

(§§ 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.

§ 6s. Registration and regulation of swap dealers and major swap participants

(a) Registration

(1) Swap dealers

It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) Major swap participants

It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) Requirements

(1) In general

A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) Contents

(A) In general

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) Continual reporting

A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) Expiration

Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) Rules

Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

(5) Transition

Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after July 21, 2010.

(6) Statutory disqualification

Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable

care should have known, of the statutory disqualification.

(c) Dual registration

(1) Swap dealer

Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

(2) Major swap participant

Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

(d) Rulemakings

(1) In general

The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

(2) Exception for prudential requirements

(A) In general

The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

(B) Applicability

Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) Capital and margin requirements

(1) In general

(A) Swap dealers and major swap participants that are banks

Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) Swap dealers and major swap participants that are not banks

Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) Rules

(A) Swap dealers and major swap participants that are banks

The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(B) Swap dealers and major swap participants that are not banks

The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(C) Capital

In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

(3) Standards for capital and margin

(A) In general

To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall—

- (i) help ensure the safety and soundness of the swap dealer or major swap participant; and
- (ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

(B) Rule of construction

(i) In general

Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 6f(a) of this title (except for section 6f(a)(3) of this title) in accordance with section 6f(b) of this title; or

(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11))¹ in accordance with section 15(c)(3) of the Securi-

ties Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).

(ii) Futures commission merchants and other dealers

A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this chapter or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(C) Margin requirements

In prescribing margin requirements under this subsection, the prudential regulator with respect to swap dealers and major swap participants for which it is the prudential regulator and the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

- (i) preserving the financial integrity of markets trading swaps; and
- (ii) preserving the stability of the United States financial system.

(D) Comparability of capital and margin requirements

(i) In general

The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) Comparability

The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

- (I) swap dealers; and
- (II) major swap participants.

(f) Reporting and recordkeeping

(1) In general

Each registered swap dealer and major swap participant—

(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may

¹ So in original. Probably should be followed by a third closing parenthesis.

be prescribed by the Commission by rule or regulation;

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission; and

(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.

(2) Rules

The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

(g) Daily trading records

(1) In general

Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) Information requirements

The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) Counterparty records

Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

(4) Audit trail

Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) Rules

The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

(h) Business conduct standards

(1) In general

Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered swap dealer and major swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) Responsibilities with respect to special entities

(A) Advising special entities

A swap dealer or major swap participant that acts as an advisor to a special entity re-

garding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) Entering of swaps with respect to special entities

A swap dealer that enters into or offers to enter into swap² with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

(C) Special entity defined

For purposes of this subsection, the term “special entity” means—

(i) a Federal agency;

(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of title 26.

(3) Business conduct requirements

Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the swap;

(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;

(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

² So in original. Probably should be preceded by “a”.

(4) Special requirements for swap dealers acting as advisors

(A) In general

It shall be unlawful for a swap dealer or major swap participant—

- (i) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;
- (ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or
- (iii) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(B) Duty

Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(C) Reasonable efforts

Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

- (i) the financial status of the Special Entity;
- (ii) the tax status of the Special Entity;
- (iii) the investment or financing objectives of the Special Entity; and
- (iv) any other information that the Commission may prescribe by rule or regulation.

(5) Special requirements for swap dealers as counterparties to special entities

(A) Any swap dealer or major swap participant that offers to enter or enters into a swap with a Special Entity shall—

- (i) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18)³ of this title, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that—
 - (I) has sufficient knowledge to evaluate the transaction and risks;
 - (II) is not subject to a statutory disqualification;
 - (III) is independent of the swap dealer or major swap participant;
 - (IV) undertakes a duty to act in the best interests of the counterparty it represents;
 - (V) makes appropriate disclosures;
 - (VI) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and
 - (VII) in the case of employee benefit plans subject to the Employee Retirement

Income Security act⁴ of 1974 [29 U.S.C. 1001 et seq.], is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

- (ii) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

(B) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(6) Rules

The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

(7) Applicability

This section shall not apply with respect to a transaction that is—

- (A) initiated by a Special Entity on an exchange or swap execution facility; and
- (B) one in which the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.

(i) Documentation standards

(1) In general

Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

(2) Rules

The Commission shall adopt rules governing documentation standards for swap dealers and major swap participants.

(j) Duties

Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

(1) Monitoring of trading

The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

(2) Risk management procedures

The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

(3) Disclosure of general information

The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

- (A) terms and conditions of its swaps;
- (B) swap trading operations, mechanisms, and practices;
- (C) financial integrity protections relating to swaps; and

³ So in original. Probably should be “section 1a(18)(A)”.

⁴ So in original. Probably should be “Act”.

(D) other information relevant to its trading in swaps.

(4) Ability to obtain information

The swap dealer or major swap participant shall—

(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

(5) Conflicts of interest

The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this chapter; and

(B) address such other issues as the Commission determines to be appropriate.

(6) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a swap dealer or major swap participant shall not—

(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(7) Rules

The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.

(k) Designation of chief compliance officer

(1) In general

Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the swap dealer or major swap participant;

(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;

(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the swap dealer or major swap participant with respect to this chapter (including regulations); and

(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) Requirements

A compliance report under subparagraph

(A) shall—

(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(l) Segregation requirements

(1) Segregation of assets held as collateral in uncleared swap transactions

(A) Notification

A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

(B) Segregation and maintenance of funds

At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

(i) segregate the funds or other property for the benefit of the counterparty; and

(ii) in accordance with such rules and regulations as the Commission may pro-

mulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.

(2) Applicability

The requirements described in paragraph (1) shall—

(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and

(B)(i) not apply to variation margin payments; or

(ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

(3) Use of independent third-party custodians

The segregated account described in paragraph (1) shall be—

(A) carried by an independent third-party custodian; and

(B) designated as a segregated account for and on behalf of the counterparty.

(4) Reporting requirement

If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(Sept. 21, 1922, ch. 369, § 4s, as added and amended Pub. L. 111-203, title VII, §§ 724(c), 731, July 21, 2010, 124 Stat. 1684, 1703.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (e)(3)(B)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (h)(5)(A)(i)(VII), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2010—Subsec. (l). Pub. L. 111-203, § 724(c), added subsec. (l).

EFFECTIVE DATE

Section and 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 an Effective Date of 2010 Amendment note under section 1a of this title.

§ 6t. Large swap trader reporting

(a) Prohibition

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

(2) Exception

Paragraph (1) shall not apply if—

(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

(b) Requirements

(1) In general

Books and records described in subsection (a)(2)(B) shall—

(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

(B) be open at all times to inspection and examination by any representative of the Commission; and

(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section 1a(47)(A)(v) of this title), and consistent with the confidentiality and disclosure requirements of section 12 of this title.

(2) Jurisdiction

Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for large swap traders under this section.

(c) Applicability

For purposes of this section, the swaps, futures, and cash or spot transactions and posi-