

classification], the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law.”

[For definitions of “appropriate Federal banking agency” and “State” as used in section 743 of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

**§ 1b. Requirements of Secretary of the Treasury regarding exemption of foreign exchange swaps and foreign exchange forwards from definition of the term “swap”**

**(a) Required considerations**

In determining whether to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term “swap”, the Secretary of the Treasury (referred to in this section as the “Secretary”) shall consider—

(1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

(2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this chapter for other classes of swaps;

(3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

(4) the extent of adequate payment and settlement systems; and

(5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.

**(b) Determination**

If the Secretary makes a determination to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term “swap”, the Secretary shall submit to the appropriate committees of Congress a determination that contains—

(1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and

(2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status.

**(c) Effect of determination**

A determination by the Secretary under subsection (b) shall not exempt any foreign exchange swaps and foreign exchange forwards traded on a designated contract market or swap execution facility from any applicable antifraud and antimanipulation provision under this chapter.<sup>1</sup>

(Sept. 21, 1922, ch. 369, §1b, as added Pub. L. 111-203, title VII, §722(h), July 21, 2010, 124 Stat. 1674.)

<sup>1</sup> See References in Text note below.

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this title”, and was translated as reading “this Act”, meaning act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to this chapter, to reflect the probable intent of Congress, because act Sept. 21, 1922, does not contain titles.

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.

**§ 2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce**

**(a) Jurisdiction of Commission; Commodity Futures Trading Commission**

**(1) Jurisdiction of Commission**

**(A) In general**

The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

**(B) Liability of principal for act of agent**

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.