

savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) The Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation ² when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and ³ when the appropriate regulatory agency for such clearing agency is not the Commission; ⁴

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account; ⁵

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(2)]), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.];

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(3)]), the deposits of which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 1841(c)(2), or held under section 1843(f) of title 12—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 1841 of title 12. As used in this paragraph, the term "savings and loan holding company" has the same meaning as in section 1467a(a) of title 12.

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this chapter and the rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this chapter which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this chapter.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(40) The term "financial responsibility rules" means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term "mortgage related security" means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 1703 of title 12; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A)(i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence 6 by a retail installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 78o-5 and 78q-1 of this title, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 78o, 78o-5, and 78q-1 of this title as applied to a bank, a qualified Canadian government obligation as defined in section 24 of title 12.

(43) The term "government securities broker" means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(44) The term "government securities dealer" means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7201 et seq.], the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) [15 U.S.C. 80b–1 et seq.], and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 78o or 78o–4 of this title, except that in paragraph (3) of this subsection and sections 78f and 78o–3 of this title the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 78o–5(a)(1)(A) of this title.

(49) The term "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.];

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders, the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either

(i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or

(ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

(B) For purposes of this paragraph—

(i) an "interest in a promissory note or a lease of personal property" includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;

(ii) the term "small business concern" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of this title;

- (iii) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]; and
- (iv) the term "insured credit union" has the same meaning as in section 1752 of title 12.

(54) QUALIFIED INVESTOR.—

- (A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this chapter, the term "qualified investor" means—
- (i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8];
 - (ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(7)];
 - (iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933 [15 U.S.C. 77b(a)(13)]), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(48)]);
 - (iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) [15 U.S.C. 681(c)] or (d) ¹ of the Small Business Investment Act of 1958;
 - (v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act [29 U.S.C. 1002(21)], which is either a bank, savings and loan association, insurance company, or registered investment adviser;
 - (vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;
 - (vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(2)];
 - (viii) any associated person of a broker or dealer other than a natural person;
 - (ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. 3101(7)]);
 - (x) the government of any foreign country;
 - (xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$25,000,000 in investments;
 - (xii) any natural person who owns and invests on a discretionary basis, not less than \$25,000,000 in investments;
 - (xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than \$50,000,000 in investments; or
 - (xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of subsection (a)(5)(C)(iii) of this section and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term "qualified investor" has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting "\$10,000,000" for "\$25,000,000".

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under paragraph (12) of this subsection as in effect on January 11, 1983 (other than any municipal security as defined in paragraph (29) of this subsection as in effect on January 11, 1983). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.] under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act [7 U.S.C. 2(c), (d), (f), (g)] (as in effect on December 21, 2000) or sections 27 to 27f of title 7.

(B) The term "narrow-based security index" means an index—

- (i) that has 9 or fewer component securities;
- (ii) in which a component security comprises more than 30 percent of the index's weighting;
- (iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or
- (iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

- (i)(I) it has at least nine component securities;
- (II) no component security comprises more than 30 percent of the index's weighting; and
- (III) each component security is—
 - (aa) registered pursuant to section 78I of this title;
 - (bb) one of 750 securities with the largest market capitalization; and
 - (cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before December 21, 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

(v) no more than 18 months have passed since December 21, 2000, and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before December 21, 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after December 21, 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term "margin", when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms "margin level" and "level of margin", when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms "higher margin level" and "higher level of margin", when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 78f(g) of this title that is higher than the minimum amount established and in effect pursuant to section 78g(c)(2)(B) of this title.

(58) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7201].

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 78o–7(a)(1)(B)(ix) of this title, with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on September 29, 2006);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 78o–7 of this title.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with" a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

(64) QUALIFIED INSTITUTIONAL BUYER.—The term "qualified institutional buyer" has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.

(65) ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(66) MAJOR SWAP PARTICIPANT.—The term "major swap participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "major security-based swap participant" means any person—

(i) who is not a security-based swap dealer; and

(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(III) that is a financial entity that—

(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "security-based swap" means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act [7 U.S.C. 1a] (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term "security-based swap" shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term "security-based swap" does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on January 11, 1983 (other than any municipal security as defined in paragraph (29) as in effect on January 11, 1983), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term "index" means an index or group of securities, including any interest therein or based on the value thereof.

(69) SWAP.—The term "swap" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 78o–10(I)(2) of this title, the term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term "security-based swap dealer" means any person who—

- (i) holds themselves out as a dealer in security-based swaps;
- (ii) makes a market in security-based swaps;
- (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or
- (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term "security-based swap dealer" does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term "prudential regulator" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term "security-based swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term "swap dealer" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term "security-based swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

- (A) facilitates the execution of security-based swaps between persons; and
- (B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 78i, 78j, 78p, 78t, and 78u–1 of this title, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term "security-based swap agreement" means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term "security-based swap agreement" does not include any security-based swap.

(79) ASSET-BACKED SECURITY.—The term "asset-backed security"—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

- (i) a collateralized mortgage obligation;
- (ii) a collateralized debt obligation;
- (iii) a collateralized bond obligation;
- (iv) a collateralized debt obligation of asset-backed securities;
- (v) a collateralized debt obligation of collateralized debt obligations; and
- (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(80) ⁷ EMERGING GROWTH COMPANY.—The term "emerging growth company" means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of —

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

(80) ⁷ FUNDING PORTAL.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) ¹ of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(b) Power to define technical, trade, accounting, and other terms

The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter.

(c) Application to governmental departments or agencies

No provision of this chapter shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) Issuers of municipal securities

No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

(e) Charitable organizations

(1) Exemption

Notwithstanding any other provision of this chapter, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10) (D) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(D)], or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, shall not be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", or "government securities dealer" for purposes of this chapter solely because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

(A) such a charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)]; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)], or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

(2) Limitation on compensation

The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after December 8, 1995, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(10)(B)], is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

(f) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(g) Church plans

No church plan described in section 414(e) of title 26, no person or entity eligible to establish and maintain such a plan under title 26, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this chapter—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)]; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.

(h) Limited exemption for funding portals

(1) In general

The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 78o(a)(1) of this title, provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 78o-3 of this title; and

(C) is subject to such other requirements under this chapter as the Commission determines appropriate under such rule.

(2) National securities association membership

For purposes of sections 78o(b)(8) and 78o-3 of this title, the term "broker or dealer" includes a funding portal and the term "registered broker or dealer" includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.

(June 6, 1934, ch. 404, title I, §3, 48 Stat. 882; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86-70, §12(b), June 25, 1959, 73 Stat. 143; Pub. L. 86-624, §7(b), July 12, 1960, 74 Stat. 412; Pub. L. 88-467, §2, Aug. 20, 1964, 78 Stat. 565; Pub. L. 91-373, title IV, §401(b), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91-547, §28(a), (b), Dec. 14, 1970, 84 Stat. 1435; Pub. L. 91-567, §6(b), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 94-29, §3, June 4, 1975, 89 Stat. 97; Pub. L. 95-283, §16, May 21, 1978, 92 Stat. 274; Pub. L. 96-477, title VII, §702, Oct. 21, 1980, 94 Stat. 2295; Pub. L. 97-303, §2, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 98-376, §6(a), Aug. 10, 1984, 98 Stat. 1265; Pub. L. 98-440, title I, §101, Oct. 3, 1984, 98 Stat. 1689; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-571, title I, §102(a)-(d), Oct. 28, 1986, 100 Stat. 3214-3216; Pub. L. 100-181, title III, §§301-306, Dec. 4, 1987, 101 Stat. 1253, 1254; Pub. L. 100-704, §6(a), Nov. 19, 1988, 102 Stat. 4681; Pub. L. 101-73, title VII, §744(u)(1), Aug. 9, 1989, 103 Stat. 441; Pub. L. 101-429, title V, §503, Oct. 15, 1990, 104 Stat. 952; Pub. L. 101-550, title II, §§203(b), 204, Nov. 15, 1990, 104 Stat. 2717, 2718; Pub. L. 103-202, title I, §§106(b)(2)(A), 109(a), Dec. 17, 1993, 107 Stat. 2350, 2352; Pub. L. 103-325, title II, §202, title III, §347(a), Sept. 23, 1994, 108 Stat. 2198,

2241; Pub. L. 104–62, §4(a), (b), Dec. 8, 1995, 109 Stat. 684; Pub. L. 104–290, title I, §106(b), title V, §508(c), Oct. 11, 1996, 110 Stat. 3424, 3447; Pub. L. 105–353, title III, §301(b)(1)–(4), Nov. 3, 1998, 112 Stat. 3235, 3236; Pub. L. 106–102, title II, §§201, 202, 207, 208, 221(b), 231(b)(1), Nov. 12, 1999, 113 Stat. 1385, 1390, 1394, 1395, 1401, 1406; Pub. L. 106–554, §1(a)(5) [title II, §201], Dec. 21, 2000, 114 Stat. 2763, 2763A-413; Pub. L. 107–204, §2(b), title II, §205(a), title VI, §604(c)(1)(A), July 30, 2002, 116 Stat. 749, 773, 796; Pub. L. 108–359, §1(c)(1), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 108–386, §8(f)(1)–(3), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 108–447, div. H, title V, §520(1), Dec. 8, 2004, 118 Stat. 3267; Pub. L. 109–291, §3(a), Sept. 29, 2006, 120 Stat. 1328; Pub. L. 109–351, title I, §101(a)(1), title IV, §401(a)(1), (2), Oct. 13, 2006, 120 Stat. 1968, 1971, 1972; Pub. L. 111–203, title III, §376(1), title VII, §761(a), title IX, §§932(b), 939(e), 941(a), 944(b), 985(b)(2), 986(a)(1), July 21, 2010, 124 Stat. 1566, 1754, 1883, 1886, 1890, 1898, 1933, 1935; Pub. L. 112–106, title I, §101(b), title III, §304(a)(1), (b), Apr. 5, 2012, 126 Stat. 307, 321, 322.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (e)(1), (f), and (g), and (h)(1)(C), was in the original "this title". See References in Text note set out under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (a)(4)(B)(v), (19), (47), (51)(A)(iii), is title I of act [Aug. 20, 1940, ch. 686](#), 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

Section 4(2), (5), and (6) of the Securities Act of 1933, referred to in subsec. (a)(4)(B)(vii)(I) and (80) defining "funding portal", was redesignated section 4(a)(2), (5), and (6), respectively, of that Act by Pub. L. 112–106, [title II, §201\(b\)\(1\), \(c\)\(1\), Apr. 5, 2012](#), 126 Stat. 314, and is classified to section 77d(a)(2), (5), and (6) of this title.

This chapter, referred to in subsec. (a)(4)(B)(vii)(II), was in the original "this Act". See References in Text note set out under section 78a of this title.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(4)(B)(ix), (5)(C)(iv), (54)(B), is section 206 of Pub. L. 106–102, which is set out as a note below.

Subsec. (e) of section 78o of this title, referred to in subsec. (a)(4)(E), was redesignated (f) by Pub. L. 111–203, [title IX, §929X\(c\)\(1\), July 21, 2010](#), 124 Stat. 1870.

Section 1462 of title 12, referred to in subsec. (a)(6)(A), (C), was amended by Pub. L. 111–203, [title III, §369\(2\)\(C\), July 21, 2010](#), 124 Stat. 1557, by redesignating pars. (4) and (5) as (2) and (3), respectively.

The Investment Advisers Act of 1940, referred to in subsec. (a)(20), (47), is title II of act [Aug. 20, 1940, ch. 686](#), 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

Section 78w(b) of this title, referred to in subsec. (a)(26), was omitted from the Code.

Section 103 of title 26, referred to in subsec. (a)(29), which related to interest on certain governmental obligations, was amended generally by Pub. L. 99–514, [title XIII, §1301\(a\), Oct. 22, 1986](#), 100 Stat. 2602, and, as so amended, relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Federal Deposit Insurance Act, referred to in subsec. (a)(34)(D), (F)(iii), (H)(iii), is act [Sept. 21, 1950, ch. 967, §2](#), 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

The International Banking Act of 1978, referred to in subsec. (a)(34)(G)(i) to (iii), (46)(B), is Pub. L. 95–369, [Sept. 17, 1978](#), 92 Stat. 607, which enacted chapter 32 (§3101 et seq.) and sections 347d and 611a of Title 12, Banks and Banking, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of Title 12, and enacted provisions set out as notes under sections 247, 611a, and 3101 of Title 12 and formerly set out as notes under sections 36, 247, and 601 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 12 and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(34)(G)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act, referred to in subsec. (a)(34)(G)(ii), (H)(ii), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Commodity Exchange Act, referred to in subsec. (a)(39)(B)(ii), (C), (55)(A), is act [Sept. 21, 1922, ch. 369](#), 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsec. (a)(47) and (80)(B) defining "emerging growth company", is act [May 27, 1933, ch. 38, title I](#), 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(47), is act [June 6, 1934, ch. 404](#), 48 Stat. 881, which is classified generally to this chapter (§78a et seq.). For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Sarbanes-Oxley Act of 2002, referred to in subsec. (a)(47), is Pub. L. 107–204, [July 30, 2002](#), 116 Stat. 745. Section 2 of the Act enacted section 7201 of this title and amended this section. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(47), is title III of act [May 27, 1933, ch. 38](#), as added [Aug. 3, 1939, ch. 411](#), 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

The Securities Investor Protection Act of 1970, referred to in subsec. (a)(47), is Pub. L. 91–598, [Dec. 30, 1970](#), 84 Stat. 1636, which is classified generally to chapter 2B–1 (§78aaa et seq.) of this title. For complete classification of this Act to the Code, see section 78aaa of this title and Tables.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (a)(54)(A)(iv), was classified to section 681(d) of this title and was repealed by Pub. L. 104–208, [div. D, title II, §208\(b\)\(3\)\(A\), Sept. 30, 1996](#), 110 Stat. 3009–742.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(54)(A)(v), is Pub. L. 93–406, [Sept. 2, 1974](#), 88 Stat. 832, 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.

Section 206A of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(78)(A), is section 206A of Pub. L. 106–102, which is set out as a note below.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "State" in subsec. (a)(16) under authority of Proc. No. 2695, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2012—Subsec. (a)(77), (79). Pub. L. 112–106, §101(b)(1), redesignated par. (77) defining "asset-backed security" as (79).

Subsec. (a)(80). Pub. L. 112–106, §304(b), added par. (80) defining "funding portal".

Pub. L. 112–106, §101(b)(2), added par. (80) defining "emerging growth company".

Subsec. (h). Pub. L. 112–106, §304(a)(1), added subsec. (h).

2010—Subsec. (a)(4)(B)(vii)(I). Pub. L. 111–203, §944(b), substituted "4(5)" for "4(6)".

Subsec. (a)(5)(A), (B). Pub. L. 111–203, §761(a)(1), inserted "(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)" after "securities".

Subsec. (a)(10). Pub. L. 111–203, §761(a)(2), inserted "security-based swap," after "security future,".

Subsec. (a)(13). Pub. L. 111–203, §761(a)(3), inserted at end "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require."

Subsec. (a)(14). Pub. L. 111–203, §761(a)(4), inserted at end "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require."

Subsec. (a)(34). Pub. L. 111–203, §376(1)(G), struck out ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Office of Thrift Supervision under section 1466a of title 12" after "section 1841 of title 12" in concluding provisions.

Subsec. (a)(34)(A)(i). Pub. L. 111–203, §376(1)(A)(i), substituted "a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association" for "or a subsidiary or a department or division of any such bank".

Subsec. (a)(34)(A)(ii). Pub. L. 111–203, §376(1)(A)(ii), substituted "a subsidiary or a department or division of such subsidiary, or a savings and loan holding company" for "or a subsidiary or a department or division of such subsidiary".

Subsec. (a)(34)(A)(iii). Pub. L. 111–203, §376(1)(A)(iii), substituted "a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and" for "or a subsidiary or department or division thereof;".

Subsec. (a)(34)(A)(iv), (v). Pub. L. 111–203, §376(1)(A)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and".

Subsec. (a)(34)(B)(i). Pub. L. 111–203, §376(1)(B)(i), substituted "a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association" for "or a subsidiary of any such bank".

Subsec. (a)(34)(B)(ii). Pub. L. 111–203, §376(1)(B)(ii), substituted "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company" for "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph".

Subsec. (a)(34)(B)(iii). Pub. L. 111–203, §376(1)(B)(iii), substituted "a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and" for "or a subsidiary thereof;".

Subsec. (a)(34)(B)(iv), (v). Pub. L. 111–203, §376(1)(B)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such savings association, or a savings and loan holding company; and".

Subsec. (a)(34)(C)(i). Pub. L. 111–203, §376(1)(C)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(C)(ii). Pub. L. 111–203, §376(1)(C)(ii), substituted "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company" for "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph".

Subsec. (a)(34)(C)(iii). Pub. L. 111–203, §376(1)(C)(iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and" after "System)".

Subsec. (a)(34)(C)(iv), (v). Pub. L. 111–203, §376(1)(C)(iv), (v), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and".

Subsec. (a)(34)(D)(i). Pub. L. 111–203, §376(1)(D)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(D)(ii) to (iv). Pub. L. 111–203, §376(1)(D)(ii)–(v), in cl. (ii), inserted "and" at end, redesignated cl. (iv) as (iii), in cl. (iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank", and struck out former cl. (iii) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

Subsec. (a)(34)(F)(i). Pub. L. 111–203, §376(1)(E)(i), inserted "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation" after "bank".

Subsec. (a)(34)(F)(ii) to (v). Pub. L. 111–203, §376(1)(E)(ii)–(iv), redesignated cls. (iii) to (v) as (ii) to (iv), respectively, in cl. (iii), inserted "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation" before semicolon, and struck out former cl. (ii) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

Subsec. (a)(34)(G)(i). Pub. L. 111–203, §376(1)(F)(i), inserted ", a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation," after "national bank".

Subsec. (a)(34)(G)(iii). Pub. L. 111–203, §376(1)(F)(ii), inserted ", a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation," after "savings bank)" and inserted "and" at end.

Subsec. (a)(34)(G)(iv), (v). Pub. L. 111–203, §376(1)(F)(iii), (iv), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;".

Subsec. (a)(39)(B)(i)(I). Pub. L. 111–203, §761(a)(5)(A)(i), substituted "government securities dealer, security-based swap dealer, or major security-based swap participant" for "or government securities dealer".

Subsec. (a)(39)(B)(i)(II). Pub. L. 111–203, §761(a)(5)(A)(ii), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (a)(39)(C). Pub. L. 111–203, §761(a)(5)(B), substituted "government securities dealer, security-based swap dealer, or major security-based swap participant" for "or government securities dealer".

Subsec. (a)(39)(D). Pub. L. 111–203, §761(a)(5)(C), inserted "security-based swap dealer, major security-based swap participant," after "government securities dealer,".

Subsec. (a)(41). Pub. L. 111–203, §939(e)(1), substituted "meets standards of credit-worthiness as established by the Commission" for "is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization" in introductory provisions.

Subsec. (a)(47). Pub. L. 111–203, §986(a)(1), struck out "the Public Utility Holding Company Act of 1935," before "the Trust Indenture Act of 1939".

Subsec. (a)(53)(A). Pub. L. 111–203, §939(e)(2), substituted "meets standards of credit-worthiness as established by the Commission" for "is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization" in introductory provisions.

Subsec. (a)(55)(A). Pub. L. 111–203, §985(b)(2)(A), made technical amendment to reference in original act which appears in text as reference to paragraph (12) of this subsection.

Subsec. (a)(62). Pub. L. 111–203, §932(b), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 78o–7 of this title;".

Subsec. (a)(65) to (76). Pub. L. 111–203, §761(a)(6), added pars. (65) to (76).

Subsec. (a)(77). Pub. L. 111–203, §941(a), which directed amendment of subsec. (a) by adding par. (77) relating to asset-backed security "at the end", was executed by making the addition after par. (78) to reflect the probable intent of Congress. See Effective Date of 2010 Amendment note below.

Pub. L. 111–203, §761(a)(6), added par. (77) relating to security-based swap execution facility.