

§ 5. Findings and purpose

(a) Findings

The transactions subject to this chapter are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) Purpose

It is the purpose of this chapter to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

(Sept. 21, 1922, ch. 369, §3, as added Pub. L. 106-554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A-383.)

PRIOR PROVISIONS

A prior section 5, acts Sept. 21, 1922, ch. 369, §3, 42 Stat. 999; June 15, 1936, ch. 545, §2, 49 Stat. 1491; Pub. L. 97-444, title II, §203, Jan. 11, 1983, 96 Stat. 2298, stated legislative findings, prior to repeal by Pub. L. 106-554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A-383.

§ 6. Regulation of futures trading and foreign transactions

(a) Restriction on futures trading

Unless exempted by the Commission pursuant to subsection (c) or by subsection (e), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

(2) such contract is executed or consummated by or through a contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of de-

livery: *Provided*, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

(b) Regulation of foreign transactions by United States persons

(1) Foreign boards of trade

(A) Registration

The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, “direct access” refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. In adopting such rules and regulations, the commission¹ shall consider—

(i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade’s home country; and

(ii) any previous commission¹ findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade’s home country.

(B) Linked contracts

The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

(I) adopts position limits (including related hedge exemption provisions) for

¹ So in original. Probably should be “Commission”.

the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 6a of this title, price distortion, or disruption of delivery or the cash settlement process;

(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

(aa) the information that the foreign board of trade will make publicly available;

(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 6a of this title, price distortion, or disruption of delivery or the cash settlement process; and

(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

(C) Existing foreign boards of trade

Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to July 21, 2010, the Commission granted direct access permission until the date that is 180 days after July 21, 2010.

(2) Persons located in the United States

(A) In general

The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions.

(B) Different requirements

Rules and regulations described in subparagraph (A) may impose different requirements for such persons depending upon the particular foreign board of trade, exchange, or market involved.

(C) Prohibition

Except as provided in paragraphs (1) and (2), no rule or regulation may be adopted by the Commission under this subsection that—

(i) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market; or

(ii) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market.

(c) Public interest exemptions

(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this chapter (except subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title,² except that—

(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

²So in original. A closing parenthesis probably should precede the comma.

(i) with respect to—

(I) paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a of this title, and sections 2(a)(13), 2(c)(1)(D), 6a(a), 6a(b), 6d(c), 6d(d), 6r, 6s, 7a-1(a), 7a-1(b), 7(d), 7(g), 7(h),³ 7a-1(c), 7a-1(i), 12(e),⁴ and 24a of this title; and

(II) section 206(e)⁵ of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note); and

(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title⁶ if the Commissions determine that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this chapter; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this chapter.

(3) For purposes of this subsection, the term “appropriate person” shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this chapter.

(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subpara-

graph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or a commodity trading advisor subject to regulation under this chapter.

(H) Any governmental entity (including the United States, any state,⁷ or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this chapter acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

(4) During the pendency of an application for an order granting an exemption under paragraph (1), the Commission may limit the public availability of any information received from the applicant if the applicant submits a written request to limit disclosure contemporaneous with the application, and the Commission determines that—

(A) the information sought to be restricted constitutes a trade secret; or

(B) public disclosure of the information would result in material competitive harm to the applicant.

(5) The Commission may—

(A) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) with respect to classes of hybrid instruments that are predominantly securities or depository instruments, to the extent that such instruments may be regarded as subject to the provisions of this chapter; or

(B) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this chapter.

Any exemption pursuant to this paragraph shall be subject to such terms and conditions as the Commission shall determine to be appropriate pursuant to paragraph (1).

(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this chapter, the Com-

³ So in original. Section 7 of this title does not contain subsections (g) and (h).

⁴ See References in Text note below.

⁵ So in original. Section 206 of the Act does not contain a subsection (e).

⁶ So in original. The closing parenthesis probably should not appear.

⁷ So in original. Probably should be capitalized.

mission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this chapter an agreement, contract, or transaction that is entered into—

(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) between entities described in section 824(f) of title 16.

(d) Effect of exemption on investigative authority of Commission

The granting of an exemption under this section shall not affect the authority of the Commission under any other provision of this chapter to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this chapter or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements.

(e) Liability of registered persons trading on a foreign board of trade

(1) In general

A person registered with the Commission, or exempt from registration by the Commission, under this chapter may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

(i) legally organized under the laws of a foreign country;

(ii) authorized to act as a board of trade by a foreign futures authority; and

(iii) subject to regulation by the foreign futures authority; and

(B) has not been determined by the Commission to be operating in violation of subsection (a).

(2) Rule of construction

Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).

(Sept. 21, 1922, ch. 369, § 4, 42 Stat. 999; June 15, 1936, ch. 545, §§ 2, 4, 49 Stat. 1491, 1492; Pub. L. 93-463, title I, § 103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97-444, title II, § 204, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102-546, title V, § 502(a), Oct. 28, 1992, 106 Stat. 3629; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-406; Pub. L. 111-203, title VII, §§ 721(d), 722(f), 738(a), (b), July 21, 2010, 124 Stat. 1671, 1674, 1726, 1728.)

REFERENCES IN TEXT

Subtitle A of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c)(1)(A), is subtitle A (§§ 721-754) of title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1641. For complete classification of subtitle A to the Code, see Tables.

Section 12(e) of this title, referred to in subsec. (c)(1)(A)(i)(I), was in the original a reference to section “8e” and has been translated as if the reference had been to section “8(e)” to reflect the probable intent of Congress. Section 8e of act Sept. 21, 1922, which was formerly classified to section 12e of this title, was repealed by Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (c)(1)(A)(ii), is Pub. L. 111-203, July 21, 2010, 124 Stat. 1376. Section 721(c) of the Act is classified to section 8321(b) of Title 15, Commerce and Trade. Section 742 of the Act amended section 2 of this title and provisions set out as a note under section 78c of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

The Investment Company Act of 1940, referred to in subsec. (c)(3)(D), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(G), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (c)(3)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, § 738(b)(1), inserted “or by subsection (e)” after “Unless exempted by the Commission pursuant to subsection (c)” in introductory provisions.

Subsec. (b). Pub. L. 111-203, § 738(a)(1)-(3), designated existing provisions as par. (2), designated the first to third sentences as subpars. (A) to (C), respectively, re-designated former pars. (1) and (2) as cls. (i) and (ii), respectively, of subpar. (C), inserted headings, in subpar. (B), substituted “Rules and regulations described in subparagraph (A)” for “Such rules and regulations”, in the introductory provisions of subpar. (C), substituted “Except as provided in paragraphs (1) and (2), no rule or regulation” for “No rule or regulation” and “that—” for “that”, and, in subpar. (C)(i), substituted “market; or” for “market, or”.

Subsec. (b)(1). Pub. L. 111-203, § 738(a)(4), added par. (1).

Subsec. (c)(1). Pub. L. 111-203, § 721(d), substituted “except that—” for “except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.” and added subpars. (A) and (B).

Subsec. (c)(6). Pub. L. 111-203, § 722(f), added par. (6).

Subsec. (e). Pub. L. 111-203, § 738(b)(2), added subsec. (e).

2000—Subsec. (a)(1). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(3)(A)(i)], substituted “designated or registered by the Commission as a contract market or derivatives transaction execution facility for” for “designated by the Commission as a ‘contract market’ for”.

Subsec. (a)(2). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(A)(ii)], struck out “member of such” after “by or through a”.

Subsec. (a)(3). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(A)(iii)], inserted “or derivatives transaction execution facility” after “contract market”.

Subsec. (c)(1). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(B)(i)], substituted “designated or registered as a contract market or derivatives transaction execution facility” for “designated as a contract market” and “subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title” for “section 2a of this title”.

Subsec. (c)(2)(B)(ii). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(B)(ii)], inserted “or derivatives transaction execution facility” after “contract market”.

1992—Subsec. (a). Pub. L. 102-546, §502(a)(1), substituted “Unless exempted by the Commission pursuant to subsection (c) of this section, it shall be unlawful” for “It shall be unlawful”.

Subsecs. (c), (d). Pub. L. 102-546, §502(a)(2), added subsecs. (c) and (d).

1983—Pub. L. 97-444 amended section generally, combining into subsec. (a) existing provisions of this section together with provisions formerly contained in section 6h(1) of this title, relating to the conduct of offices or places of business anywhere in the United States or its territories that are used for dealing in commodities for future delivery unless such dealings are executed or consummated by or through a member of a contract market, and adding subsec. (b).

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture” and “United States Department of Agriculture”.

1936—Act June 15, 1936, §2, substituted “commodity” for “grain” wherever appearing.

Act June 15, 1936, §4, struck out par. (a) and combined par. (b) with first par.

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 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

§ 6a. Excessive speculation

(a) Burden on interstate commerce; trading or position limits

(1) In general

Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or swaps that perform or

affect a significant price discovery function with respect to registered entities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity, as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as “spreads” or “straddles” or “arbitrage” or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word “arbitrage” in domestic markets shall be defined to mean the same as “spread” or “straddle”. The Commission is authorized to define the term “international arbitrage”.

(2) Establishment of limitations

(A) In general

In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the