

Statutory Notes and Related Subsidiaries

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§ 8343. Rulemaking on conflict of interest

(a) In general

In order to mitigate conflicts of interest, not later than 180 days after July 21, 2010, the Securities and Exchange Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section 1841 of title 12) with total consolidated assets of \$50,000,000,000 or more, a nonbank financial company (as defined in section 5311 of title 12) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(b) Purposes

The Securities and Exchange Commission shall adopt rules if the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant's conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.

(c) Considerations

In adopting rules pursuant to this section, the Securities and Exchange Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

(Pub. L. 111-203, title VII, §765, July 21, 2010, 124 Stat. 1796.)

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§ 8344. Other authority

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal

banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

(Pub. L. 111-203, title VII, §771, July 21, 2010, 124 Stat. 1801.)

Editorial Notes

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§761-774) of title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c-3 to 78c-5, 78j-2, 78m-1, and 78o-10 of this title, amended sections 77b, 77b-1, 77e, 77g, 78c, 78c-1, 78f, 78i, 78j, 78m, 78o, 78p, 78q-1, 78t, 78u-1, 78u-2, 78bb, 78dd, 78mm, 80a-2, and 80b-2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

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CHAPTER 110—ONLINE SHOPPER PROTECTION

Sec.

- 8401. Findings; declaration of policy.
- 8402. Prohibitions against certain unfair and deceptive Internet sales practices.
- 8403. Negative option marketing on the Internet.
- 8404. Enforcement by Federal Trade Commission.
- 8405. Enforcement by State attorneys general.

§ 8401. Findings; declaration of policy

The Congress finds the following:

(1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.

(2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.