

(Sept. 21, 1922, ch. 369, §4h, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 97-444, title II, §210, Jan. 11, 1983, 96 Stat. 2302.)

#### AMENDMENTS

1983—Pub. L. 97-444 struck out provisions formerly designated as par. (1) relating to conduct of offices or places of business anywhere in the United States or its territories that were used for dealing in commodities for future delivery unless such dealings were executed or consummated by or through a member of a contract market, which provisions were transferred to section 6(a) of this title, and broadened remaining provisions, formerly designated as par. (2), to prohibit false representations that a person is registered with the Commission in any capacity, and not only as a futures commission merchant, as previously provided.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, 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.

#### CROSS REFERENCES

Punishment for violating the provisions of this section, see section 13 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13 of this title.

### **§ 6i. Reports of deals equal to or in excess of trading limits; books and records; cash and controlled transactions**

It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market—

(1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of

Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

(Sept. 21, 1922, ch. 369, § 4i, as added June 15, 1936, ch. 545, § 5, 49 Stat. 1496; amended Pub. L. 90-258, § 9, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93-463, title I, § 103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97-444, title II, § 211, Jan. 11, 1983, 96 Stat. 2303.)

#### AMENDMENTS

1983—Pub. L. 97-444 amended section generally by substantially restating provisions and inserting requirement that persons whose transactions and positions in any cash commodity or commodity future are equal to or in excess of amounts fixed by the Commission, must keep books and records of such transactions and positions as well as books and records of any such commodity traded on or subject to rules of any other board of trade, whether or not such person is required to file reports with the Commission concerning such transactions and positions.

1974—Pub. L. 93-463 substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

1968—Pub. L. 90-258 required recordkeeping of positions and of cash or spot transactions in commodities entered into, and inventories and purchase and sale commitments of commodities held, in any month in which reports are required to be kept, including details concerning positions, inventories, and commitments, and included controlled transactions and positions in the futures and cash or spot transactions and positions of any person.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 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.

#### CROSS REFERENCES

Punishment for violating the provisions of this section, see section 13 of this title.

### **§ 6j. Regulation of trades and executions**

#### **(a) Dual trading prohibited; exemptions**

(1) The Commission shall issue regulations to prohibit the privilege of dual trading on each contract market which has not been exempted from such regulations under paragraph (3). The regulations issued by the Commission under this paragraph—

(A) shall provide that the prohibition of dual trading thereunder shall take effect not less than thirty days after the issuance of the regulations;

(B) shall provide for exceptions, as the Commission determines necessary and appropriate,

to ensure fairness and orderly trading in affected contract markets, including—

- (i) transition measures and a reasonable phase-in period,
- (ii) exceptions for spread transactions and the correction of trading errors,
- (iii) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this paragraph, and
- (iv) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest;

(C) shall establish procedures for the application for and issuance of exemptions under paragraph (3) which, among other things, shall specify the relevant data required to be submitted by the board of trade with each application;

(D) shall specify the methodology by which it shall determine the average daily trading volume on a contract market for purposes of paragraph (4) based on a moving daily average of either six or twelve months; and

(E) shall establish an expeditious procedure to revoke an exemption granted under paragraph (3) providing sufficient notice, opportunity for hearing, and findings to assure fundamental fairness.

(2) As used in this section, the term “dual trading” means the execution of customer orders by a floor broker during any trading session in which the floor broker executes any trade in the same contract market for—

- (A) the account of such floor broker;
- (B) an account for which such floor broker has trading discretion; or
- (C) an account controlled by a person with whom such floor broker is subject to trading restrictions under subsection (d) of this section.

(3) The Commission shall exempt a contract market from the regulations issued under paragraph (1), either unconditionally or on stated conditions (including stated periods of time) relevant to the attainment or maintenance of compliance with the standards in subparagraphs (A) and (B), upon finding that—

- (A) the trade monitoring system in place at the contract market satisfies the requirements of section 7a(b) of this title with regard to violations attributable to dual trading at such contract market; or
- (B)(i) there is a substantial likelihood that a dual trading suspension would harm the public interest in hedging or price basing at such contract market, and
- (ii) other corrective actions, such as those described in section 12e of this title, are sufficient and appropriate to bring the contract market into compliance with the standard in subparagraph (A).

(4)(A) The regulations issued by the Commission under paragraph (1) shall not apply to any

contract market in which the Commission determines that the average daily trading volume is less than the threshold trading level established for the contract market under this paragraph.

(B) The threshold trading level shall be set initially at eight thousand contracts.

(C) The Commission may, by rule or order—

- (i) increase, or
- (ii) at any time following the date three years after October 28, 1992, decrease,

the threshold trading level for specific contract markets after taking into consideration the actual or potential effects of a dual trading ban on the public interest in hedging or price basing at the affected contract market.

(D) The Commission shall provide the affected contract market with adequate notice of any such increase or decrease.

(5) Before the Commission denies an application for an exemption under paragraph (3) or exempts a contract market subject to conditions, it shall—

(A) provide the affected board of trade with notice of the reason or reasons that the application was not approved as submitted, including—

- (i) any reason the Commission has to believe that the trade monitoring system in place at the contract market does not satisfy the requirements of paragraph (3)(A) and the basis for such reason;
- (ii) any corrective action or actions, such as those described in section 12e of this title, that the Commission believes the affected contract market must take to satisfy the requirements of paragraph (3)(A), and an acceptable timetable for such corrective action; and
- (iii) any conditions or limitations that the Commission proposes to attach to the exemption under paragraph (3);

(B) provide the affected board of trade with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the board of trade, through an oral presentation of views and comments to the Commission, in order to make the demonstration required under paragraph (3) or otherwise to petition the Commission with respect to its application; and

(C) make findings, based on the information, views, and arguments placed before it in connection with the application, as to whether—

- (i) the standard in either paragraph (3)(A) or (3)(B) applies, and
- (ii) any conditions or limitations which the Commission proposes to attach under paragraph (3) are appropriate in light of the purposes of this subsection.

The Commission shall publish in the Federal Register notice of any exemptive petitions filed under paragraph (3) and any proposed or final actions the Commission may take on such petitions. Unless the Commission determines that more immediate action is appropriate in the public interest, any Commission order denying an application or exempting a contract market conditionally shall not take effect for at least twenty days following the issuance of the order.

(6) Violation of an order issued under this subsection shall be considered a violation of an order of the Commission for purposes of—

(i) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 13a or 13a-1 of this title; or

(ii) initiating proceedings under section 7b or 8(a) of this title.

(7) Any board of trade which has applied to the Commission to exempt a contract market from the regulations issued under paragraph (1) may obtain judicial review of any final action of the Commission to deny such application, to issue an exemption subject to conditions, or to revoke an exemption, only in the United States Court of Appeals for the circuit in which 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, under the standards applicable to rulemaking proceedings under section 553 of title 5.

(8)(A) The Commission shall issue the regulations required under paragraph (1) not later than two hundred and seventy days after October 28, 1992. If, prior to the effective date of the prohibition on dual trading under such regulations, a board of trade submits to the Commission an application for an exemption for a contract market under paragraph (3), the Commission shall not apply the prohibition against dual trading under paragraph (1) to the contract market until the Commission has approved or denied the application.

(B) The Commission shall approve or deny any application for an exemption under paragraph (3) within seventy-five days after receipt of the application, or as soon as practicable.

**(b) Trades and executions by floor brokers**

If, in addition to the regulations issued pursuant to subsection (a) of this section, the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a) of this section, the Commission shall make a determination, after notice and opportunity for hearing, whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted: *Provided*, That any such determination shall, at a minimum, take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

**(c) Trades by futures commission merchants**

The Commission shall within nine months after the effective date of the Commodity Fu-

tures Trading Commission Act of 1974, and subsequently when it determines that changes are required, make a determination, after notice and opportunity for hearing, whether or not a futures commission merchant may trade for its own account or any proprietary account, as defined by the Commission, and if the Commission determines that such trades shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades shall be conducted: *Provided*, That any such determination, at a minimum, shall take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

**(d) Restrictions on trading among members of broker associations**

(1) Except as provided in paragraph (2), a floor broker may not execute an order of a customer if such floor broker knows the opposite party to the transaction to be a floor broker or floor trader with whom such trader or broker has a relationship involving trading on such contract market as—

(A) a partner in a partnership;

(B) an employer or employee; or

(C) Such<sup>1</sup> other affiliation as the Commission may specify by rule.

(2) Paragraph (1) shall not apply—

(A) if the Commission has adopted rules that the Commission certifies to Congress require procedures and standards designed to prevent violations of this chapter attributable to the trading described in paragraph (1); or

(B) to any contract market that has implemented rules designed to prevent violations of this chapter attributable to the trading described in paragraph (1), except that, if the Commission determines, by rule or order, that such rules are not adequate to prevent such violations, paragraph (1) shall become effective with respect to such contract market after a reasonable period determined by the Commission.

(Sept. 21, 1922, ch. 369, §4j, as added Pub. L. 93-463, title II, §203, Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 94-16, §2, Apr. 16, 1975, 89 Stat. 77; Pub. L. 102-546, title I, §§101, 102(a), Oct. 28, 1992, 106 Stat. 3591, 3594.)

REFERENCES IN TEXT

For the effective date of the Commodity Futures Trading Commission Act of 1974, referred to in subsec. (c), see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-546, §101(a)(3), added subsec. (a).

Subsec. (b). Pub. L. 102-546, §101(a)(1), (2), redesignated par. (1) as subsec. (b) and substituted "If, in addi-

<sup>1</sup> So in original. Probably should not be capitalized.

tion to the regulations issued pursuant to subsection (a) of this section, the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a) of this section, the Commission shall” for “The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required.”

Subsec. (c). Pub. L. 102-546, §101(a)(1), redesignated par. (2) as subsec. (c).

Subsec. (d). Pub. L. 102-546, §102(a), added subsec. (d). 1975—Pub. L. 94-16 substituted “nine months” for “six months” in pars. (1) and (2).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(b) of Pub. L. 102-546 provided that: “The amendment made by subsection (a) [amending this section] shall become effective two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992].”

#### EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7a, 12e of this title.

### **§ 6k. Registration of associates of futures commission merchants, commodity pool operators, and commodity trading advisors; required disclosure of disqualifications**

(1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers’ orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this paragraph.

(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity

pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client’s or prospective client’s discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

(5) It shall be unlawful for any registrant to permit a person to become or remain an associ-