

104TH CONGRESS
2D SESSION

H. R. 4276

To amend the Commodity Exchange Act to provide a conditional exemption for certain transactions involving professional markets, to clarify the effect of the designation of a board of trade as a contract market, to simplify the process for the making effective of contract market rules, to regulate audit trail requirements, to establish cost-benefit analysis requirements, to combat fraud in transactions in or involving foreign currency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1996

Mr. EWING introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Commodity Exchange Act to provide a conditional exemption for certain transactions involving professional markets, to clarify the effect of the designation of a board of trade as a contract market, to simplify the process for the making effective of contract market rules, to regulate audit trail requirements, to establish cost-benefit analysis requirements, to combat fraud in transactions in or involving foreign currency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Commodity Exchange Act Amendments of 1996”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—ADMINISTRATION OF COMMODITY EXCHANGE
ACT**

Sec. 101. Findings and purposes.

Sec. 102. Conditional exemption from Commodity Exchange Act for certain
transactions involving professional markets.

Sec. 103. Designation of contract markets.

Sec. 104. Process for submission and disapproval of contract market rules.

Sec. 105. Regulation of audit trail requirements.

Sec. 106. Use of benefit-cost analysis.

Sec. 107. Commission oversight and deficiency orders.

TITLE II—TREASURY AMENDMENT CLARIFICATION

Sec. 201. Regulation of transactions in or involving foreign currency.

6 **TITLE I—ADMINISTRATION OF**
7 **COMMODITY EXCHANGE ACT**

8 **SEC. 101. FINDINGS AND PURPOSES.**

9 Section 3 of the Commodity Exchange Act (7 U.S.C.
10 5) is amended to read as follows:

11 **“SEC. 3. FINDINGS AND PURPOSES.**

12 “(a) FINDINGS.—The Congress finds the following:

13 “(1) Commodity futures and commodity options
14 are traded in interstate commerce, and the regula-
15 tion of transactions in or involving commodity fu-
16 tures and commodity options is in the national pub-
17 lic interest.

1 “(2) Commodity futures and commodity options
2 transactions are used to hedge and manage price or
3 other economic risks faced by businesses and finan-
4 cial enterprises throughout the world.

5 “(3) Such hedging activity allows businesses
6 and financial enterprises to operate in a more effi-
7 cient manner, with corresponding benefits to con-
8 sumers and others served by these businesses and
9 enterprises.

10 “(4) Liquid trading in commodity futures and
11 commodity options contracts also provides a mecha-
12 nism for discovering important pricing information
13 relating to the various commodities that are the sub-
14 ject of such trading.

15 “(5) Such pricing information may be widely
16 quoted and disseminated in order to allow consum-
17 ers, businesses, and financial enterprises to rely
18 upon such pricing information in making various
19 commercial arrangements and decisions relating to
20 the price of the affected commodities in interstate
21 commerce.

22 “(6) Unless appropriately and prudently regu-
23 lated, whether through self-regulation by the market
24 participants themselves or through Government reg-

1 ulation, transactions subject to this Act may not
 2 serve these public interests.

3 “(b) PURPOSE.—It is the purpose of this Act to pro-
 4 vide for self-regulation that is in the public interest and
 5 Government oversight of transactions subject to this
 6 Act—

7 “(1) to prevent fraud, sales practice abuses,
 8 and price manipulation;

9 “(2) to foster efficient and effective transaction
 10 executions at fair prices;

11 “(3) to ensure conduct consistent with just and
 12 equitable principles of trade and the financial integ-
 13 rity of all futures and options transactions, market
 14 participants, and markets; and

15 “(4) to promote responsible economic or finan-
 16 cial innovation and fair competition among all mar-
 17 kets, market participants, and consumers of the
 18 markets’ services.”.

19 **SEC. 102. CONDITIONAL EXEMPTION FROM COMMODITY EX-**
 20 **CHANGE ACT FOR CERTAIN TRANSACTIONS**
 21 **INVOLVING PROFESSIONAL MARKETS.**

22 Section 4 of the Commodity Exchange Act (7 U.S.C.
 23 6) is amended by adding the following subsections:

24 “(e) EXEMPTION FOR CERTAIN PROFESSIONAL MAR-
 25 KETS.—

1 “(1) EXEMPTION.—Subject to paragraphs (2)
2 and (3), any agreement, contract, or transaction (or
3 class thereof) that is or may be subject to this Act
4 shall be exempt from all of the provisions of this Act
5 if the only parties eligible to enter into the agree-
6 ment, contract, or transaction (or class thereof)
7 qualify as appropriate persons (as defined in sub-
8 section (c)(3)).

9 “(2) RULES AGAINST FRAUD AND MANIPULA-
10 TION.—Any agreement, contract, or transaction (or
11 class thereof) for which an exemption is provided
12 under this subsection shall still be subject to prohibi-
13 tions against fraud or manipulation issued by the
14 Commission, following notice and opportunity for
15 hearing, that are specifically designed to apply to
16 such agreements, contracts, and transactions.

17 “(3) USE OF APPROVED CLEARINGHOUSES AND
18 SYSTEMS.—Any agreement, contract, or transaction
19 (or class thereof) for which an exemption is provided
20 under this subsection shall not be submitted to any
21 clearinghouse or clearing system (or similar entity)
22 unless that clearinghouse or clearing system (or
23 similar entity) has been approved by the Commission
24 to do business as a clearinghouse or clearing sys-
25 tem.”.

1 **SEC. 103. DESIGNATION OF CONTRACT MARKETS.**

2 (a) DESIGNATION REQUIRED.—Section 4(a)(1) of the
3 Commodity Exchange Act (7 U.S.C. 6(a)(1)) is amended
4 by striking “for such commodity”.

5 (b) CONDITIONS AND REQUIREMENTS FOR DESIGNA-
6 TION.—Section 5 of the Commodity Exchange Act (7
7 U.S.C. 7) is amended—

8 (1) by striking the matter preceding paragraph
9 (1) and inserting the following:

10 **“SEC. 5. DESIGNATION OF BOARD OF TRADE AS CONTRACT**
11 **MARKET.**

12 “(a) IN GENERAL.—The Commission shall designate
13 a board of trade as a contract market if, and only if, the
14 board of trade complies with and carries out the following
15 conditions and requirements:”;

16 (2) by striking paragraphs (1), (7), and (8);

17 (3) by redesignating paragraphs (2) through
18 (6) as paragraphs (1) through (5), respectively; and

19 (4) by inserting at the end the following new
20 paragraph:

21 “(6) When the board of trade demonstrates
22 that it is in compliance with the requirements of sec-
23 tion 5a(b).”.

24 (c) EFFECT OF DESIGNATION.—Section 5 of the
25 Commodity Exchange Act (7 U.S.C. 7) is amended by in-

1 setting after paragraph (6), as added by subsection (b)(4),
 2 the following new subsection:

3 “(b) EXISTING AND FUTURE DESIGNATIONS.—

4 “(1) FUTURE DESIGNATIONS.—If a board of
 5 trade is designated as a contract market by the
 6 Commission under subsection (a) and section 6, the
 7 board of trade shall retain the designation for all ex-
 8 isting or future contracts, unless—

9 “(A) the Commission suspends or revokes
 10 the designation; or

11 “(B) the board of trade relinquishes the
 12 designation.

13 “(2) EXISTING DESIGNATIONS.—A board of
 14 trade that has been designated as a contract market
 15 as of the date of the enactment of this subsection
 16 shall retain the designation unless—

17 “(A) the Commission finds that a violation
 18 of this Act or a rule, regulation, or order of the
 19 Commission by the contract market justifies
 20 suspension or revocation of the designation
 21 under section 6(b); or

22 “(B) the board of trade relinquishes the
 23 designation.”.

24 (d) APPLICATION FOR DESIGNATION.—The first sen-
 25 tence of section 6(a) of the Commodity Exchange Act (7

1 U.S.C. 8(a)) is amended by striking “Any board of trade
 2 desiring to be designated a ‘contract market’ ” and insert-
 3 ing “A board of trade that has not obtained designation
 4 as a contract market for a contract of sale for a commod-
 5 ity under section 5, but that desires to be designated as
 6 a contract market,”.

7 **SEC. 104. PROCESS FOR SUBMISSION AND DISAPPROVAL**
 8 **OF CONTRACT MARKET RULES.**

9 Section 5a of the Commodity Exchange Act (7 U.S.C.
 10 7a) is amended—

11 (1) in subsection (a), by striking paragraph
 12 (12); and

13 (2) by adding at the end the following new sub-
 14 section:

15 “(c) CONTRACT MARKET BYLAWS, RULES, REGULA-
 16 TIONS, AND RESOLUTIONS.—

17 “(1) SUBMISSION TO COMMISSION.—Except as
 18 otherwise provided in this subsection, each contract
 19 market shall submit to the Commission all bylaws,
 20 rules, regulations, and resolutions (in this subsection
 21 referred to as ‘rules’) made or issued by the contract
 22 market, or by the governing board or any committee
 23 thereof, other than rules that relate to the setting of
 24 levels of margin and such other rules as the Com-
 25 mission may specify by regulation.

1 “(2) EFFECTIVE DATE.—

2 “(A) IN GENERAL.—Except in the case of
3 a rule described in subparagraph (B) or (C), a
4 contract market may make a rule of that con-
5 tract market effective 10 days after the date on
6 which the Commission receives the rule under
7 paragraph (1), unless, within such period, the
8 contract market requests review of the rule by
9 the Commission or the Commission institutes
10 proceedings to determine whether the rule
11 should be disapproved. The disapproval pro-
12 ceedings shall be conducted in accordance with
13 paragraph (3).

14 “(B) SPECIAL EFFECTIVE DATE FOR CER-
15 TAIN RULES.—In the case of a rule that would
16 establish the terms and conditions of a contract
17 for the purchase or sale of a commodity for fu-
18 ture delivery, which is to be executed subject to
19 the rules of a contract market and has not pre-
20 viously been traded subject to the rules of the
21 contract market, the contract market may make
22 the rule effective 15 days after the date on
23 which the Commission receives the rule under
24 paragraph (1), unless, within such period, the
25 Commission institutes proceedings to determine

1 whether the rule should be disapproved. The
2 disapproval proceedings shall be conducted in
3 accordance with paragraph (3).

4 “(C) EXCEPTION.—A board of trade may
5 not make effective any rule to establish the
6 terms and conditions of a new contract (or op-
7 tion on such a contract) that is subject to the
8 requirements and procedures of clauses (ii)
9 through (v) of section 2(a)(1)(B) unless and
10 until the requirements and procedures of such
11 clauses are satisfied and carried out.

12 “(3) DISAPPROVAL PROCESS.—

13 “(A) NOTICE OF PROPOSED DIS-
14 APPROVAL.—If the Commission institutes a
15 proceeding to determine whether a rule submit-
16 ted under paragraph (1) should be disapproved,
17 the Commission shall provide the contract mar-
18 ket with written notice of the proposed grounds
19 for disapproval, including—

20 “(i) the specific sections of this Act or
21 the regulations of the Commission that
22 would be violated; and

23 “(ii) in the case of a rule described in
24 paragraph (2)(B), the specific reason or

1 reasons why the rule might be contrary to
2 the public interest.

3 “(B) DISAPPROVAL PROCEEDING.—In a
4 disapproval proceeding under this paragraph,
5 the Commission shall afford the contract mar-
6 ket a reasonable opportunity to respond in writ-
7 ing and an opportunity for a hearing, including
8 the right to an oral hearing before a quorum of
9 the Commission. In a disapproval proceeding in-
10 volving a rule described in paragraph (2)(B),
11 the Commission shall have the burden of prov-
12 ing that the rule is contrary to the public inter-
13 est.

14 “(C) DISAPPROVAL.—At the conclusion of
15 a disapproval proceeding under this paragraph,
16 the Commission shall determine whether to dis-
17 approve the rule and shall disapprove the rule
18 if the Commission determines in the proceeding
19 that the rule would be—

20 “(i) in violation of the provisions of
21 this Act or the regulations of the Commis-
22 sion; or

23 “(ii) in the case of a rule described in
24 paragraph (2)(B), contrary to the public
25 interest.

1 “(D) NOTICE OF DISAPPROVAL.—The
2 Commission shall provide the contract market
3 with written notice of the disapproval of a rule
4 of the contract market. The notice shall—

5 “(i) specify the sections of this Act or
6 the Commission’s regulations that the
7 Commission determines the rule violates
8 or, if effective, would violate; and

9 “(ii) in the case of a rule described in
10 paragraph (2)(B), contain an explanation
11 and analysis of the substantive basis why
12 the rule violates or, if effective, would vio-
13 late the public interest.

14 “(E) TIME FOR DISAPPROVAL.—Before the
15 end of the 60-day period beginning on the date
16 on which the Commission receives a rule under
17 paragraph (1), the Commission shall complete
18 any disapproval proceeding instituted under this
19 paragraph regarding the rule. Unless the Com-
20 mission has notified the contract market by the
21 end of such period that the Commission has
22 disapproved the rule, the contract market may
23 make such rule effective, and the Commission
24 shall not thereafter disapprove the rule. How-
25 ever, this subparagraph shall not be construed

1 to modify or affect the ability of the Commis-
2 sion to alter or supplement any rules of a con-
3 tract market pursuant to section 8a(7).

4 “(5) RULE OF CONSTRUCTION REGARDING PUB-
5 LIC INTEREST STANDARD.—The authority of the
6 Commission to disapprove a rule described in para-
7 graph (2)(B) on the basis that the rule is contrary
8 to the public interest shall not be construed to au-
9 thorize the Commission to apply such a standard to
10 any other provision of this Act or any other action
11 of the Commission.

12 “(6) TEMPORARY EFFECTIVENESS FOR EMER-
13 GENCY RULES.—

14 “(A) EMERGENCY RULES AUTHORIZED.—

15 The Commission shall issue regulations to
16 specify the terms and conditions under which,
17 in an emergency as defined by the Commission,
18 a contract market may, by a two-thirds vote of
19 its governing board, make a rule (in this para-
20 graph referred to as an ‘emergency rule’) imme-
21 diately effective on a temporary basis without
22 compliance with the applicable notice require-
23 ments under paragraph (2), or during any pe-
24 riod of review by the Commission, if the con-
25 tract market makes every effort practicable to

1 notify the Commission of the emergency rule
2 before making the emergency rule effective. The
3 notification shall include a complete explanation
4 of the emergency involved. If the contract mar-
5 ket does not provide the Commission with such
6 notification and explanation before making the
7 emergency rule effective, the contract market
8 shall provide the Commission with such notifi-
9 cation and explanation at the earliest possible
10 date. The Commission may delegate the power
11 to receive such notification and explanation to
12 such individuals as the Commission determines
13 necessary and appropriate.

14 “(B) COMMISSION CONSIDERATION OF
15 EMERGENCY RULES.—Within 10 days of the re-
16 ceipt from a contract market of notification of
17 an emergency rule and an explanation of the
18 emergency involved, or as soon as practicable,
19 the Commission shall determine whether it is
20 appropriate either—

21 “(i) to permit the emergency rule to
22 remain in effect during the pendency of the
23 emergency; or

24 “(ii) to suspend the effect of the
25 emergency rule pending review either

1 under the procedures of this subsection or
2 otherwise.

3 “(C) REPORT ON CONSIDERATION.—The
4 Commission shall submit to the affected con-
5 tract market, to the Committee on Agriculture
6 of the House of Representatives and the Com-
7 mittee on Agriculture, Nutrition, and Forestry
8 of the Senate a report regarding its determina-
9 tion (and the basis thereof) with respect to an
10 emergency rule. If the report is submitted more
11 than 10 days after the Commission’s receipt of
12 notification of the emergency rule, the report
13 shall also contain an explanation of why sub-
14 mission within such period was not practicable.
15 A determination by the Commission to suspend
16 the effect of a rule under this paragraph shall
17 be subject to judicial review on the same basis
18 as an emergency determination under section
19 8a(9). Nothing in this paragraph shall be con-
20 strued to limit the authority of the Commission
21 under section 8a(9).”.

22 **SEC. 105. REGULATION OF AUDIT TRAIL REQUIREMENTS.**

23 Section 5a(b) of the Commodity Exchange Act (7
24 U.S.C. 7a(b)) is amended—

25 (1) by striking paragraphs (3), (4), and (6);

1 (2) by redesignating paragraph (5) as para-
2 graph (6);

3 (3) in paragraph (6) (as so redesignated)—

4 (A) by striking “paragraph (3)” both
5 places it appears and inserting “this sub-
6 section” and

7 (B) by striking “such paragraph” and in-
8 serting “this subsection”; and

9 (4) by inserting after paragraph (2) the follow-
10 ing new paragraphs:

11 “(3) DEVELOPMENT OF STANDARDS FOR TIME
12 OF EXECUTION.—Not later than nine months after
13 the date of the enactment of this paragraph, the
14 Commission shall issue a regulation, after notice and
15 an opportunity for a hearing, that prescribes an ob-
16 jective standard or methodology for establishing
17 whether a contract market meets the requirement
18 under paragraph (2) that each contract market must
19 be able to determine, with reasonable accuracy, the
20 time of execution, in increments of no more than one
21 minute in length. In issuing the regulation, the Com-
22 mission—

23 “(A) shall take into account any unique
24 features and trading practices of each contract
25 market and any surveillance mechanisms be-

1 yond a manual trade recordation system adopt-
2 ed by each contract market;

3 “(B) shall not prescribe a specific means
4 or technology for meeting the accuracy or any
5 other requirement.

6 “(4) USE OF TRADE RECORDATION DATA.—
7 Consistent with Commission regulations, the audit
8 trail system for a contract market shall rely upon
9 trade recordation data that are—

10 “(A) entered by floor traders, floor brokers
11 or others in nonerasable ink or other form that
12 cannot be altered without leaving a complete
13 record of such alteration; and

14 “(B) continually provided to the contract
15 market during the trading day in intervals of
16 not more than 30 minutes for processing by the
17 contract market.

18 “(5) USE OF TIME STAMPS.—The audit trail
19 system for a contract market shall rely upon accu-
20 rate time stamps or similarly reliable devices for re-
21 cording when a customer’s order reaches the trading
22 floor and when that order is reported from the floor
23 as having been executed.”.

1 **SEC. 106. USE OF BENEFIT-COST ANALYSIS.**

2 Section 12 of the Commodity Exchange Act (7 U.S.C.
3 16) is amended by adding at the end the following new
4 subsection:

5 “(h) USE OF BENEFIT-COST ANALYSIS.—

6 “(1) ANALYSIS REQUIRED.—Except as provided
7 in paragraph (4), the Commission shall not adopt
8 any rule, regulation, or order, or take any other reg-
9 ulatory action, if the benefits of such an action do
10 not exceed the costs. The Commission shall make
11 this benefit-cost determination based upon the infor-
12 mation available in the record of such action main-
13 tained by the Commission.

14 “(2) BENEFITS DEFINED.—For purposes of
15 this subsection, the term ‘benefits’ means the signifi-
16 cant, reasonably identifiable, favorable effects (in-
17 cluding the impact on market liquidity and effi-
18 ciency, financial and market integrity, customer pro-
19 tection, and fair competition) that are reasonably ex-
20 pected to result, directly or indirectly, from the
21 adoption of a rule or other agency action.

22 “(3) COSTS DEFINED.—For purposes of this
23 subsection, the term ‘costs’ means the significant,
24 reasonably identifiable, adverse effects (including the
25 impact on market liquidity and efficiency, financial
26 and market integrity, customer protection, and fair

1 competition) that are reasonably expected to result,
 2 directly or indirectly, from the adoption of a rule or
 3 other agency action.

4 “(4) EXCEPTION FOR CERTAIN RULES AND AC-
 5 TIONS.—This subsection shall not apply to the fol-
 6 lowing:

7 “(A) Any adjudicatory or formal rule-
 8 making determinations made by the Commis-
 9 sion after a hearing on the record.

10 “(B) Any emergency determination made
 11 by the Commission under section 8a(a)(9).

12 “(C) Any review or action taken by the
 13 Commission on appeal from a contract market
 14 disciplinary action in accordance with section
 15 8c.

16 “(D) Any Commission approvals of rules
 17 or rule changes in accordance with section
 18 5a(c).

19 “(E) Any Commission approvals of con-
 20 tract market designation applications under sec-
 21 tion 6.”.

22 **SEC. 107. COMMISSION OVERSIGHT AND DEFICIENCY OR-**
 23 **DERS.**

24 (a) REPEAL.—Section 8e of the Commodity Ex-
 25 change Act (7 U.S.C. 12e) is repealed.

1 (b) CONFORMING AMENDMENTS.—(1) Section 4j(a)
 2 of the Commodity Exchange Act (7 U.S.C. 6j(a)) is
 3 amended—

4 (1) in paragraph (3)(B)(ii), by striking “, such
 5 as those described in section 8e,”; and

6 (2) in paragraph (5)(A)(ii), by striking “, such
 7 as those described in section 8e,”.

8 **TITLE II—TREASURY**

9 **AMENDMENT CLARIFICATION**

10 **SEC. 201. TREASURY AMENDMENT CLARIFICATION.**

11 Section 2(a)(1)(A)(ii) of the Commodity Exchange
 12 Act (7 U.S.C. 2(ii)) is amended—

13 (1) by inserting “or transactions involving”
 14 after “transactions in”;

15 (2) by inserting “to the general public” after
 16 “sale thereof”; and

17 (3) by adding at the end the following new sen-
 18 tence: “For purposes of this clause only, the term
 19 ‘board of trade’, as it applies to transactions in or
 20 involving foreign currency, means any facility where-
 21 by standardized contracts are systematically mar-
 22 keted to retail investors (other than individuals and
 23 entities described as eligible participants under the
 24 regulations of the Commission published in the Fed-
 25 eral Register on January 22, 1993, as codified in

1 section 35.1(b)(2) of part 35 of title 17, Code of
2 Federal Regulations).”.

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