

2008—Pub. L. 110-246, §13102, inserted section catchline, added subsecs. (a) and (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and struck out former subsec. (a) which related to contracts designed to defraud or mislead and bucketing orders.

2000—Subsec. (a)(1). Pub. L. 106-554 substituted “registered entity” for “contract market” in two places.

1992—Pub. L. 102-546 designated first par. as subsec. (a), redesignated cls. (a) to (c) as subpars. (A) to (C), respectively, and subpars. (A) to (D) as cls. (i) to (iv), respectively, and designated second and third undesignated pars. as subsecs. (b) and (c), respectively.

1986—Pub. L. 99-641 struck out “on or subject to the rules of any contract market,” after “to be made” in cl. (2) of first par. and added concluding paragraph that this section not apply to activity on board of trade, exchange, market, or clearinghouse located outside United States involving contract of sale of commodity for future delivery.

1974—Pub. L. 93-463 substituted “a commodity” for “cotton” in provisions following subpar. (D) and inserted requirement that execution of buying and selling orders for commodities held simultaneously by the same merchant or broker be carried out in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

1968—Pub. L. 90-258 relocated cl. (1) designation in first par. to follow “unlawful” rather than to precede “any contract of sale”, provided in such cl. (1) for orders to make or making of contracts of sale “made, or to be made on or subject to the rules of any contract market, for or on behalf of any other person” and in cl. (2) “for any person, in or in connection with any order to make, or the making of,” any contract of sale of any commodity for future delivery for or on behalf of any “other” person; and inserted “other” before “person” in subpar. (A) and in subpars. (B) and (C) where appearing for first time, respectively.

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.

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, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6b-1. Enforcement authority

(a) Commodity Futures Trading Commission

Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive author-

ity to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

(b) Prudential regulators

The prudential regulators shall have exclusive authority to enforce the provisions of section 6s(e) of this title with respect to swap dealers or major swap participants for which they are the prudential regulator.

(c) Referrals

(1) Prudential regulators

If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this chapter (including section 6s of this title or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

(A) a request that the Commission initiate an enforcement proceeding under this chapter; and

(B) an explanation of the facts and circumstances that led to the preparation of the written report.

(2) Commission

If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 6s of this title or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

(A) a request that the prudential regulator initiate an enforcement proceeding under this chapter or any other Federal law (including regulations); and

(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

(d) Backstop enforcement authority

(1) Initiation of enforcement proceeding by prudential regulator

If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

(2) Initiation of enforcement proceeding by Commission

If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.

(Sept. 21, 1922, ch. 369, §4b-1, as added Pub. L. 111-203, title VII, §741(a), July 21, 2010, 124 Stat. 1729.)

REFERENCES IN TEXT

Subtitle A of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a), is subtitle A (§§ 711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of this title and subchapter I (§§ 8301 et seq.) of chapter 109 and section 78c–2 of Title 15, Commerce and Trade, amended sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of this title, section 761 of Title 11, Bankruptcy, sections 4421 and 4422 of Title 12, Banks and Banking, and sections 78f, 78o, and 78s of Title 15, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of this title, and amended provisions set out as a note under section 78c of Title 15. For complete classification of subtitle A to the Code, see Tables.

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.

§ 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 who, by virtue of the employment or position of the 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 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 78f(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 who, by virtue of the employment or position of the 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 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 78f(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 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 78f(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 that may affect or tend to affect the price of any commodity in