

the Commodity Exchange Act [amending this section] shall be implemented—

“(1) without regard to—

“(A) chapter 35 of title 44, United States Code; and

“(B) the notice and comment provisions of section 553 of title 5, United States Code;

“(2) through the promulgation of an interim final rule, pursuant to which public comment will be sought before a final rule is issued; and

“(3) such that paragraph (1) shall apply solely to changes to rules and regulations, or proposed rules and regulations, that are limited to and directly a consequence of such amendments.”

§ 6t. Large swap trader reporting

(a) Prohibition

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

(2) Exception

Paragraph (1) shall not apply if—

(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

(b) Requirements

(1) In general

Books and records described in subsection (a)(2)(B) shall—

(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

(B) be open at all times to inspection and examination by any representative of the Commission; and

(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section 1a(47)(A)(v) of this title), and consistent with the confidentiality and disclosure requirements of section 12 of this title.

(2) Jurisdiction

Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to pre-

scribe recordkeeping and reporting requirements for large swap traders under this section.

(c) Applicability

For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

(d) Significant price discovery function

In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 6a(a)(3) of this title.

(Sept. 21, 1922, ch. 369, §4t, as added Pub. L. 111-203, title VII, §730, July 21, 2010, 124 Stat. 1702.)

EFFECTIVE DATE

Section 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 rule-making, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§ 7. Designation of boards of trade as contract markets

(a) Applications

A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this chapter.

(b) Repealed. Pub. L. 111-203, title VII, § 735(a), July 21, 2010, 124 Stat. 1718

(c) Existing contract markets

A board of trade that is designated as a contract market on December 21, 2000, shall be considered to be a designated contract market under this section.

(d) Core principles for contract markets

(1) Designation as contract market

(A) In general

To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

(i) any core principle described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of contract market

Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(2) Compliance with rules**(A) In general**

The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

- (i) access requirements;
- (ii) the terms and conditions of any contracts to be traded on the contract market; and
- (iii) rules prohibiting abusive trade practices on the contract market.

(B) Capacity of contract market

The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(C) Requirement of rules

The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(3) Contracts not readily subject to manipulation

The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) Prevention of market disruption

The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

- (A) methods for conducting real-time monitoring of trading; and
- (B) comprehensive and accurate trade reconstructions.

(5) Position limitations or accountability**(A) In general**

To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Maximum allowable position limitation

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(6) Emergency authority

The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

- (A) to liquidate or transfer open positions in any contract;

(B) to suspend or curtail trading in any contract; and

(C) to require market participants in any contract to meet special margin requirements.

(7) Availability of general information

The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

- (A) the terms and conditions of the contracts of the contract market; and
- (B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and
- (ii) the rules and specifications describing the operation of the contract market's—
 - (I) electronic matching platform; or
 - (II) trade execution facility.

(8) Daily publication of trading information

The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) Execution of transactions**(A) In general**

The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

(B) Rules

The rules of the board of trade may authorize, for bona fide business purposes—

- (i) transfer trades or office trades;
- (ii) an exchange of—
 - (I) futures in connection with a cash commodity transaction;
 - (II) futures for cash commodities; or
 - (III) futures for swaps; or

(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(10) Trade information

The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

- (A) to assist in the prevention of customer and market abuses; and
- (B) to provide evidence of any violations of the rules of the contract market.

(11) Financial integrity of transactions

The board of trade shall establish and enforce—

- (A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the con-

tract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

(B) rules to ensure—

(i) the financial integrity of any—

- (I) futures commission merchant; and
- (II) introducing broker; and

(ii) the protection of customer funds.

(12) Protection of markets and market participants

The board of trade shall establish and enforce rules—

(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

(B) to promote fair and equitable trading on the contract market.

(13) Disciplinary procedures

The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(14) Dispute resolution

The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

(15) Governance fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

(16) Conflicts of interest

The board of trade shall establish and enforce rules—

(A) to minimize conflicts of interest in the decision-making process of the contract market; and

(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

(17) Composition of governing boards of contract markets

The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

(18) Recordkeeping

The board of trade shall maintain records of all activities relating to the business of the contract market—

(A) in a form and manner that is acceptable to the Commission; and

(B) for a period of at least 5 years.

(19) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall not—

(A) adopt any rule or taking¹ any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading on the contract market.

(20) System safeguards

The board of trade shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(21) Financial resources

(A) In general

The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) Determination of adequacy

The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(22) Diversity of board of directors

The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(23) Securities and Exchange Commission

The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.

(e) Current agricultural commodities

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(9) of this title that is available for trade on a contract market, as of December 21, 2000, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the

¹ So in original. Probably should be "take".

Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, § 5, as added Pub. L. 106-554, § 1(a)(5) [title I, § 110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384; amended Pub. L. 111-203, title VII, §§ 721(e)(4), 735, July 21, 2010, 124 Stat. 1671, 1718.)

PRIOR PROVISIONS

A prior section 7, acts Sept. 21, 1922, ch. 369, § 5, 42 Stat. 1000; June 15, 1936, ch. 545, §§ 2, 6, 49 Stat. 1491, 1497; Pub. L. 90-258, §§ 10, 11, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, § 103(a), (f), (g), title II, § 207, Oct. 23, 1974, 88 Stat. 1392, 1400; Pub. L. 102-546, title II, §§ 201(c), 209(b)(2), Oct. 28, 1992, 106 Stat. 3597, 3606, related to conditions and requirements for designation of boards of trade as contract markets, prior to repeal by Pub. L. 106-554, § 1(a)(5) [title I, § 110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203, § 735(a), struck out subsec. (b) which related to criteria for designation as a contract market.

Subsec. (d). Pub. L. 111-203, § 735(b), added subsec. (d) and struck out former subsec. (d) which related to core principles for contract markets.

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

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.

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

Section, act Sept. 21, 1922, ch. 369, § 5a, as added Pub. L. 106-554, § 1(a)(5) [title I, § 111], Dec. 21, 2000, 114 Stat. 2763, 2763A-387; amended Pub. L. 110-234, title XIII, § 13203(h), May 22, 2008, 122 Stat. 1440; Pub. L. 110-246, § 4(a), title XIII, § 13203(h), June 18, 2008, 122 Stat. 1664, 2202; Pub. L. 111-203, title VII, § 721(e)(5), July 21, 2010, 124 Stat. 1671, related to derivatives transaction execution facilities.

A prior section 7a, act Sept. 21, 1922, ch. 369, § 5a, as added June 15, 1936, ch. 545, § 7, 49 Stat. 1497; amended Pub. L. 90-258, § 12, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, § 103(a), (e), (f), title II, §§ 208-210, title IV, §§ 406, 407, Oct. 23, 1974, 88 Stat. 1392, 1400, 1401, 1413; Pub. L. 95-405, §§ 11, 12, Sept. 30, 1978, 92 Stat. 870, 871; Pub. L. 97-444, title II, §§ 216, 217(a), Jan. 11, 1983, 96 Stat. 2306, 2307; Pub. L. 99-641, title I, § 110(2), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102-546, title I, § 103, title II, §§ 201(a), 206(a)(1), 213(a), 217, 222(a), Oct. 28, 1992, 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615, related to duties of contract markets prior to repeal by Pub. L. 106-554, § 1(a)(5) [title I, § 110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§ 711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as

an Effective Date of 2010 Amendment note under section 1a of this title.

§ 7a-1. Derivatives clearing organizations

(a) Registration requirement

(1) In general

Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

(i) excluded from this chapter by subsection (a)(1)(C)(i), (c), or (f) of section 2 of this title; or

(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(B) a swap.

(2) Exception

Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

(b) Voluntary registration

A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this chapter may register with the Commission as a derivatives clearing organization.

(c) Registration of derivatives clearing organizations

(1) Application

A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) Core principles for derivatives clearing organizations

(A) Compliance

(i) In general

To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(ii) Discretion of derivatives clearing organization

Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organi-