

(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 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 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 paragraph¹ (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 dealer (as such terms are defined in section 78c of title 15) or a futures commission merchant (as defined in section 1a(20) 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(12) 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(4) of this title).

(d) Covered swap agreement

In sections 27 to 27f of this title, the term “covered swap agreement” means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of this title if—

(1) the swap agreement—

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of this title, as in effect on December 21, 2000) at the time the persons enter into the swap agreement; and
(B) is not entered into or executed on a trading facility (as defined in section 1a(33)² of this title); or

(2) the swap agreement—

(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of this title);

(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this title;

(C) is entered into only between persons that are eligible contract participants as described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of this title, as in effect on December 21, 2000, at the time the persons enter into the swap agreement; and

(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) 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.)

AMENDMENT OF SECTION

Pub. L. 111-203, title VII, §§721(e)(9), 725(g)(1)(B), 754, July 21, 2010, 124 Stat. 1672, 1694, 1754, provided that, 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, this section is amended as follows:

- (1) in subsection (a)(7), by striking “section 1a(20)” and inserting “section 1a”;
- (2) in subsection (b)(2), by striking “section 1a(12)” and inserting “section 1a”;
- (3) in subsection (c), by striking “section 1a(4)” and inserting “section 1a”; and
- (4) by striking subsection (d).

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

Par. (33) of section 1a of this title, referred to in subsec. (d)(1)(B), was redesignated par. (34) by Pub. L. 110-246, title XIII, §13201(a), June 18, 2008, 122 Stat. 2197.

¹ So in original. Probably should be “paragraphs”.

² See References in Text note below.

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.

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 products commonly offered on or before December 5, 2000

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product if—

(1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

(2) the product was not prohibited by the Commodity Exchange Act [7 U.S.C. 1 et seq.] and not regulated by the Commodity Futures Trading Commission as a contract of sale of a commodity for future delivery (or an option on such a contract) or an option on a commodity, on or before December 5, 2000.

(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.)

AMENDMENT OF SECTION

Pub. L. 111-203, title VII, §§ 725(g)(2), 754, July 21, 2010, 124 Stat. 1694, 1754, provided that, 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, this section is amended to read as follows:

§ 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 and “security-based swap agreement” in section 1a(47)(A)(v) of the Commodity Exchange Act

and section 3(a)(78) of the Securities Exchange Act of 1934 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) or a “security-based swap” under that 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.).

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, 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.

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.

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.

§ 27b. Exclusion of certain identified banking products offered by banks after December 5, 2000

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not