

Subsec. (a)(78). Pub. L. 111–203, §761(a)(6), added par. (78).

Subsec. (g). Pub. L. 111–203, §985(b)(2)(B), substituted "account, person" for "account person" in introductory provisions.

**2006**—Subsec. (a)(4)(F). Pub. L. 109–351, §101(a)(1), added subpar. (F).

Subsec. (a)(6)(A). Pub. L. 109–351, §401(a)(1)(A), inserted "or a Federal savings association, as defined in section 1462(5) of title 12" after "a banking institution organized under the laws of the United States".

Subsec. (a)(6)(C). Pub. L. 109–351, §401(a)(1)(B), inserted "or savings association, as defined in section 1462(4) of title 12" after "other banking institution" and "or savings associations" after "having supervision over banks".

Subsec. (a)(34). Pub. L. 109–351, §401(a)(2)(G), inserted at end of concluding provisions "As used in this paragraph, the term 'savings and loan holding company' has the same meaning as in section 1467a(a) of title 12."

Subsec. (a)(34)(A)(ii). Pub. L. 109–351, §401(a)(2)(A)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(A)(iv), (v). Pub. L. 109–351, §401(a)(2)(A)(ii)–(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(B)(ii). Pub. L. 109–351, §401(a)(2)(B)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(B)(iv), (v). Pub. L. 109–351, §401(a)(2)(B)(ii)–(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(C)(ii). Pub. L. 109–351, §401(a)(2)(C)(i), substituted "clause (i), (iii), or (iv)" for "clause (i) or (iii)".

Subsec. (a)(34)(C)(iv), (v). Pub. L. 109–351, §401(a)(2)(C)(ii)–(iv), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (a)(34)(D)(iii), (iv). Pub. L. 109–351, §401(a)(2)(D), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(34)(F)(ii) to (v). Pub. L. 109–351, §401(a)(2)(E), added cl. (ii) and redesignated former cls. (ii) to (iv) as (iii) to (v), respectively.

Subsec. (a)(34)(H). Pub. L. 109–351, §401(a)(2)(F), moved subpar. (H) and inserted it immediately after subpar. (G).

Subsec. (a)(60) to (64). Pub. L. 109–291 added pars. (60) to (64).

**2004**—Subsec. (a)(12)(C)(iv). Pub. L. 108–359 added cl. (iv).

Subsec. (a)(34)(A)(i), (B)(i), (C)(i), (D)(i), (F)(i). Pub. L. 108–386, §8(f)(1), struck out "or a bank operating under the Code of Law for the District of Columbia" after "national bank".

Subsec. (a)(34)(G)(i). Pub. L. 108–386, §8(f)(2), struck out ", a bank in the District of Columbia examined by the Comptroller of the Currency," after "national bank".

Subsec. (a)(34)(H)(i). Pub. L. 108–386, §8(f)(3), struck out "or a bank in the District of Columbia examined by the Comptroller of the Currency" after "national bank".

Subsec. (a)(42)(B). Pub. L. 108–447 inserted "by the Tennessee Valley Authority or" after "issued or guaranteed".

**2002**—Subsec. (a)(39)(F). Pub. L. 107–204, §604(c)(1)(A), inserted ", or is subject to an order or finding," before "enumerated" and substituted "(H), or (G)" for "or (G)".

Subsec. (a)(47). Pub. L. 107–204, §2(b), inserted "the Sarbanes-Oxley Act of 2002," before "the Public Utility Holding Company Act of 1935".

Subsec. (a)(58), (59). Pub. L. 107–204, §205(a), added pars. (58) and (59).

**2000**—Subsec. (a)(10). Pub. L. 106–554, §1(a)(5) [title II, §201(1)], inserted "security future," after "treasury stock,".

Subsec. (a)(11). Pub. L. 106–554, §1(a)(5) [title II, §201(2)], added par. (11) and struck out former par. (11) which read as follows: "The term 'equity security' means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

Subsec. (a)(13), (14). Pub. L. 106–554, §1(a)(5) [title II, §201(3), (4)], inserted at end "For security futures products, such term includes any contract, agreement, or transaction for future delivery."

Subsec. (a)(55) to (57). Pub. L. 106–554, §1(a)(5) [title II, §201(5)], added pars. (55) to (57).

**1999**—Subsec. (a)(4). Pub. L. 106–102, §201, inserted heading and amended text of par. (4) generally. Prior to amendment, text read as follows: "The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

Subsec. (a)(5). Pub. L. 106–102, §202, inserted heading and amended text of par. (5) generally. Prior to amendment, text read as follows: "The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or

otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Subsec. (a)(12)(A)(iii). Pub. L. 106-102, §221(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;"

Subsec. (a)(34)(H). Pub. L. 106-102, §231(b)(1), added subpar. (H) at end of par. (34).

Subsec. (a)(42)(E). Pub. L. 106-102, §208, added subpar. (E).

Subsec. (a)(54). Pub. L. 106-102, §207, added par. (54).

**1998**—Subsec. (a)(10). Pub. L. 105-353, §301(b)(1), substituted "deposit for" for "deposit, for".

Subsec. (a)(12)(A)(vi). Pub. L. 105-353, §301(b)(2), realigned margins.

Subsec. (a)(22)(A). Pub. L. 105-353, §301(b)(3), substituted "section 153" for "section 153(h)" and for "section 153(t)".

Subsec. (a)(39)(B)(i). Pub. L. 105-353, §301(b)(4), substituted "of the Commission" for "to the Commission" in introductory provisions.

**1996**—Subsec. (a)(12)(A)(vi), (vii). Pub. L. 104-290, §508(c)(1), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsecs. (f), (g). Pub. L. 104-290, §§106(b), 508(c)(2), added subsecs. (f) and (g), respectively.

**1995**—Subsec. (a)(12)(A)(iv) to (vi). Pub. L. 104-62, §4(a), struck out "and" at end of cl. (iv), added cl. (v), and redesignated former cl. (v) as (vi).

Subsec. (e). Pub. L. 104-62, §4(b), added subsec. (e).

**1994**—Subsec. (a)(41)(A)(i). Pub. L. 103-325, §347(a), substituted "on a residential" for "or on a residential" and inserted before semicolon ", or on one or more parcels of real estate upon which is located one or more commercial structures".

Subsec. (a)(53). Pub. L. 103-325, §202, added par. (53).

**1993**—Subsec. (a)(12)(B)(ii). Pub. L. 103-202, §106(b)(2)(A), substituted "sections 78o and 78q-1" for "sections 78o, 78o-3 (other than subsection (g)(3)), and 78q-1".

Subsec. (a)(34)(G)(ii) to (iv). Pub. L. 103-202, §109(a)(1), amended cls. (ii) to (iv) generally. Prior to amendment, cls. (ii) to (iv) read as follows:

"(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, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

"(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);

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;"

Subsec. (a)(46). Pub. L. 103-202, §109(a)(2), amended par. (46) generally. Prior to amendment, par. (46) read as follows: "The term 'financial institution' means (A) a bank (as such term is defined in paragraph (6) of this subsection), (B) a foreign bank, and (C) an insured institution (as such term is defined in section 1724 of title 12)."

Subsec. (a)(52). Pub. L. 103-202, §109(a)(3), redesignated par. (51) defining "foreign financial regulatory authority" as (52).

**1990**—Subsec. (a)(39)(A). Pub. L. 101-550, §203(b)(1), inserted "foreign equivalent of a self-regulatory organization, foreign or international securities exchange," after "self-regulatory organization," "or any substantially equivalent foreign statute or regulation," after "(7 U.S.C. 7)," and "(7 U.S.C. 21)," and "or foreign equivalent" after "contract market".

Subsec. (a)(39)(B). Pub. L. 101-550, §203(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "is subject to an order of the Commission or other appropriate regulatory agency denying, suspending for a period not exceeding twelve months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or is subject to 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.);".

Subsec. (a)(39)(D). Pub. L. 101-550, §203(b)(4), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(39)(E). Pub. L. 101-550, §203(b)(3), (5), redesignated subpar. (D) as (E) and substituted "(A), (B), (C), or (D)" for "(A), (B), or (C)". Former subpar. (E) redesignated (F).

Subsec. (a)(39)(F). Pub. L. 101-550, §203(b)(3), (6), redesignated subpar. (E) as (F), substituted "(D), (E), or (G)" for "(D) or (E)", and inserted "or any other felony" before "within ten years".

Subsec. (a)(51). Pub. L. 101-550, §204, added par. (51) defining "foreign financial regulatory authority".

Pub. L. 101-429 added par. (51) defining "penny stock".

**1989**—Subsec. (a)(34). Pub. L. 101-73, §744(u)(1)(B), substituted "Office of Thrift Supervision" for "Federal Home Loan Bank Board" in concluding provisions.

Subsec. (a)(34)(G)(iv) to (vi). Pub. L. 101-73, §744(u)(1)(A), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

"(iv) the Federal Home Loan Bank Board, in the case of a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association;

"(v) the Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association);".

**1988**—Subsec. (a)(50). Pub. L. 100-704 added par. (50).

**1987**—Subsec. (a)(6)(C). Pub. L. 100-181, §301, substituted "under the authority of the Comptroller of the Currency pursuant to section 92a of title 12" for "under section 11(k) of the Federal Reserve Act, as amended".

Subsec. (a)(16). Pub. L. 100-181, §302, struck out reference to Canal Zone.

Subsec. (a)(22)(B). Pub. L. 100-181, §303, substituted "association, or any" and "own behalf, in" for "association or any" and "own behalf in", respectively.

Subsec. (a)(34)(C)(ii). Pub. L. 100-181, §304, substituted "State" for "state".

Subsec. (a)(39)(B). Pub. L. 100-181, §305, substituted "months, or revoking" for "months, revoking" and "barring or suspending for a period not exceeding 12 months his" for "barring his".

Subsec. (a)(47). Pub. L. 100-181, §306(1), added par. (47).

Subsec. (a)(49). Pub. L. 100-181, §306(2), added par. (49).

**1986**—Subsec. (a)(12). Pub. L. 99-571, §102(a), in amending par. (12) generally, expanded definition of "exempted security" or "exempted securities" to include government securities as defined in par. (42) of this subsection, provided that such securities not be deemed exempt for purposes of section 78q-1 of this title, substituted section 78o-3(g)(3) of this title for section 78o-3(b)(6), (11), and (g)(2) of this title in provision relating to municipal securities as not being "exempted securities" and defined "qualified plan" to mean qualified stock bonus, pension, or profit-sharing plan, qualified annuity plan, or governmental plan.

Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(29). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(34). Pub. L. 99-571, §102(b)(2), inserted ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Federal Home Loan Bank Board under section 1466a of title 12" in concluding provisions.

Subsec. (a)(34)(G). Pub. L. 99-571, §102(b)(1), added subpar. (G).

Subsec. (a)(39)(B). Pub. L. 99-571, §102(c)(1)(A), which directed insertion of "or other appropriate regulatory agency" after "Commission" was executed by making the insertion after "Commission" the first place appearing as the probable intent of Congress.

Pub. L. 99-571, §102(c)(1)(B), substituted "municipal securities dealer, government securities broker, or government securities dealer" for "or municipal securities dealer" in two places.

Subsec. (a)(39)(C). Pub. L. 99-571, §102(c)(2), substituted "municipal securities dealer, government securities broker, or government securities dealer" for "or municipal securities dealer" and inserted ", an appropriate regulatory agency," after "the Commission".

Subsec. (a)(42) to (46), (48). Pub. L. 99-571, §102(d), added pars. (42) to (46) and (48).

**1984**—Subsec. (a)(39)(A). Pub. L. 98–376, §6(a)(1), inserted ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market".

Subsec. (a)(39)(B). Pub. L. 98–376, §6(a)(2), inserted ", or is subject to 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.)".

Subsec. (a)(39)(C). Pub. L. 98–376, §6(a)(3), inserted "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

Subsec. (a)(41). Pub. L. 98–440 added par. (41).

**1982**—Subsec. (a)(10). Pub. L. 97–303 inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency," after "for a security,".

**1980**—Subsec. (a)(12). Pub. L. 96–477 included within definition of "exempted security" interests or participation in single trust funds, provided that qualifying interests, participation, or securities could be issued in connection with certain governmental plans as defined in section 414(d) of title 26, substituted provisions relating to securities arising out of contracts issued by insurance companies for provisions relating to separate accounts maintained by insurance companies, and excluded from definition of "exempted security" any plans described in cls. (A), (B), or (C) of par. (12) which were funded by annuity contracts described in section 403(b) of title 26.

**1978**—Subsec. (a)(40). Pub. L. 95–283 added par. (40).

**1975**—Subsec. (a)(3). Pub. L. 94–29, §3(1), redefined term "member" to recognize the elimination of fixed commission rates in the case of exchanges, inserted definition of term when used in the case of registered securities associations, expanded definition of term when used with respect to an exchange to include any natural person permitted to effect transactions on the floor of an exchange without the services of another person acting as broker, any registered broker or dealer with which such natural person is associated, any registered broker or dealer permitted to designate a natural person as its representative on the floor of an exchange, and any other registered broker or dealer which agrees to be regulated by an exchange and with respect to whom the exchange has undertaken to enforce compliance with its rules, this chapter, and the rules and regulations thereunder, introduced the concept of including among members any person required to comply with the rules of an exchange to the extent specified by the Commission in accordance with section 78f(f) of this title, and expanded definition of term when used with respect to a registered securities association to include any broker or dealer who has agreed to be regulated and with respect to whom the association undertakes to enforce compliance with its own rules, this chapter, and the rules and regulations thereunder.

Subsec. (a)(9). Pub. L. 94–29, §3(2), substituted "a natural person, company, government, or political subdivision, agency, or instrumentality of a government" for "an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization".

Subsec. (a)(12). Pub. L. 94–29, §3(3), brought brokers and dealers engaged exclusively in municipal securities business within the registration provisions of this chapter by transferring the existing description of municipal securities to subsec. (a)(29) and by inserting in its place provisions revoking the exempt status of municipal securities for purposes of sections 78o, 78o–3 (except subsections (b)(6), (b)(11), and (g)(2) thereof) and 78q–1 of this title.

Subsec. (a)(17). Pub. L. 94–29, §3(4), expanded definition of "interstate commerce" to establish that the intrastate use of any facility of an exchange, any telephones or other interstate means of communication, or any other interstate instrumentality constitutes a use of the jurisdictional means for purposes of this chapter.

Subsec. (a)(18). Pub. L. 94–29, §3(4), expanded definition to include persons under common control with the broker or dealer and struck out references to the classification of the persons, including employees, controlled by a broker or a dealer.

Subsec. (a)(19). Pub. L. 94–29, §3(4), substituted "'separate account', and 'company' " for "and 'separate account'."

Subsec. (a)(21). Pub. L. 94–29, §3(5), broadened definition of term "person associated with a member" to encompass a person associated with a broker or dealer which is a member of an exchange by restating directly the definition of a "person associated with a broker or dealer" in subsec. (a)(18).

Subsec. (a)(22) to (39). Pub. L. 94–29, §3(6), added pars. (22) to (39).

Subsec. (b). Pub. L. 94–29, §3(7), substituted "accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter" for "and accounting terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this

chapter".

Subsec. (d). Pub. L. 94–29, §3(8), added subsec. (d).

**1970**—Subsec. (a)(12). Pub. L. 91–567 inserted provisions which brought within definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91–373.

Pub. L. 91–547, §28(a), struck out reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and included as exempted securities interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity; interests or participations in bank collective trust funds maintained for funding of employees' stock-bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and such other securities as the Commission by rules and regulations deems necessary in the public interest.

Pub. L. 91–373 inserted provisions which brought within definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91–567.

Subsec. (a)(19). Pub. L. 91–547, §28(b), provided for term "separate account" the same meaning as in the Investment Company Act of 1940.

**1964**—Subsec. (a)(18) to (21). Pub. L. 88–467 added pars. (18) to (21).

**1960**—Subsec. (a)(16). Pub. L. 86–624 struck out reference to Hawaii.

**1959**—Subsec. (a)(16). Pub. L. 86–70 struck out reference to Alaska.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

### EFFECTIVE DATE OF 2012 AMENDMENT

Notwithstanding subsec. (a)(80) of this section, issuer not to be an emerging growth company for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before Dec. 8, 2011, see section 101(d) of Pub. L. 112–106, set out as a note under section 77b of this title.

### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 932(b), 941(a), 944(b), 985(b)(2), and 986(a)(1) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 Title 12, Banks and Banking.

Amendment by section 376(1) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 761(a) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

Amendment by section 939(e) of Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of Title 12, Banks and Banking.

### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of Title 12, Banks and Banking.

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by sections 201, 202, 207, and 208 of Pub. L. 106–102 effective at the end of the 18-month period beginning on Nov. 12, 1999, see section 209 of Pub. L. 106–102, set out as a note under section 1828 of Title 12, Banks and Banking.

Amendment by section 221(b) of Pub. L. 106–102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106–102, set out as a note under section 77c of this title.

### **EFFECTIVE DATE OF 1995 AMENDMENT**

Amendment by Pub. L. 104–62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104–62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a–3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104–62, set out as a note under section 77c of this title.

### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by section 347(a) of Pub. L. 103–325 effective upon date of promulgation of final regulations under section 347(c) of Pub. L. 103–325, see section 347(d) of Pub. L. 103–325, set out as an Effective Date of 1994 Amendment note under section 24 of Title 12, Banks and Banking.

### **EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101–429 effective 12 months after Oct. 15, 1990, with provision to commence rulemaking proceedings to implement such amendment note later than 180 days after Oct. 15, 1990, and with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(2), (3)(A), (C) of Pub. L. 101–429, set out in a note under section 77g of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–704, except for amendment by section 6, not applicable to actions occurring before Nov. 19, 1988, see section 9 of Pub. L. 100–704, set out as a note under section 78o of this title.

### **EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99–571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99–571, set out as an Effective Date note under section 78o–5 of this title.

### **EFFECTIVE DATE OF 1984 AMENDMENT**

Pub. L. 98–376, §7, Aug. 10, 1984, 98 Stat. 1266, provided that: "The amendments made by this Act [amending this section and sections 78o, 78t, 78u, and 78ff of this title] shall become effective immediately upon enactment of this Act [Aug. 10, 1984]."

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 94–29 effective June 4, 1975, except for amendment of subsec. (a)(12) by Pub. L. 94–29 to be effective 180 days after June 4, 1975, with provisions of subsec. (a)(3), as amended by Pub. L. 94–29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

### **EFFECTIVE DATE OF 1970 AMENDMENTS**

For effective date of amendment by Pub. L. 91–567, see section 6(d) of Pub. L. 91–567, set out as a note under section 77c of this title.  
Amendment by Pub. L. 91–547 effective Dec. 14, 1970, see section 30 of Pub. L. 91–547, set out as a note under section 80a–52 of this title.  
For effective date of amendment by Pub. L. 91–373, see section 401(c) of Pub. L. 91–373, set out as a note under section 77c of this title.

### **EFFECTIVE DATE OF 1964 AMENDMENT**

Pub. L. 88–467, §13, Aug. 20, 1964, 78 Stat. 580, provided that: "The amendments made by this Act shall take effect as follows:

- "(1) The effective date of section 12(g)(1) of the Securities Exchange Act of 1934, as added by section 3(c) of this Act [section 78l(g)(1) of this title], shall be July 1, 1964.
- "(2) The effective date of the amendments to sections 12(b) and 15(a) of the Securities Exchange Act of 1934 [sections 78l(b) and 78o(a) of this title], contained in sections 3(a) and 6(a), respectively, of this Act shall be July 1, 1964.
- "(3) All other amendments contained in this Act [amending this section and sections 77d, 78l, 78m, 78n, 78o, 78o–3, 78p, 78t, 78w, and 78ff of this title] shall take effect on the date of its enactment [Aug. 20, 1964]."

### **REGULATIONS**

Pub. L. 109–351, title I, §101(a)(2)–(c), Oct. 13, 2006, 120 Stat. 1968, provided that:

"(2) **TIMING.**—Not later than 180 days after the date of the enactment of this Act [Oct. 13, 2006], the Securities and Exchange Commission (in this section [enacting this note and amending 15 U.S.C. 78c] referred to as the 'Commission') and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') shall jointly issue a proposed single set of rules or regulations to define the term 'broker' in accordance with section 3(a)(4) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(4)], as amended by this subsection.

"(3) **RULEMAKING SUPERSEDES PREVIOUS RULEMAKING.**—A final single set of rules or regulations jointly adopted in accordance with this section shall supersede any other proposed or final rule issued by the Commission on or after the date of enactment of section 201 of the Gramm-Leach-Bliley Act [Nov. 12, 1999] with regard to the exceptions to the definition of a broker under section 3(a)(4)(B) of the Securities Exchange Act of 1934. No such other rule, whether or not issued in final form, shall have any force or effect on or after that date of enactment.

"(b) **CONSULTATION.**—Prior to jointly adopting the single set of final rules or regulations required by this section, the Commission and the Board shall consult with and seek the concurrence of the Federal banking agencies concerning the content of such rulemaking in implementing section 3(a)(4)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(4)(B)], as amended by this section and section 201 of the Gramm-Leach-Bliley Act [Pub. L. 106–102].

"(c) **DEFINITION.**—For purposes of this section, the term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation."

### **CONSTRUCTION OF 1993 AMENDMENT**

Amendment by Pub. L. 103–202 not to be construed to govern initial issuance of any public debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103–202, set out as a note under section 78o–5 of this title.

### **RULEMAKING**

Pub. L. 112–106, title III, §304(a)(2), Apr. 5, 2012, 126 Stat. 322, provided that: "The [Securities and Exchange] Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c[(h)]), as added by this subsection, not later than 270 days after the date of enactment of this Act [Apr. 5, 2012]."

### **OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES**

Pub. L. 112–106, title I, §107, Apr. 5, 2012, 126 Stat. 312, provided that:

"(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title [amending this section and sections 77b, 77e to 77g, 78k–1, 78m, 78n, 78n–1, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title], or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

"(b) SPECIAL RULE.—Notwithstanding subsection (a), with respect to the extension of time to comply with new or revised financial accounting standards provided under section 7(a)(2)(B) of the Securities Act of 1933 [15 U.S.C. 77g(a)(2)(B)] and section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)], as added by section 102(b), if an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

"(1) must make such choice at the time the company is first required to file a registration statement, periodic report, or other report with the [Securities and Exchange] Commission under section 13 of the Securities Exchange Act of 1934 [15 U.S.C. 78m] and notify the Securities and Exchange Commission of such choice;

"(2) may not select some standards to comply with in such manner and not others, but must comply with all such standards to the same extent that a non-emerging growth company is required to comply with such standards; and

"(3) must continue to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards for as long as the company remains an emerging growth company."

## STATE OPT OUT

Pub. L. 103–325, [title III, §347\(e\)](#), [Sept. 23, 1994](#), 108 Stat. 2241, provided that: "Notwithstanding the amendments made by this section [amending this section and section 24 of Title 12, Banks and Banking], a note that is directly secured by a first lien on one or more parcels of real estate upon which is located one or more commercial structures shall not be considered to be a mortgage related security under section 3(a)(41) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(41)] in any State that, prior to the expiration of 7 years after the date of enactment of this Act [Sept. 23, 1994], enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided by the amendments made by this subsection. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto, and shall not require the sale or other disposition of any securities acquired prior thereto."

## DEFINITIONS

Pub. L. 112–106, [title I, §101\(c\)](#), [Apr. 5, 2012](#), 126 Stat. 308, provided that: "As used in this title [amending this section and sections 77b, 77e to 77g, 78k–1, 78m, 78n, 78n–1, 78o–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78o–6 of this title, and amending provisions set out as a note under section 78l of this title], the following definitions shall apply:

"(1) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(2) INITIAL PUBLIC OFFERING DATE.—The term 'initial public offering date' means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq]."

Pub. L. 106–554, [§1\(a\)\(5\)](#) [[title III, §301\(b\)](#)], [Dec. 21, 2000](#), 114 Stat. 2763, [2763A-451](#), provided that: "As used in the amendment made by subsection (a) [enacting sections 206A to 206C of Pub. L. 106—102, set out below], the term 'security' has the same meaning as in section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)] or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]."

Pub. L. 106–102, [title II, §206](#), [Nov. 12, 1999](#), 113 Stat. 1393, as amended by Pub. L. 111–203, [title VII, §742\(b\)](#), [July 21, 2010](#), 124 Stat. 1733, provided that:

"(a) DEFINITION OF IDENTIFIED BANKING PRODUCT.—Except as provided in subsection (e) [sic], for purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term 'identified banking product' means—

"(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

"(2) a banker's acceptance;

"(3) a letter of credit issued or loan made by a bank;

"(4) a debit account at a bank arising from a credit card or similar arrangement;



"(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

"(A) to qualified investors; or

"(B) to other persons that—

"(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

"(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

"(6) any swap agreement, including credit and equity swaps, except that an equity swap that is sold directly to any person other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934 [15 U.S.C. 78c(a)(54)]) shall not be treated as an identified banking product.

"(b) DEFINITION OF SWAP AGREEMENT.—For purposes of subsection (a)(6), the term 'swap agreement' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include any other identified banking product, as defined in paragraphs (1) through (5) of subsection (a).

"(c) CLASSIFICATION LIMITED.—Classification of a particular product as an identified banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

"(d) INCORPORATED DEFINITIONS.—For purposes of this section, the terms 'bank' and 'qualified investor' have the same meanings as given in section 3(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)], as amended by this Act."

Pub. L. 106–102, title II, §§206A–206C, as added by Pub. L. 106–554, §1(a)(5) [title III, §301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–449, and amended by Pub. L. 111–203, title VII, §762(a), (b), July 21, 2010, 124 Stat. 1759, provided that:

#### "SEC. 206A. SWAP AGREEMENT.

"(a) IN GENERAL.—Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—

"(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

"(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

"(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

"(b) EXCLUSIONS.—The term 'swap agreement' does not include—

"(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

"(2) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] relating to foreign currency;

"(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

"(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)] or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)]; or

"(6) any agreement, contract, or transaction that is—

"(A) based on a security; and

"(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)]) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—As used in this section, the term 'swap agreement' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), 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 swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement, contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b)."

[SECS. 206B, 206C. REPEALED. PUB. L. 111–203, TITLE VII, §762(A), JULY 21, 2010, 124 STAT. 1759.]

[Amendment by section 762(a), (b) of Pub. L. 111–203 to sections 206A–206C of Pub. L. 106–102, set out above, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B.]

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be followed by a comma.

<sup>3</sup> So in original. The "; and" probably should be a comma.

<sup>4</sup> So in original. Probably should be followed by "and".

<sup>5</sup> So in original. The semicolon probably should be a colon.

<sup>6</sup> So in original. Probably should be "evidenced".

7 *So in original. Two pars. (80) have been enacted.*

## **§78c–1. Swap agreements**

**(a) [Reserved]**

**(b) Security-based swap agreements**

(1) The definition of "security" in section 78c(a)(10) of this title does not include any security-based swap agreement.

(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this chapter of any security-based swap agreement. If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such a swap agreement shall be void and of no force or effect.

(3) Except as provided in section 78p(a) of this title with respect to reporting requirements, the Commission is prohibited from—

(A) promulgating, interpreting, or enforcing rules; or

(B) issuing orders of general applicability;

under this chapter in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement.

(4) References in this chapter to the "purchase" or "sale" of a security-based swap agreement shall be deemed to mean 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 agreement, as the context may require.

(June 6, 1934, ch. 404, title I, §3A, as added Pub. L. 106–554, §1(a)(5) [title III, §303(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-452; amended Pub. L. 111–203, title VII, §762(d)(1), July 21, 2010, 124 Stat. 1760.)

### **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (b)(2) to (4), was in the original "this title". See References in Text note set out under section 78a of this title.

### **AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111–203, §762(d)(1)(A), struck out subsec. (a) and reserved that subsec. Prior to amendment, text read as follows: "The definition of 'security' in section 78c(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act)."

Subsec. (b). Pub. L. 111–203, §762(d)(1)(B), struck out "(as defined in section 206B of the Gramm-Leach-Bliley Act)" after "security-based swap agreement" wherever appearing.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

## **§78c–2. Securities-related derivatives**

(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 6(c)(1) of title 7 with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.

(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 6(c)(1) of title 7 with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the "purchase" or "sale" of a security shall be deemed to 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 such agreement, contract, or transaction, as the context may require.

(June 6, 1934, ch. 404, title I, §3B, as added Pub. L. 111–203, title VII, §717(b), July 21, 2010, 124 Stat. 1651.)

### **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 rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

## **§78c–3. Clearing for security-based swaps**

### **(a) In general**

#### **(1) Standard for clearing**

It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this chapter or a clearing agency that is exempt from registration under this chapter if the security-based swap is required to be cleared.

#### **(2) Open access**

The rules of a clearing agency described in paragraph (1) shall—

(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

### **(b) Commission review**

#### **(1) Commission-initiated review**

(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.

(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

#### **(2) Swap submissions**

(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type, or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

(B) Any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of July 21, 2010, shall be considered submitted to the Commission.

(C) The Commission shall—

- (i) make available to the public any submission received under subparagraphs (A) and (B);
- (ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and
- (iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

### **(3) Deadline**

The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

### **(4) Determination**

(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 78q-1 of this title.

(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

- (i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.
- (ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.
- (iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.
- (iv) The effect on competition, including appropriate fees and charges applied to clearing.
- (v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

(C) In making a determination under subsection (b)(1) or paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

### **(5) Rules**

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type, or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in paragraph (2)(B).

## **(c) Stay of clearing requirement**

### **(1) In general**

After making a determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

### **(2) Deadline**

The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

### **(3) Determination**

Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

- (A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps.

**(4) Rules**

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type, or class of security-based swaps, that it has accepted for clearing.

**(d) Prevention of evasion**

**(1) In general**

The Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this chapter.

**(2) Duty of Commission to investigate and take certain actions**

To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall—

(A) investigate the relevant facts and circumstances;

(B) within 30 days issue a public report containing the results of the investigation; and

(C) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.

**(3) Effect on authority**

Nothing in this subsection—

(A) authorizes the Commission to adopt rules requiring a clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would threaten the financial integrity of the clearing agency; and

(B) affects the authority of the Commission to enforce the open access provisions of subsection (a)(2) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.

**(e) Reporting transition rules**

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(1) Security-based swaps entered into before July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of this section.

(2) Security-based swaps entered into on or after July 21, 2010, shall be reported to a registered security-based swap data repository or the Commission no later than the later of—

(A) 90 days after such effective date; or

(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

**(f) Clearing transition rules**

(1) Security-based swaps entered into before July 21, 2010, are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

**(g) Exceptions**

**(1) In general**

The requirements of subsection (a)(1) shall not apply to a security-based swap if 1 of the counterparties to the security-based swap—

(A) is not a financial entity;

(B) is using security-based swaps to hedge or mitigate commercial risk; and

(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

**(2) Option to clear**

The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

**(3) Financial entity definition**

**(A) In general**

For the purposes of this subsection, the term "financial entity" means—

- (i) a swap dealer;
- (ii) a security-based swap dealer;
- (iii) a major swap participant;
- (iv) a major security-based swap participant;
- (v) a commodity pool as defined in section 1a(10) of title 7;
- (vi) a private fund as defined in section 80b–2(a) of this title;
- (vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 1002 of title 29;
- (viii) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 1843(k) of title 12.

**(B) Exclusion**

The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

- (i) depository institutions with total assets of \$10,000,000,000 or less;
- (ii) farm credit system institutions with total assets of \$10,000,000,000 or less; or
- (iii) credit unions with total assets of \$10,000,000,000 or less.

**(4) Treatment of affiliates**

**(A) In general**

An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

- (i) enters into the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;
- (ii) is directly and wholly-owned by another affiliate qualified for the exception under this paragraph or an entity that is not a financial entity;
- (iii) is not indirectly majority-owned by a financial entity;
- (iv) is not ultimately owned by a parent company that is a financial entity; and
- (v) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12).

**(B) Limitation on qualifying affiliates**

The exception in subparagraph (A) shall not apply if the affiliate is—

- (i) a swap dealer;
- (ii) a security-based swap dealer;
- (iii) a major swap participant;
- (iv) a major security-based swap participant;
- (v) a commodity pool;
- (vi) a bank holding company;
- (vii) a private fund, as defined in section 80b–2(a) of this title;
- (viii) an employee benefit plan or government <sup>1</sup> plan, as defined in paragraphs (3) and (32) of section 1002 of title 29;
- (ix) an insured depository institution;
- (x) a farm credit system institution;