

(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; Pub. L. 114-1, title III, § 302(a), Jan. 12, 2015, 129 Stat. 28.)

Editorial Notes

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

2015—Subsec. (e)(4). Pub. L. 114-1 added par. (4).

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

Statutory Notes and Related Subsidiaries

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.

IMPLEMENTATION

Pub. L. 114-1, title III, § 303, Jan. 12, 2015, 129 Stat. 28, provided that: “The amendments made by this title to the Commodity Exchange Act [amending this section] shall be implemented—

“(1) without regard to—

“(A) chapter 35 of title 44, United States Code; and

“(B) the notice and comment provisions of section 553 of title 5, United States Code;

“(2) through the promulgation of an interim final rule, pursuant to which public comment will be sought before a final rule is issued; and

“(3) such that paragraph (1) shall apply solely to changes to rules and regulations, or proposed rules and regulations, that are limited to and directly a consequence of such amendments.”

§ 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 positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

(d) Significant price discovery function

In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 6a(a)(3) of this title.

(Sept. 21, 1922, ch. 369, §4t, as added Pub. L. 111-203, title VII, §730, July 21, 2010, 124 Stat. 1702.)

Statutory Notes and Related Subsidiaries

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.

§ 7. Designation of boards of trade as contract markets

(a) Applications

A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this chapter.

(b) Repealed. Pub. L. 111-203, title VII, § 735(a), July 21, 2010, 124 Stat. 1718

(c) Existing contract markets

A board of trade that is designated as a contract market on December 21, 2000, shall be considered to be a designated contract market under this section.

(d) Core principles for contract markets

(1) Designation as contract market

(A) In general

To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

- (i) any core principle described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of contract market

Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(2) Compliance with rules

(A) In general

The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

- (i) access requirements;
- (ii) the terms and conditions of any contracts to be traded on the contract market; and
- (iii) rules prohibiting abusive trade practices on the contract market.

(B) Capacity of contract market

The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(C) Requirement of rules

The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(3) Contracts not readily subject to manipulation

The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) Prevention of market disruption

The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

- (A) methods for conducting real-time monitoring of trading; and
- (B) comprehensive and accurate trade reconstructions.

(5) Position limitations or accountability

(A) In general

To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Maximum allowable position limitation

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.