§ 6c. Prohibited transactions

(a) In general

(1) Prohibition

It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) or swap if the transaction is used or may be used to——

(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;
(B) determine the price basis of any such transaction in interstate commerce in the commodity; or
(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

(2) Transaction

A transaction referred to in paragraph (1) is a transaction that——

(A)(i) is, of the character of, or is commonly known to the trade as, a “wash sale” or “accommodation trade”; or
(ii) is a fictitious sale; or
(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

(3) Contract of sale

It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress (as such terms are defined under section 2 of the STOCK Act) or any judicial officer or judicial employee (as such terms are defined, respectively, under section 2 of the STOCK Act) who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into——

(A) a contract of sale of a commodity for future delivery (or option on such a contract);
(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78(f)(a) of Title 15; or
(C) a swap.

(4) Nonpublic information
  (A) Imparting of nonpublic information
  It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into——
    (i) a contract of sale of a commodity for future delivery (or option on such a contract);
    (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78(f)(a) of Title 15; or
    (iii) a swap.
  (B) Knowing use
  It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into——
    (i) a contract of sale of a commodity for future delivery (or option on such a contract);
    (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78(f)(a) of Title 15; or
    (iii) a swap.
  (C) Theft of nonpublic information
  It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government or by Congress or by the judiciary that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it gen-
erally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into——

(i) a contract of sale of a commodity for future delivery (or option on such a contract);
(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of Title 15; or
(iii) a swap, provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, to Congress, any Member of Congress, any employee of Congress, any judicial officer, or any judicial employee, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses\(^1\) (i), (ii), or (iii).

(5) Disruptive practices

It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that——

(A) violates bids or offers;
(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
(C) is, is of the character of, or is commonly known to the trade as, “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution).

(6) Rulemaking authority

The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

(7) Use of swaps to defraud

It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.

(b) Regulated option trading

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advantage guaranty”, or “decline guaranty”, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commis-

\(^1\) So in original. Probably should be “clause”.

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sion shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

(c) Regulations for elimination of pilot status of commodity option transactions; terms and conditions of options trading

Not later than 90 days after November 10, 1986, the Commission shall issue regulations——

(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.

(d) Dealer options exempt from subsections (b) and (c) prohibitions; requirements

Notwithstanding the provisions of subsection (c) of this section——

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection:

Provided, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, if——

(A) the grantor is a person domiciled in the United States who——

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least $5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor’s option if the grantor knows or has reason to believe that the grantor's net worth has fallen below $5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 78c(a)(12) of Title 15), commercial paper, bankers’
acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who——

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer’s name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection, other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: Provided, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission’s judgment present a substantial risk to the public interest.

(e) Rules and regulations

The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.
(f) Nonapplicability to foreign currency options

Nothing in this chapter shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

(g) Oral orders