

**(iii) Study on impact of FOIA exemption on Commodity Futures Trading Commission**

**(I) Study**

The Inspector General of the Commission shall conduct a study—

(aa) on whether the exemption under section 552(b)(3) of title 5 (known as the Freedom of Information Act) established in paragraph (2)(A) aids whistleblowers in disclosing information to the Commission;

(bb) on what impact the exemption has had on the public's ability to access information about the Commission's regulation of commodity futures and option markets; and

(cc) to make any recommendations on whether the Commission should continue to use the exemption.

**(II) Report**

Not later than 30 months after July 21, 2010, the Inspector General shall—

(aa) submit a report on the findings of the study required under this clause to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives; and

(bb) make the report available to the public through publication of a report on the website of the Commission.

**(3) Rights retained**

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

**(i) Rulemaking authority**

The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

**(j) Implementing rules**

The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after July 21, 2010.

**(k) Original information**

Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after July 21, 2010.

**(l) Awards**

A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this chapter, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to July 21, 2010.

**(m) Provision of false information**

A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18.

**(n) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes**

**(1) Waiver of rights and remedies**

The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

**(2) Predispute arbitration agreements**

No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

(Sept. 21, 1922, ch. 369, §23, as added Pub. L. 111-203, title VII, §748, July 21, 2010, 124 Stat. 1739.)

PRIOR PROVISIONS

A prior section 26, 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, prior to repeal by Pub. L. 102-546, title IV, §402(15), Oct. 28, 1992, 106 Stat. 3625.

EFFECTIVE DATE

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§ 711-754) of title VII of Pub. L. 111-203 requires a rule-making, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1a 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

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

dealer (as such terms are defined in section 78c of title 15) or a futures commission merchant (as defined in section 1a 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 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 of this title).

(Pub. L. 106-554, §1(a)(5) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A-457; Pub. L. 111-203, title VII, §§721(e)(9), 725(g)(1)(B), July 21, 2010, 124 Stat. 1672, 1694.)

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 subsec. (b), is section 206 of Pub. L. 106-102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

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.

AMENDMENTS

2010—Subsec. (a)(7). Pub. L. 111-203, §721(e)(9)(A), substituted “section 1a” for “section 1a(20)”.

Subsec. (b)(2). Pub. L. 111-203, §721(e)(9)(B), substituted “section 1a” for “section 1a(12)”.

Subsec. (c). Pub. L. 111-203, §721(e)(9)(C), substituted “section 1a” for “section 1a(4)”.

Subsec. (d). Pub. L. 111-203, §725(g)(1)(B), struck out subsec. (d) which defined covered swap agreement.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

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 product**

**(a) Exclusion**

Except as provided in subsection (b) or (c)—

(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

(2) the definitions of “security-based swap” in section 3(a)(68) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68)] and “security-based swap agreement” in section 1a(47)(A)(v) of the Commodity Exchange Act [7 U.S.C. 1a(47)(A)(v)] and section 3(a)(78) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(78)] do not include any identified bank product.

**(b) Exception**

An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

(1) would meet the definition of a “swap” under section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a[47]) or a “security-based swap” under that<sup>1</sup> section 3(a)(68) of the Securities Exchange Act of 1934; and

(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

**(c) Exception**

The exclusions in subsection (a) shall not apply to an identified bank product that—

(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

(2) meets the definition of swap in section 1a(47) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(Pub. L. 106-554, §1(a)(5) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A-458; Pub. L. 111-203, title VII, §725(g)(2), July 21, 2010, 124 Stat. 1694.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a)(1), (b)(2), and (c)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(2) and (c)(3), is title I of act May 27, 1933, ch. 38, 48

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