(1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and

(2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

(b) The Working Group shall consult, as appropriate, with representatives of the various exchanges, clearinghouses, self-regulatory bodies, and with major market participants to determine private sector solutions wherever possible.

(c) The Working Group shall report to the President initially within 60 days (and periodically thereafter) on its progress and, if appropriate, its views on any recommended legislative changes.

SEC. 3. *Administration*. (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Working Group such information as it may require for the purpose of carrying out this Order.

(b) Members of the Working Group shall serve without additional compensation for their work on the Working Group.

(c) To the extent permitted by law and subject to the availability of funds therefor, the Department of the Treasury shall provide the Working Group with such administrative and support services as may be necessary for the performance of its functions.

RONALD REAGAN.

§ 78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) The term ''exchange'' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term ''facility'' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term ''member'' when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules. For purposes of sections 78f(b)(1), 78f(b)(4), 78f(b)(6), 78f(b)(7), 78f(d), 78q(d), 78s(d), 78s(e), 78s(g), 78s(h), and 78u of this title, the term ''member'' when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 78f(f) of this title.

(B) The term ''member'' when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term ''broker'' means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this chapter under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of title 12, in conformity with section 78*o*–5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 1841 of title 12), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of November 12, 1999; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 1841 of title 12) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 1843(k)(4)(H) of title 12.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2),[1] or 4(5)[1] of the Securities Act of 1933 [15 U.S.C. 77c(b), 77d(a)(2), 77d(a)(5)] or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after November 12, 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this chapter, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 78*o*(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term ''fiduciary capacity'' means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 78*o*(e).[1]—The term ''broker'' does not include a bank that—

(i) was, on the day before November 12, 1999, subject to section 78*o*(e)[1] of this title; and

[1] See References in Text note below.

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term ''dealer'' means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term ''dealer'' does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of title 12, in conformity with section 78*o*–5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term ''bank'' means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 1462(5)[1] of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 1462(4)[1] of title 12, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to section 92a of title 12, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this chapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term ''director'' means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term ''issuer'' means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term ''issuer'' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term ''issuer'' means the person by whom the equipment or property is, or is to be, used.

(9) The term ''person'' means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term ''security'' means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, 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, or in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(11) The term ''equity security'' means any stock or similar security; or any security future on any such 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.

(12)(A) The term ''exempted security'' or ''exempted securities'' includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ''investment company'' under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(3)];

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar 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)];

(vi) solely for purposes of sections 78*l*, 78m, 78n, and 78p of this title, any security issued by or any interest or participation in 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

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this chapter which by their terms do not apply to an ''exempted security'' or to ''exempted securities''.

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be ''exempted securities'' for the purposes of section 78q–1 of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be ''exempted securities'' for the purposes of sections 78*o* and 78q–1 of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term ''qualified plan'' means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, (iii) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a 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)], other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of title 26, or (II) is a plan funded by an annuity contract described in section 403(b) of title 26.

(13) The terms ''buy'' and ''purchase'' each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. 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.

(14) The terms ''sale'' and ''sell'' each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. 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.

(15) The term ''Commission'' means the Securities and Exchange Commission established by section 78d of this title.

(16) The term ''State'' means any State of the United States, the District of Columbia,

Puerto Rico, the Virgin Islands, or any other possession of the United States.

(17) The term ''interstate commerce'' means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term ''person associated with a broker or dealer'' or ''associated person of a broker or dealer'' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 78*o*(b) of this title (other than paragraph (6) thereof).

(19) The terms ''investment company'', ''affiliated person'', ''insurance company'', ''separate account'', and ''company'' have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(20) The terms ''investment adviser'' and ''underwriter'' have the same meanings as in the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.].

(21) The term ''person associated with a member'' or ''associated person of a member'' when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term ''securities information processor'' means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term ''securities information processor'' does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organizations, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 153 of title 47, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 153 of title 47, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term ''exclusive processor'' means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term ''clearing agency'' means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term ''clearing agency'' does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connec-

tion with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this chapter; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph (25)(E) of this subsection.

(24) The term ''participant'' when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term ''transfer agent'' means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term ''transfer agent'' does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term ''self-regulatory organization'' means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 78s(b), 78s(c), and 78w(b)[1] of this title) the Municipal Securities Rulemaking Board established by section 78*o*–4 of this title.

(27) The term ''rules of an exchange'', ''rules of an association'', or ''rules of a clearing agency'' means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term ''rules of a self-regulatory organization'' means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term ''municipal securities'' means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2)[1] of title 26) the interest on which is excludable from gross income under section 103(a)(1)[1] of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c)[1] of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),[1] paragraph (1) of such section 103(c)[1] does not apply to such security.

(30) The term ''municipal securities dealer'' means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal 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; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise: *Provided*, *however*, That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 78*o*–4(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term ''municipal securities broker'' means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term ''person associated with a municipal securities dealer'' when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term ''municipal securities investment portfolio'' means all municipal securities held for investment and not for sale as

part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term ''appropriate regulatory agency'' means—

(A) When used with respect to a municipal securities dealer:

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

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, 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, a subsidiary or a department or division of such subsidiary, or a 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 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

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

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

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, 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;

(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 de-

[2] So in original. Probably should be followed by a comma.

[3] So in original. The ''; and'' probably should be a comma.

[4] So in original. Probably should be followed by ''and''.

fined 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,

[5] So in original. The semicolon probably should be a colon.

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 78*o*(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 Com-

mission, 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 78*o*–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 78*o*, 78*o*–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 organi-

[6] So in original. Probably should be ''evidenced''.

zation, 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. 78aaa et seq.).

(48) The term ''registered broker or dealer'' means a broker or dealer registered or required to register pursuant to section 78*o* or 78*o*–4 of this title, except that in paragraph (3) of this subsection and sections 78f and 78*o*–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 78*o*–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 78*l* 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 78*o*–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 78*o*–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 78*o*–10(*l*)(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 themself 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.

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

(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 78*o*(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 78*o*–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 78*o*(b)(8) and 78*o*–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 78*o* 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 78*o*–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.

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 78*o* and 78q–1'' for ''sections 78*o*, 78*o*–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 78*o*–3(g)(3) of this title for section 78*o*–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 subdivi-

sion, 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 78*o* 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 78*o*–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 78*o*, 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 78*l*(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 78*l*(b) and 78*o*(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, 78*l*, 78m, 78n, 78*o*, 78*o*–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 78*o*–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, 78*o*–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78*o*–6 of this title, and amending provisions set out as a note under section 78*l* 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, 78*o*–6, 7213, and 7262 of this title, enacting provisions set out as notes under this section and sections 77b, 77g, and 78*o*–6 of this title, and amending provisions set out as a note under section 78*l* 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 there-

in 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.

§ 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.