

**§ 26. Repealed. Pub. L. 102-546, title IV, § 402(15), Oct. 28, 1992, 106 Stat. 3625**

Section, act Sept. 21, 1922, ch. 369, §23, as added Jan. 11, 1983, Pub. L. 97-444, title II, §236, 96 Stat. 2324, provided for special studies to be conducted by Commission, Board of Governors of Federal Reserve System, and Securities and Exchange Commission.

**EFFECTIVE DATE**

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

**§ 27. Definitions**

**(a) Bank**

In sections 27 to 27f of this title, the term “bank” means—

- (1) any depository institution (as defined in section 1813(c) of title 12);
- (2) any foreign bank or branch or agency of a foreign bank (each as defined in section 3101 of title 12);
- (3) any Federal or State credit union (as defined in section 1752 of title 12);
- (4) any corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];
- (5) any corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.];
- (6) any trust company; or
- (7) any subsidiary of any entity described in paragraph<sup>1</sup> (1) through (6) of this subsection, if the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 78c of title 15) or a futures commission merchant (as defined in section 1a(20) of this title).

**(b) Identified banking product**

In sections 27 to 27f of this title, the term “identified banking product” shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of sections 27 to 27f of this title—

- (1) the term “bank” shall have the meaning given in subsection (a) of this section; and
- (2) the term “qualified investor” means eligible contract participant (as defined in section 1a(12) of this title, as in effect on December 21, 2000).

**(c) Hybrid instrument**

In sections 27 to 27f of this title, the term “hybrid instrument” means an identified banking product not excluded by section 27a of this title, offered by a bank, having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities (as defined in section 1a(4) of this title).

**(d) Covered swap agreement**

In sections 27 to 27f of this title, the term “covered swap agreement” means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of this title if—

(1) the swap agreement—

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of this title, as in effect on December 21, 2000) at the time the persons enter into the swap agreement; and  
(B) is not entered into or executed on a trading facility (as defined in section 1a(33)<sup>2</sup> of this title); or

(2) the swap agreement—

(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of this title);  
(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this title;  
(C) is entered into only between persons that are eligible contract participants as described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of this title, as in effect on December 21, 2000, at the time the persons enter into the swap agreement; and  
(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) of this title).

(Pub. L. 106-554, §1(a)(5) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A-457.)

**REFERENCES IN TEXT**

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25 of the Federal Reserve Act, referred to in subsec. (a)(5), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsecs. (b) and (d), is section 206 of Pub. L. 106-102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

Par. (33) of section 1a of this title, referred to in subsec. (d)(1)(B), was redesignated par. (34) by Pub. L. 110-246, title XIII, §13201(a), June 18, 2008, 122 Stat. 2197.

**CODIFICATION**

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

**SHORT TITLE**

For short title of sections 27 to 27f of this title as the “Legal Certainty for Bank Products Act of 2000”, see section 1(a)(5) [title IV, §401] of Pub. L. 106-554, set out as a Short Title of 2000 Amendment note under section 1 of this title.

**§ 27a. Exclusion of identified banking products commonly offered on or before December 5, 2000**

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product if—

- (1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

<sup>1</sup> So in original. Probably should be “paragraphs”.

<sup>2</sup> See References in Text note below.