n and 78o-3 of this title and enacting provisions set out as notes under sections 78a and 78n of this title], the Securities and Exchange Commission shall continue to review and declare effective registration statements and amendments thereto relating to limited partnership rollup transactions in accordance with applicable regulations then in effect.

“(b) EFFECT ON EXISTING AUTHORITY.—The amendments made by this title [amending this section and sections 78n and 78o-3 of this title] shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsecs. (a) through (d) by Pub. L. 94-29 to be effective 180 days after June 4, 1975, with provisions of subsecs. (b)(2) and (c)(6), as amended by Pub. L. 94-29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to a natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2,

eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CHANGES IN ORGANIZATION AND RULES OF NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS

Pub. L. 94-29, §31(b), June 4, 1975, 89 Stat. 170, provided that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act [see Short Title of 1975 Amendment note under section 78a of this title] to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act [June 4, 1975] do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934 [section 78s(h) of this title], as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements."

§ 78g. Margin requirements

(a) Rules and regulations for extension of credit; standard for initial extension; undermargined accounts

For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to October 1, 1934, and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security or a security futures product). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

- (1) 55 per centum of the current market price of the security, or
- (2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1,

1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

(b) Lower and higher margin requirements

Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) Unlawful credit extension to customers

(1) Prohibition

It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall prescribe under subsections (a) and (b); or

(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe—

- (i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and
- (ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).

(2) Margin regulations

(A) Compliance with margin rules required

It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations—

- (i) which the Board shall prescribe pursuant to subparagraph (B); or
- (ii) if the Board determines to delegate the authority to prescribe such regulations, which the Commission and the Commodity Futures Trading Commission shall jointly prescribe pursuant to subparagraph (B).