

(Sept. 21, 1922, ch. 369, §5g, as added Pub. L. 106-554, §1(a)(5) [title I, §124], Dec. 21, 2000, 114 Stat. 2763, 2763A-411.)

Editorial Notes

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in text, is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§6801 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§ 7b-3. Swap execution facilities

(a) Registration

(1) In general

No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

(2) Dual registration

Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.

(b) Trading and trade processing

(1) In general

Except as specified in paragraph (2), a swap execution facility that is registered under subsection (a) may—

- (A) make available for trading any swap; and
- (B) facilitate trade processing of any swap.

(2) Agricultural swaps

A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

(c) Identification of facility used to trade swaps by contract markets

A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.

(d) Rule-writing

(1) The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e).

(2) For all swaps that are not required to be executed through a swap execution facility as defined in paragraph (1), such trades may be executed through any other available means of interstate commerce.

(3) The Securities and Exchange Commission and Commodity Futures Trading Commission shall update these rules as necessary to account for technological and other innovation.

(e) Rule of construction

The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.

(f) Core principles for swap execution facilities

(1) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

- (i) the core principles 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 swap execution facility

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

(2) Compliance with rules

A swap execution facility shall—

(A) establish and enforce compliance with any rule of the swap execution facility, including—

- (i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and
- (ii) any limitation on access to the swap execution facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

- (i) to provide market participants with impartial access to the market; and
- (ii) to capture information that may be used in establishing whether rule violations have occurred;

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h) of this title, the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8) of this title.

(3) Swaps not readily susceptible to manipulation

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

(4) Monitoring of trading and trade processing

The swap execution facility shall—

(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(5) Ability to obtain information

The swap execution facility shall—

(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

(B) provide the information to the Commission on request; and

(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(6) Position limits or accountability**(A) In general**

To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Position limits

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the swap execution facility shall—

(i) set its position limitation at a level no higher than the Commission limitation; and

(ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

(7) Financial integrity of transactions

The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1) of this title.

(8) Emergency authority

The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

(9) Timely publication of trading information**(A) In general**

The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

(B) Capacity of swap execution facility

The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

(10) Recordkeeping and reporting**(A) In general**

A swap execution facility shall—

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this chapter; and

(iii) shall keep any such 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.”¹

(B) Requirements

The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

(11) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the swap execution facility shall not—

(A) adopt any rules or taking² any actions that result in any unreasonable restraint of trade; or

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

(12) Conflicts of interest

The swap execution facility shall—

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(B) establish a process for resolving the conflicts of interest.

¹ So in original. The closing quotation marks probably should not appear.

² So in original. Probably should be “take”.

(13) Financial resources**(A) In general**

The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(B) Determination of resource adequacy

The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

(14) System safeguards

The swap execution facility shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

- (i) are reliable and secure; and
- (ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

- (i) the timely recovery and resumption of operations; and
- (ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

- (i) order processing and trade matching;
- (ii) price reporting;
- (iii) market surveillance and
- (iv) maintenance of a comprehensive and accurate audit trail.

(15) Designation of chief compliance officer**(A) In general**

Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) Duties

The chief compliance officer shall—

- (i) report directly to the board or to the senior officer of the facility;
- (ii) review compliance with the core principles in this subsection;
- (iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;
- (iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;
- (v) ensure compliance with this chapter and the rules and regulations issued under this chapter, including rules prescribed by the Commission pursuant to this section; and

(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

(C) Requirements for procedures

In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(D) Annual reports**(i) 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 execution facility with this chapter; and
- (II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(ii) Requirements

The chief compliance officer shall—

- (I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and
- (II) include in the report a certification that, under penalty of law, the report is accurate and complete.

(g) Exemptions

The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

(h) Rules

The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.

(Sept. 21, 1922, ch. 369, §5h, as added Pub. L. 111-203, title VII, §733, July 21, 2010, 124 Stat. 1712.)

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.

§ 8. Application for designation as contract market or derivatives transaction execution facility; time; suspension or revocation of designation; hearing; review by court of appeals

(a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this chapter, and with a sufficient assurance that it will continue to comply with the¹ requirements of this chapter. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed 6 months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that the contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government, made a condition of its designation or registration as set forth in sections 7 through 7a-1 of this title or section 7b-1 of this title, or that the contract market or derivatives transaction execution facility or electronic trading facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the

court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(Sept. 21, 1922, ch. 369, § 6(a), (b), formerly § 6(a), 42 Stat. 1001; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85-791, § 7(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 90-258, §§ 14, 15, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, § 103(a)-(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, § 13(1), (2), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97-444, title II, § 218, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 98-620, title IV, § 402(3), Nov. 8, 1984, 98 Stat. 3357; renumbered § 6(a), (b) and amended Pub. L. 102-546, title II, § 209(a)(1)-(3), title IV, § 402(1)(B), (9)(A), Oct. 28, 1992, 106 Stat. 3606, 3624, 3625; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(12)(A), (B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-408; Pub. L. 110-234, title XIII, § 13203(m), May 22, 2008, 122 Stat. 1441; Pub. L. 110-246, § 4(a), title XIII, § 13203(m), June 18, 2008, 122 Stat. 1664, 2203; Pub. L. 111-203, title VII, § 749(e), July 21, 2010, 124 Stat. 1747.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Section is comprised of subsecs. (a) and (b) of section 6 of act Sept. 21, 1922. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203 struck out “, or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract,” before “on a showing”.

2008—Subsec. (b). Pub. L. 110-246, § 13203(m), added first sentence, in second sentence substituted “Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record” for “Such suspension or revocation shall only be after a notice to the officers of the contract market or derivatives transaction execution facility affected and upon a hearing on the record”, and struck out former first sentence which read as follows: “The Commission is authorized to suspend for a period not to exceed six

¹ So in original.