

stitution, or institution of the Farm Credit System; and

(B) receive funds of customers to serve as margin or security for the transactions.

### (2) Requirements

The requirements referred to in paragraph (1) are that—

(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and

(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

### (3) Implementation

The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to facilitate the implementation of this subsection.

### (f) Segregation of customer funds

Not later than 180 days after December 21, 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the customer that are carried with the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

### (g) Election to trade excluded and exempt commodities

#### (1) In general

Notwithstanding subsection (b)(2) of this section, a board of trade that is or elects to become a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded or exempt commodities other than securities, except contracts of sale for future delivery of exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, that are otherwise excluded from this chapter under section 2(c), 2(d), or 2(g) of this title, or exempt under section 2(h) of this title.

#### (2) Exclusive jurisdiction of the Commission

The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the ex-

tent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.

(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.)

#### REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(D)(ii), 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, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

#### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

#### PRIOR PROVISIONS

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.

#### AMENDMENTS

2008—Subsec. (d)(4) to (10). Pub. L. 110-246, §13203(h), added par. (4) and redesignated former pars. (4) to (9) as (5) to (10), respectively.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(h) of Pub. L. 110-246 effective June 18, 2008, see section 13204(a) of Pub. L. 110-246, set out as a note under section 2 of this title.

### § 7a-1. Derivatives clearing organizations

#### (a) Registration requirement

It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, 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 described in section 1a(9) of this title with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option—

(1) is excluded from this chapter by section 2(a)(1)(C)(i), 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title; or

(2) is a security futures product cleared by a clearing agency registered under the Securi-

ties Exchange Act of 1934 [15 U.S.C. 78a et seq.].

**(b) Voluntary registration**

A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this chapter by section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) 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**

**(A) In general**

To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

**(B) Financial resources**

The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

**(C) Participant and product eligibility**

The applicant shall establish—

(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

**(D) Risk management**

The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

**(E) Settlement procedures**

The applicant shall have the ability to—

(i) complete settlements on a timely basis under varying circumstances;

(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

**(F) Treatment of funds**

The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

**(G) Default rules and procedures**

The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

**(H) Rule enforcement**

The applicant shall—

(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

**(I) System safeguards**

The applicant shall demonstrate that the applicant—

(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

**(J) Reporting**

The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

**(K) Recordkeeping**

The applicant shall maintain records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

**(L) Public information**

The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

**(M) Information-sharing**

The applicant shall—

(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

(ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

**(N) Antitrust considerations**

Unless appropriate to achieve the purposes of this chapter, the derivatives clearing organization shall avoid—

- (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or
- (ii) imposing any material anticompetitive burden on trading on the contract market.

**(3) Orders concerning competition**

A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this chapter.

**(d) Existing derivatives clearing organizations**

A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before December 21, 2000.

**(e) Appointment of trustee****(1) In general**

If a proceeding under section 7b of this title results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

**(2) Assumption of jurisdiction**

If the Commission applies for appointment of a trustee under paragraph (1)—

- (A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and
- (B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

**(f) Linking of regulated clearing facilities****(1) In general**

The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions.

**(2) Coordination**

In carrying out paragraph (1), the Commission shall coordinate with the Federal banking

agencies and the Securities and Exchange Commission.

(Sept. 21, 1922, ch. 369, §5b, as added Pub. L. 106-554, §1(a)(5) [title I, §112(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-396.)

## REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(2), 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, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b), is Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2236, as amended. For definition of over-the-counter derivative instrument, see section 4421 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12 and Tables.

## PRIOR PROVISIONS

A prior section 5b of act Sept. 21, 1922, was renumbered section 5e, and is classified to section 7b of this title.

**§ 7a-2. Common provisions applicable to registered entities****(a) Acceptable business practices under core principles****(1) In general**

Consistent with the purposes of this chapter, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 7(d), 7a(d), and 7a-1(c)(2) of this title, and section 2(h)(7) of this title with respect to significant price discovery contracts, to describe what would constitute an acceptable business practice under such sections.

**(2) Effect of interpretation**

An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

**(b) Delegation of functions under core principles****(1) In general**

A contract market, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.

**(2) Responsibility**

A contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

**(3) Noncompliance**

If a contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this chapter, the contract market, derivatives