

105TH CONGRESS  
2D SESSION

# H. R. 4062

To provide for the study of derivatives regulation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1998

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Commerce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for the study of derivatives regulation, 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Financial Derivatives  
5       Supervisory Improvement Act of 1998”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds as follows:

1           (1) There should be consistency, coordination,  
2           and clarity in the regulation of derivative instru-  
3           ments used by financial institutions.

4           (2) Banks and their affiliates developed, and re-  
5           main the principal participants in, the derivatives  
6           markets.

7           (3) Regulation of the derivatives markets di-  
8           rectly affects the liquidity, efficiency, capital posi-  
9           tion, and safety and soundness of the banking indus-  
10          try and the safety and soundness of the Federal de-  
11          posit insurance fund.

12          (4) Regulation of the derivatives markets has  
13          profound consequences for the continued effective-  
14          ness of the bank supervisory process, including the  
15          capital provisions of the Federal banking agencies.

16          (5) Statutes and regulations governing use of  
17          financial derivatives by depository institutions in the  
18          United States, including over-the-counter and ex-  
19          change-traded derivatives, should be brought up to  
20          date to reflect the rapid evolution of the markets in  
21          recent years, framed so as to keep pace with changes  
22          in the markets brought on by the onrush of techno-  
23          logical advances, and formulated in a manner that  
24          enhances the legal certainty of derivatives trans-  
25          actions.

1           (6) The Congress desires interagency coopera-  
2           tion to harmonize, to the maximum extent possible,  
3           United States rules and regulations related to the  
4           derivatives markets.

5           (7) Regulatory arbitrage is a fact of commerce,  
6           with market participants having the tendency to  
7           move to the weakest regulator.

8           (8) The stability of the international financial  
9           system and the competitive position of United States  
10          financial institutions are jeopardized if foreign mar-  
11          kets are regulated less prudently than United States  
12          markets.

13 **SEC. 3. ESTABLISHMENT OF WORKING GROUP ON FINAN-**  
14 **CIAL DERIVATIVES.**

15          (a) ESTABLISHMENT; COMPOSITION.—There is es-  
16          tablished the Working Group on Financial Derivatives,  
17          which shall consist of—

18               (1) the Secretary of the Treasury;

19               (2) the Chairman of the Board of Governors of  
20          the Federal Reserve System;

21               (3) the Chairman of the Securities and Ex-  
22          change Commission;

23               (4) the Chairman of the Commodity Futures  
24          Trading Commission;

25               (5) the Comptroller of the Currency;

1           (6) the Director of the Office of Thrift Super-  
2 vision;

3           (7) the Chairperson of the Board of Directors  
4 of the Federal Deposit Insurance Corporation; and

5           (8) the President of the Federal Reserve Bank  
6 of New York.

7       (b) CHAIRMANSHIP.—The Chairman of the Working  
8 Group on Financial Derivatives shall be the Secretary of  
9 the Treasury.

10       (c) DESIGNATION OF OFFICERS AND EMPLOYEES.—  
11 The members of the Working Group on Financial Deriva-  
12 tives may, from time to time, designate other officers or  
13 employees of their respective agencies to assist in carrying  
14 out the duties on the Working Group on Financial Deriva-  
15 tives.

16       (d) ESTABLISHMENT OF ADVISORY COMMITTEES.—  
17 In the development of recommendations related to deriva-  
18 tive products, the Working Group on Financial Derivatives  
19 shall consult, to the widest extent possible, with market  
20 participants, and may establish advisory committees ac-  
21 cordingly.

22       (e) SUNSET; REPORTS.—The Working Group on Fi-  
23 nancial Derivatives shall cease to exist upon the enactment  
24 of legislation authorizing appropriations for the Commod-  
25 ity Futures Trading Commission for any fiscal year after

1 fiscal year 2000. The Secretary of the Treasury and the  
2 Chairman of the Board of Governors of the Federal Re-  
3 serve System shall submit to the Congress every 6 months,  
4 during the 4-year period beginning on the date of such  
5 cessation, a report on the progress of the implementation  
6 of the recommendations of the Working Group on Finan-  
7 cial Derivatives.

8 **SEC. 4. STUDY AND RECOMMENDATIONS ON REGULATION**  
9 **OF DERIVATIVES MARKETS.**

10 (a) STUDY.—The Working Group on Financial De-  
11 rivatives established under section 2—

12 (1) shall conduct a study on the regulation of  
13 the derivatives markets, including over-the-counter  
14 derivatives and exchange-traded derivatives, in which  
15 depository institutions, brokers or dealers registered  
16 under the Securities and Exchange Act of 1934, for-  
17 eign banks, or affiliates of a depository institution or  
18 a foreign bank, participate; and

19 (2) shall develop recommendations for mod-  
20 ernizing and harmonizing statutes, regulations, and  
21 policies—

22 (A) to reflect changes in the markets de-  
23 scribed in paragraph (1);

24 (B) to improve their operations;

1 (C) to enhance legal certainty for all types  
2 of instruments related to such markets, includ-  
3 ing hybrid instruments and swap agreements;  
4 and

5 (D) to promote the harmonization of regu-  
6 lation of such markets worldwide.

7 (b) REPORTS.—

8 (1) INTERIM REPORT.—Not later than 6  
9 months after the date of the enactment of this Act,  
10 the Working Group on Financial Derivatives estab-  
11 lished under section 2 shall submit an interim report  
12 to the Congress describing the working group's  
13 progress.

14 (2) FINAL REPORT.—Not later than 1 year  
15 after the date of the enactment of this Act, the  
16 Working Group on Financial Derivatives established  
17 under section 2 shall submit a final report to the  
18 Congress describing the study conducted under sub-  
19 section (a)(1) and containing the recommendations  
20 developed under subsection (a)(2).

21 (3) SEPARATE VIEWS.—The reports under  
22 paragraph (1) and (2) may include separately stated  
23 views of any member of the working group.

1 **SEC. 5. PROTECTION OF INTERNATIONAL BANKING SYS-**  
2 **TEM.**

3 To protect customers, stabilize the international fi-  
4 nancial system, and underpin the safety and soundness of  
5 banking institutions in the United States and the banking  
6 system around the world, the Government of the United  
7 States and the Working Group on Financial Derivatives  
8 should make a high priority continual negotiations to en-  
9 sure that foreign markets and regulatory bodies establish  
10 and maintain regulations comparably prudent to those ap-  
11 plicable in United States markets.

12 **SEC. 6. RESTRICTIONS RELATING TO HYBRID INSTRU-**  
13 **MENTS AND SWAP AGREEMENTS.**

14 Notwithstanding any other provision of law—

15 (1) during the period beginning on the date of  
16 the enactment of this Act and ending upon the en-  
17 actment of legislation authorizing appropriations for  
18 the Commodity Futures Trading Commission for  
19 any fiscal year after fiscal year 2000, the Commod-  
20 ity Futures Trading Commission may not, without  
21 the approval of the Secretary of the Treasury, pro-  
22 pose or promulgate any rule, regulation, or order, or  
23 issue any interpretive or policy statement, that re-  
24 stricts or regulates activity in a hybrid instrument or  
25 swap agreement—

1 (A) that is eligible for exemption under  
 2 part 34 or 35 of title 17, Code of Federal Reg-  
 3 ulations (as in effect on January 1, 1998); and

4 (B) to which a depository institution, a  
 5 broker or dealer registered under the Securities  
 6 and Exchange Act of 1934, a foreign bank, or  
 7 an affiliate of a depository institution or a for-  
 8 eign bank, is a party; and

9 (2) a hybrid instrument or swap agreement de-  
 10 scribed in paragraph (1) that is entered into before  
 11 the period described in such paragraph shall not be  
 12 subject to section 2(a)(1)(B)(v) of the Commodity  
 13 Exchange Act (7 U.S.C. 2a(a)(1)(B)(v)).

14 **SEC. 7. DEFINITIONS.**

15 For purposes of this Act:

16 (1) The term “depository institution” has the  
 17 meaning given such term in section 19(b)(1)(A) of  
 18 the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

19 (2) The term “foreign bank” has the meaning  
 20 given such term in section 1(b)(7) of the Inter-  
 21 national Banking Act of 1978 (12 U.S.C.  
 22 3101(b)(7)).

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