

transactions defined in subparagraph (A) that are not cleared.

(3) Financial Stability Oversight Council

In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) or (2) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with 1 of the Commissions regarding the entirety of the matter or by determining a compromise position.

(4) Joint interpretation

Any interpretation of, or guidance by either Commission regarding, a provision of this title,¹ shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, if this title¹ requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(e) Global rulemaking timeframe

Unless otherwise provided in this title,¹ or an amendment made by this title,¹ the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title¹ or an amendment made by this title¹ not later than 360 days after July 21, 2010.

(f) Rules and registration before final effective dates

Beginning on July 21, 2010, and notwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act,

provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.

(Pub. L. 111–203, title VII, §712, July 21, 2010, 124 Stat. 1641.)

Editorial Notes

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a)(1), (7)(B), is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July

21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

Subtitle B, referred to in subsec. (a)(2), is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted subchapter II of this chapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

The Commodity Exchange Act, referred to in subsecs. (a)(4)(A) and (d)(2)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

This title, where footnoted in subsecs. (a)(8), (b), (d)(1), (2)(A)–(D), (4), and (e), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This Act, referred to in subsec. (f), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act. 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.

Statutory Notes and Related Subsidiaries

DEFINITIONS

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

§ 8303. Abusive swaps

The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, individually may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of—

(A) swap (as defined in section 1a of title 7); or

(B) security-based swap (as defined in section 1a of title 7); and

(2) issue a report with respect to any types of swaps or security-based swaps that the Commodity Futures Trading Commission or the Securities and Exchange Commission determines to be detrimental to—

(A) the stability of a financial market; or

(B) participants in a financial market.

(Pub. L. 111–203, title VII, §714, July 21, 2010, 124 Stat. 1647.)

§ 8304. Authority to prohibit participation in swap activities

Except as provided in section 6 of title 7, if the Commodity Futures Trading Commission or the

Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.

(Pub. L. 111–203, title VII, §715, July 21, 2010, 124 Stat. 1647.)

§ 8305. Prohibition against Federal Government bailouts of swaps entities

(a) Prohibition on Federal assistance

Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) Definitions

In this section:

(1) Federal assistance

The term “Federal assistance” means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 343(3)(A) of title 12, Federal Deposit Insurance Corporation insurance or guarantees for the purpose of—

(A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or

(D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.

(2) Swaps entity

(A) In general

The term “swaps entity” means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, that is registered under—

(i) the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) Exclusion

The term “swaps entity” does not include any major swap participant or major security-based swap participant that is an¹ covered depository institution.

(3) Covered depository institution

The term “covered depository institution” means—

(A) an insured depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) a United States uninsured branch or agency of a foreign bank.

(c) Affiliates of covered depository institutions

The prohibition on Federal assistance contained in subsection (a) does not apply to and

shall not prevent a covered depository institution from having or establishing an affiliate which is a swaps entity, as long as such covered depository institution is part of a bank holding company, savings and loan holding company, or foreign banking organization (as such term is defined under Regulation K of the Board of Governors of the Federal Reserve System (12 CFR 211.21(o))), that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 371c and 371c–1 of title 12 and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

(d) Only bona fide hedging and traditional bank activities permitted

(1) In general

The prohibition in subsection (a) shall not apply to any covered depository institution that limits its swap and security-based swap activities to the following:

(A) Hedging and other similar risk mitigation activities

Hedging and other similar risk mitigating activities directly related to the covered depository institution’s activities.

(B) Non-structured finance swap activities

Acting as a swaps entity for swaps or security-based swaps other than a structured finance swap.

(C) Certain structured finance swap activities

Acting as a swaps entity for swaps or security-based swaps that are structured finance swaps, if—

(i) such structured finance swaps are undertaken for hedging or risk management purposes; or

(ii) each asset-backed security underlying such structured finance swaps is of a credit quality and of a type or category with respect to which the prudential regulators have jointly adopted rules authorizing swap or security-based swap activity by covered depository institutions.

(2) Definitions

For purposes of this subsection:

(A) Structured finance swap

The term “structured finance swap” means a swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities).

(B) Asset-backed security

The term “asset-backed security” has the meaning given such term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(e) Existing swaps and security-based swaps

The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by a covered depository institution after the end of the transition period described in subsection (f).

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