

The Commission shall not approve any such application if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements set forth in clause (ii) of this subparagraph. Such determination shall be made by order no later than forty-five days after the close of the public comment period under clause (iii) of this subparagraph. In the event of such determination, the board of trade shall be afforded an opportunity for a hearing on the record before the Securities and Exchange Commission. If a board of trade requests a hearing on the record, the hearing shall commence no later than thirty days following the receipt of the request, and a final determination shall be made no later than thirty days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review thereof in the same manner and under such terms and conditions as are provided in section 8(b) of this title.

(v) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 77c of title 15 or section 78c(a)(12) of title 15 as in effect on January 11, 1983 (other than any municipal security as defined in section 78c(a)(29) of title 15 on January 11, 1983), or except as provided in clause (ii) of this subparagraph, any group or index of such securities or any interest therein or based on the value thereof.

(vi)(I) Notwithstanding any other provision of this chapter, any contract market in a stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for the stock index futures contract (or option thereon).

(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this clause only to the Commission.

(IV) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 12a(9) of this title to direct a contract market, on finding an emergency to exist, to raise temporary emergency margin levels on any futures contract or option on the contract covered by this clause.

(V) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III,<sup>1</sup> under this clause

directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(Sept. 21, 1922, ch. 369, §2(a)(1)(B), as added Jan. 11, 1983, Pub. L. 97-444, title I, §101(a)(3), 96 Stat. 2294; amended Nov. 10, 1986, Pub. L. 99-641, title I, §110(1), 100 Stat. 3561; Oct. 28, 1992, Pub. L. 102-546, title II, §209(b)(1), title V, §501, 106 Stat. 3606, 3628.)

#### REFERENCES IN TEXT

Section 9 of this title and sections 8 and 9 of this title, referred to in par. (iv)(I), were in the original "section 6(c) of this Act" and "section 6 of this Act", respectively, meaning section 6 of act Sept. 21, 1922, ch. 369, which is classified to sections 8, 9, 9a, 13b, and 15 of this title. See Codification note set out under section 8 of this title.

#### CODIFICATION

Section is comprised of subsec. (a)(1)(B) of section 2 of the Commodity Exchange Act, act Sept. 21, 1922. Subsec. (a)(1)(A) is classified to sections 2 and 4 of this title. Subsec. (a)(2) to (11) of section 2 of the Commodity Exchange Act is classified to section 4a of this title. Subsec. (b) of section 2 of the Commodity Exchange Act is classified to section 3 of this title.

#### AMENDMENTS

1992—Par. (iv)(I). Pub. L. 102-546, §209(b)(1)(A), made technical amendment to reference to section 9 of this title appearing in penultimate sentence to reflect change in reference to corresponding section of original act.

Par. (iv)(II). Pub. L. 102-546, §209(b)(1)(B), substituted "section 8(b)" for "section 8".

Par. (vi). Pub. L. 102-546, §501, added par. (vi).

1986—Par. (iv)(I). Pub. L. 99-641 substituted "Securities and Exchange Commission" for "Securities Exchange Commission" before "otherwise agree".

#### 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.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6, 7a, 18, 21, 25 of this title.

### § 3. Transaction in interstate commerce

For the purposes of this chapter (but not in any wise limiting the definition of interstate commerce in section 2 of this title) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State, with the expectation that

<sup>1</sup> So in original. Probably should be subclause "(III)".

they will end their transit, after purchase, in another, including in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this section the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(Sept. 21, 1922, ch. 369, §2(b), 42 Stat. 998; June 15, 1936, ch. 545, §2, 49 Stat. 1491.)

#### CODIFICATION

Section is comprised of subsec. (b) of section 2 of the Commodity Exchange Act, act Sept. 21, 1922. Part of subsec. (a) of such section 2 is classified to section 2 and the remainder of such subsec. (a) is classified to sections 2a, 4, and 4a of this title.

#### AMENDMENTS

1936—Act June 15, 1936, substituted "commodity" and "commodities", as the case may require, for "grain" wherever appearing.

#### EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

#### CROSS REFERENCES

Interstate commerce defined, see section 2 of this title.

Power of Congress to regulate interstate commerce, see Const. Art. I, §8, cl. 3.

### § 4. Liability of principal for act of agent

For the purpose of this chapter the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(Sept. 21, 1922, ch. 369, §2(a)(1)(A)(iii), formerly §2(a), 42 Stat. 998; renumbered §2(a)(1), Oct. 23, 1974, Pub. L. 93-463, title I, §101(a)(1), 88 Stat. 1389; renumbered §2(a)(1)(A), Jan. 11, 1983, Pub. L. 97-444, title I, §101(a)(1), 96 Stat. 2294; renumbered §2(a)(1)(A)(iii), Oct. 28, 1992, Pub. L. 102-546, title IV, §404(b)(6), 106 Stat. 3628.)

#### CODIFICATION

Section is comprised of part of subsec. (a)(1)(A)(iii) of section 2 of the Commodity Exchange Act, act Sept. 21, 1922. Subsec. (a)(1)(A)(i), (ii) is classified to section 2 of this title. Subsec. (a)(1)(B) is classified to section 2a of this title. Subsecs. (a)(2) to (11) of section 2 of the Commodity Exchange Act are classified to section 4a of this title. Subsec. (b) of section 2 of the Commodity Exchange Act is classified to section 3 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7a, 18, 21, 25 of this title.

### § 4a. Commodity Futures Trading Commission

#### (a) Establishment; composition; term of Commissioners

(1) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this chapter; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.

Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(2) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

#### (b) Vacancies

A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

#### (c) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings