

**(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

transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.

**(c) New contracts, new rules, and rule amendments**

**(1) In general**

Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

**(2) Prior approval**

**(A) In general**

A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

**(B) Prior approval required**

Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) of this title (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

**(C) Deadline**

If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

**(3) Approval**

The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this chapter.

**(d) Violation of core principles**

**(1) In general**

If the Commission determines, on the basis of substantial evidence, that a registered entity is violating any applicable core principle specified in section 7(d), 7a(d), or 7a-1(c)(2) or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility,<sup>1</sup> the Commission shall—

(A) notify the registered entity in writing of the determination; and

(B) afford the registered entity an opportunity to make appropriate changes to bring the registered entity into compliance with the core principles.

**(2) Failure to make changes**

If, not later than 30 days after receiving a notification under paragraph (1), a registered entity fails to make changes that, in the opinion of the Commission, are necessary to comply with the core principles, the Commission may take further action in accordance with this chapter.

**(e) Reservation of emergency authority**

Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 12a(9) of this title.

**(f) Rules to avoid duplicative regulation of dual registrants**

Consistent with this chapter, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof) with respect to the application of—

(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 6d(c) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o-3(a) of title 15 and national securities exchanges registered pursuant to section 78f(g) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, § 5c, as added and amended Pub. L. 106-554, §1(a)(5) [title I, §113, title II, §251(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-399, 2763A-444; Pub. L. 110-234, title XIII, §§13105(e), (f), 13203(i)-(k), May 22, 2008, 122 Stat. 1434, 1440, 1441; Pub. L. 110-246, §4(a), title XIII, §§13105(e), (f), 13203(i)-(k), June 18, 2008, 122 Stat. 1664, 2196, 2202, 2203.)

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.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-246, §13203(i), which directed amendment of par. (1) by inserting “, and section 2(h)(7) of this title with respect to significant price discovery contracts,” after “, and 7a-1(d)(2) of this title”, was executed by making the insertion after “, and 7a-1(c)(2) of this title” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, §13105(e). See below.

Pub. L. 110-246, §13105(e), substituted “7a-1(c)(2)” for “7a-1(d)(2)”.

Subsec. (b)(1). Pub. L. 110-246, §13203(j)(1), added par. (1) and struck out heading and text of former par. (1).

<sup>1</sup> So in original.

Text read as follows: “A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.”

Subsec. (b)(2), (3). Pub. L. 110-246, §13203(j)(2), (3), substituted “contract market, derivatives transaction execution facility, or electronic trading facility” for “contract market or derivatives transaction execution facility” wherever appearing.

Subsec. (d)(1). Pub. L. 110-246, §13203(k), which directed amendment of par. (1) by inserting “or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility,” after “7a-1(d)(2)”, was executed by making the insertion after “7a-1(c)(2)” in introductory provisions to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, §13105(e). See below.

Pub. L. 110-246, §13105(e), substituted “7a-1(c)(2)” for “7a-1(d)(2)” in introductory provisions.

Subsec. (f)(1). Pub. L. 110-246, §13105(f), substituted “6d(c)” for “6d(3)”.

2000—Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §251(h)], added subsec. (f).

#### 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(i)–(k) 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-3. Exempt boards of trade

#### (a) Election to register with the Commission

A board of trade that meets the requirements of subsection (b) of this section may operate as an exempt board of trade on receipt from the board of trade of a notice, provided in such manner as the Commission may by rule or regulation prescribe, that the board of trade elects to operate as an exempt board of trade. Except as otherwise provided in this section, no provision of this chapter (other than subparagraphs (C) and (D) of sections 2(a)(1) and 16(e)(2)(B) of this title) shall apply with respect to a contract of sale of a commodity for future delivery (or option on such a contract) traded on or through the facilities of an exempt board of trade.

#### (b) Criteria for exemption

To qualify for an exemption under subsection (a) of this section, a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts or on a commodity)—

(1) for which the underlying commodity has—

(A) a nearly inexhaustible deliverable supply;

(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

(C) no cash market;

(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

(3) that are not contracts of sale (or options on such a contract or on a commodity) for future delivery of any security, including any group or index of securities or any interest in, or based on the value of, any security or any group or index of securities.

#### (c) Antimanipulation requirements

A party to a contract of sale of a commodity for future delivery (or option on such a contract or on a commodity) that is traded on an exempt board of trade shall be subject to sections 6b, 6c(b), 6o, 9, 15, and 13(a)(2) of this title, and the Commission shall enforce those provisions with respect to any such trading.

#### (d) Price discovery

If the Commission finds that an exempt board of trade is a significant source of price discovery for transactions in the cash market for the commodity underlying any contract, agreement, or transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

#### (e) Jurisdiction

The Commission shall have exclusive jurisdiction over any account, agreement, contract, or transaction involving a contract of sale of a commodity for future delivery, or option on such a contract or on a commodity, to the extent that the account, agreement, contract, or transaction is traded on an exempt board of trade.

#### (f) Subsidiaries

A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.

#### (g) Misrepresentation of status

An exempt board of trade that meets the requirements of subsection (b) of this section shall not represent to any person that the board of trade is registered with, or designated, recognized, licensed, or approved by the Commission. (Sept. 21, 1922, ch. 369, §5d, as added Pub. L. 106-554, §1(a)(5) [title I, §114], Dec. 21, 2000, 114 Stat. 2763, 2763A-401.)

### § 7b. Suspension or revocation of designation as registered entity

The failure of a registered entity to comply with any provision of this chapter, or any regulation or order of the Commission under this chapter, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity, or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract, in accordance with the procedures and subject to the judicial review provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §5e, formerly §5b, as added June 15, 1936, ch. 545, §7, 49 Stat. 1498;