

105TH CONGRESS
1ST SESSION

S. 257

To amend the Commodity Exchange Act to improve the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1997

Mr. LUGAR (for himself, Mr. HARKIN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to improve the Act, 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 “Commodity Exchange
5 Amendments Act of 1997”.

6 **SEC. 2. TREASURY AMENDMENT.**

7 Section 2(a)(1)(A) of the Commodity Exchange Act
8 (7 U.S.C. 2) is amended by striking clause (ii) and insert-
9 ing the following:

10 “(ii) TREASURY AMENDMENT.—

1 “(I) IN GENERAL.—Nothing in
2 this Act shall be deemed to govern or
3 in any way be applicable to trans-
4 actions in or involving foreign cur-
5 rency, security warrants, security
6 rights, resales of installment loan con-
7 tracts, repurchase options, govern-
8 ment securities, or mortgages and
9 mortgage purchase commitments, un-
10 less such transactions involve the sale
11 thereof to the general public for fu-
12 ture delivery conducted on a board of
13 trade.

14 “(II) OTHER AGENCIES.—Noth-
15 ing in subclause (I) shall affect the
16 powers of the Securities and Ex-
17 change Commission, the Office of the
18 Comptroller of the Currency, the
19 Board of Governors of the Federal
20 Reserve System, the Department of
21 the Treasury, the Federal Deposit In-
22 surance Corporation, any agency of
23 State government with the authority
24 to charter, regulate, or license banks,
25 or any State insurance regulatory

1 agency, under this Act or any other
2 provision of law.

3 “(III) DEFINITIONS.—

4 “(aa) BOARD OF TRADE;
5 FOREIGN EXCHANGE TRANS-
6 ACTIONS.—The term ‘board of
7 trade’, as applied to foreign ex-
8 change transactions described in
9 subclause (I), shall include unsu-
10 pervised entities that are engaged
11 in the systematic marketing of
12 standardized, non-negotiable for-
13 eign currency transactions to re-
14 tail investors.

15 “(bb) BOARD OF TRADE;
16 GOVERNMENT SECURITIES.—The
17 term ‘board of trade’, as used in
18 subclause (I), shall not include a
19 government securities dealer or
20 government securities broker, to
21 the extent the dealer or broker
22 engage in transactions in govern-
23 ment securities, as the terms

1 'government securities', 'govern-
2 ment securities dealer', and 'gov-
3 ernment securities broker' are de-
4 fined in section 3(a) of the Secu-
5 rities Exchange Act of 1934 (15
6 U.S.C. 78c(a)).

7 "(cc) GENERAL PUBLIC; RE-
8 TAIL INVESTORS.—The Commis-
9 sion shall define the terms 'gen-
10 eral public' as used in subclause
11 (I) and 'retail investors' as used
12 in item (aa), taking into account,
13 to the extent practicable, section
14 4(e)(3) of this Act and section
15 35(b)(2) of title 17, Code of Fed-
16 eral Regulations. In carrying out
17 the preceding sentence, the Com-
18 mission shall not include in the
19 definition of 'retail investors' a
20 natural person with total assets
21 that exceeds \$10,000,000.

22 "(dd) OPTION.—For pur-
23 poses of this clause, an 'option'
24 shall be considered to be a trans-
25 action at the time it is purchased

1 or sold and at the time, if any,
2 that it is exercised.

3 “(IV) EMERGENCY AUTHOR-
4 ITY.—Nothing in this clause shall re-
5 strict the powers of the Commission
6 under section 8a(9) as they apply to
7 designated contract markets.”.

8 **SEC. 3. HEDGING.**

9 Section 3 of the Commodity Exchange Act (7 U.S.C.
10 5) is amended in the fourth sentence by striking “through
11 fluctuations in price”.

12 **SEC. 4. DELIVERY POINTS FOR FOREIGN FUTURES CON-**
13 **TRACTS.**

14 Section 4(b) of the Commodity Exchange Act (7
15 U.S.C. 6(b)) is amended—

16 (1) in the third sentence—

17 (A) by striking “(1)” and “(2)” and in-
18 serting “(A)” and “(B)”, respectively; and

19 (B) by striking “No rule” and inserting
20 “Except as provided in paragraph (2), no rule”;

21 (2) by inserting “(1)” after “(b)”; and

22 (3) by adding at the end the following:

23 “(2)(A) The Commission shall consult with a foreign
24 government, foreign futures authority, or department,

1 agency, governmental body, or regulatory organization em-
2 powered by a foreign government to regulate a board of
3 trade, exchange, or market located outside the United
4 States, or a territory or possession of the United States,
5 that has 1 or more established delivery points in the Unit-
6 ed States, or a territory or possession of the United
7 States, for a contract of sale of a commodity for future
8 delivery that is made or will be made on or subject to the
9 rules of the board of trade, exchange, or market.

10 “(B) In the consultations, the Commission shall en-
11 deavor to secure adequate assurances, through memo-
12 randa of understanding or any other means the Commis-
13 sion considers appropriate, that the presence of the deliv-
14 ery points will not create the potential for manipulation
15 of the price, or any other disruption in trading, of a con-
16 tract of sale of a commodity for future delivery traded on
17 or subject to the rules of a contract market, or a commod-
18 ity, in interstate commerce.

19 “(C) Any warehouse or other facility housing an es-
20 tablished delivery point in the United States, or a territory
21 or possession of the United States, described in subpara-
22 graph (A) shall—

1 “(i) keep books, records, and other information
2 specified by the Commission pertaining to all trans-
3 actions and positions in all contracts made or car-
4 ried on the foreign board of trade, exchange, or mar-
5 ket in such form and manner and for such period as
6 may be required by the Commission;

7 “(ii) file such reports regarding the transactions
8 and positions with the Commission as the Commis-
9 sion may specify; and

10 “(iii) keep the books and records open to in-
11 spection by a representative of the Commission or
12 the United States Department of Justice.”.

13 **SEC. 5. EXEMPTION AUTHORITIES.**

14 Section 4 of the Commodity Exchange Act (7 U.S.C.
15 6(c)) is amended by adding at the end the following:

16 “(e) PRIVATE TRANSACTION EXEMPTION.—

17 “(1) IN GENERAL.—Notwithstanding subsection
18 (c)(1), to the extent, if any, that an agreement, con-
19 tract, or transaction (or class thereof) is otherwise
20 subject to this Act, it shall be exempt from all provi-
21 sions of this Act and any person or class of persons
22 offering, entering into, rendering advice, or render-
23 ing other services with respect to the agreement,
24 contract, or transaction (or class thereof), shall be
25 exempt for the activity from all provisions of this

1 Act (except in each case the provisions of sections 4b
2 and 4o, any antifraud provision adopted by the Com-
3 mission pursuant to section 4c(b), and the provisions
4 of section 6(c) and 9(a)(2) to the extent the provi-
5 sions prohibit manipulation of the market price of
6 any commodity in interstate commerce for future de-
7 livery on or subject to the rules of any contract mar-
8 ket) if—

9 “(A) the agreement, contract, or trans-
10 action (or class thereof) is entered into only be-
11 tween appropriate persons at the time the per-
12 sons enter into the agreement, contract, or
13 transaction (or class thereof);

14 “(B) the agreement, contract, or trans-
15 action (or class thereof) is not part of a fun-
16 gible class of agreements, contracts, or trans-
17 actions that are standardized as to their mate-
18 rial economic terms;

19 “(C) the creditworthiness of any party hav-
20 ing an actual or potential obligation under the
21 agreement, contract, or transaction (or class
22 thereof) would be a material consideration in
23 entering into or determining the terms of the
24 agreement, contract, or transaction (or class

1 thereof), including pricing, cost, or credit en-
2 hancement terms of the agreement, contract, or
3 transaction (or class thereof); and

4 “(D) the agreement, contract, or trans-
5 action (or class thereof) is not entered into and
6 traded on or through a multilateral transaction
7 execution facility.

8 “(2) EXCEPTIONS.—Paragraph (1) shall not
9 preclude—

10 “(A) arrangements or facilities between
11 parties to an agreement, contract, or trans-
12 action (or class thereof) that provide for netting
13 of payment obligations resulting from the
14 agreement, contract, or transaction (or class
15 thereof);

16 “(B) arrangements or facilities among par-
17 ties to an agreement, contract, or transaction
18 (or class thereof) that provide for netting of
19 payments resulting from the agreement, con-
20 tract or transaction (or class thereof); or

21 “(C) the prohibition of transactions cov-
22 ered under section 32.2 of title 17, Code of
23 Federal Regulations.

1 “(3) DEFINITION OF APPROPRIATE PERSON.—

2 In paragraph (1), the term ‘appropriate person’
3 means—

4 “(A) a person (as defined in subsection
5 (c)(3)); or

6 “(B) a natural person whose total assets
7 exceed \$10,000,000.

8 “(4) HYBRID INSTRUMENT EXEMPTION.—

9 “(A) DEFINITIONS.—In this paragraph:

10 “(i) COMMODITY-DEPENDENT COMPO-
11 NENT.—The term ‘commodity-dependent
12 component’ means a component of a hy-
13 brid instrument, the payment of which re-
14 sults from indexing to, or calculation by
15 reference to, the price of a commodity.

16 “(ii) COMMODITY-DEPENDENT
17 VALUE.—The term ‘commodity-dependent
18 value’ means the value of a commodity-de-
19 pendent component, which when decom-
20 posed into an option payout or payouts, is
21 measured by the absolute net value of the
22 put option premia with strike prices less
23 than or equal to the reference price plus
24 the absolute net value of the call option
25 premia with strike prices greater than or

1 equal to the reference price, calculated as
2 of the time of issuance of the hybrid in-
3 strument.

4 “(iii) COMMODITY-INDEPENDENT
5 COMPONENT.—The term ‘commodity-inde-
6 pendent component’ means the component
7 of a hybrid instrument, the payments of
8 which do not result from indexing to, or
9 calculation by reference to, the price of a
10 commodity.

11 “(iv) COMMODITY-INDEPENDENT
12 VALUE.—The term ‘commodity-independ-
13 ent value’ means the present value of the
14 payments attributable to the commodity-
15 independent component calculated as of
16 the time of issuance of the hybrid instru-
17 ment.

18 “(v) HYBRID INSTRUMENT.—The
19 term ‘hybrid instrument’ means an equity
20 or debt security or depository instrument
21 with 1 or more commodity-dependent com-
22 ponents that have payment features similar
23 to commodity futures or commodity option
24 contracts or combinations thereof.

1 “(vi) OPTION PREMIUM.—The term
2 ‘option premium’ means the value of an
3 option on the referenced commodity of the
4 hybrid instrument, calculated by using—

5 “(I) the same method as that
6 used to determine the issue price of
7 the instrument; or

8 “(II) a commercially reasonable
9 method appropriate to the instrument
10 being priced where the premia are not
11 explicitly calculated in determining
12 the issue price of the instrument.

13 “(vii) REFERENCE PRICE.—The term
14 ‘reference price’ means a price nearest the
15 current spot or forward price, whichever is
16 used to price the instrument, at which a
17 commodity-dependent payment becomes
18 non-zero, or, in the case in which 2 poten-
19 tial reference prices exist, the price that re-
20 sults in the greatest commodity-dependent
21 value.

22 “(B) EXEMPTION.—Notwithstanding sub-
23 section (c)(1), a hybrid instrument is exempt
24 from all provisions of this Act, and any person
25 or class of persons offering, entering into, or

1 rendering advice or other services with respect
2 to the hybrid instrument is exempt for such ac-
3 tivity from all provisions of this Act, if the fol-
4 lowing terms and conditions are satisfied:

5 “(i) The instrument is—

6 “(I) an equity or debt security
7 (within the meaning of section 2(1) of
8 the Securities Act of 1933 (15 U.S.C.
9 77b); or

10 “(II) a demand deposit, time de-
11 posit or transaction account within
12 the meaning of subsections (b)(1),
13 (c)(1), and (e) of section 204.2 of title
14 12, Code of Federal Regulations, re-
15 spectively, that are offered by—

16 “(aa) an insured depository
17 institution (as defined in section
18 3 of the Federal Deposit Insur-
19 ance Act (12 U.S.C. 1813));

20 “(bb) an insured credit
21 union (as defined in section 101
22 of the Federal Credit Union Act
23 (12 U.S.C. 1752)); or

24 “(cc) a Federal or State
25 branch or agency of a foreign

1 bank (as defined in section 1 of
2 the International Banking Act of
3 1978 (12 U.S.C. 3101)).

4 “(ii) The sum of the commodity-de-
5 pendent values of the commodity-depend-
6 ent components is less than the commod-
7 ity-independent value of the commodity-
8 independent component.

9 “(iii) Provided that—

10 “(I) an issuer must receive full
11 payment of the purchase price of the
12 hybrid instrument, and a purchaser or
13 holder of a hybrid instrument may not
14 be required to make additional out-of-
15 pocket payments to the issuer during
16 the life of the instrument or at matu-
17 rity;

18 “(II) the instrument is not mar-
19 keted as a futures contract or a com-
20 modity option or, except to the extent
21 necessary to describe the functioning
22 of the instrument or to comply with
23 applicable disclosure requirements, as
24 having the characteristics of a futures
25 contract or a commodity option; and

1 “(III) the instrument does not
2 provide for settlement in the form of
3 a delivery instrument that is specified
4 as such in the rules of a designated
5 contract market.

6 “(iv) The instrument is initially issued
7 or sold subject to applicable Federal or
8 State securities or banking laws to persons
9 who are permitted under the laws to pur-
10 chase or enter into the hybrid instrument.

11 “(C) PROVISION NOT EXEMPTED.—The
12 prohibition of transactions covered under sec-
13 tion 32.2 of title 17, Code of Federal Regula-
14 tions, shall apply to a hybrid instrument under
15 this paragraph.

16 “(5) APPLICATION OF EXEMPTIONS.—Sub-
17 section (c) shall not restrict the authority of the
18 Commission to grant an exemption under this sub-
19 section that is in addition to or independent of an
20 exemption provided under paragraph (1) or (4). An
21 exemption provided under subsection (c) may not be
22 applied in a manner that restricts the exemption
23 provided under either paragraph (1) or (4).

24 “(6) EXEMPTION BY COMMISSION.—

1 “(A) IN GENERAL.—The Commission may
 2 exempt an agreement, contract, or transaction
 3 (or class thereof), or a hybrid instrument under
 4 this subsection, to the extent that the agree-
 5 ment, contract, or transaction (or class there-
 6 of), or hybrid instrument, may be subject to
 7 this Act.

8 “(B) NO PRESUMPTION CREATED.—An ex-
 9 emption under this subsection shall not create
 10 a presumption that the exempted agreement,
 11 contract, or transaction (or class thereof), or
 12 hybrid instrument, is subject to this Act.”.

13 **SEC. 6. EXEMPTION FOR PROFESSIONAL MARKETS.**

14 Section 4 of the Commodity Exchange Act (7 U.S.C.
 15 6) (as amended by section 5) is amended by adding at
 16 the end the following:

17 “(f) EXEMPTION FOR PROFESSIONAL MARKETS.—

18 “(1) DEFINITIONS.—In this subsection:

19 “(A) APPROPRIATE PERSON.—The term
 20 ‘appropriate person’ means—

21 “(i) a person (as defined in subsection
 22 (c)(3)); or

23 “(ii) a natural person whose total as-
 24 sets exceed \$10,000,000.

1 “(B) PROFESSIONAL MARKET.—The term
2 ‘professional market’ means a market—

3 “(i) that is traded on a board of trade
4 that is otherwise designated by the Com-
5 mission as a contract market; and

6 “(ii) on which only an appropriate
7 person (as defined in subparagraph (A))
8 may enter into an agreement, contract, or
9 transaction (or class thereof) on the mar-
10 ket.

11 “(2) EXEMPTION.—

12 “(A) IN GENERAL.—An agreement, con-
13 tract, or transaction (or class thereof) that is
14 traded on a professional market and is, or may
15 be, subject to this Act shall be exempt from this
16 Act.

17 “(B) CONTRACTS NOT EXEMPTED.—The
18 exemption provided under subparagraph (A)
19 shall not apply to—

20 “(i) any individual agreement, con-
21 tract, or transaction that has been trans-
22 acted for the product involved as of the ef-
23 fective date of this subsection; or

24 “(ii) an agreement, contract, or trans-
25 action (or class thereof) that involves an

1 agricultural commodity referred to in sec-
2 tion 1a.

3 “(3) APPLICABILITY OF CERTAIN PROVI-
4 SIONS.—An agreement, contract, or transaction (or
5 class thereof) for which an exemption is provided
6 under paragraph (2)(A), shall, to the extent applica-
7 ble, in each case be subject to—

8 “(A) sections 2(a)(1)(B), 4b, and 4o;

9 “(B) the provisions of sections 6(c) and
10 9(a)(2) to the extent the provisions prohibit
11 manipulation of the market price of any com-
12 modity in interstate commerce for future deliv-
13 ery on or subject to the rules of a contract mar-
14 ket;

15 “(C) prohibitions adopted by the Commis-
16 sion against fraud or manipulation under sec-
17 tion 4c(b); and

18 “(D) the powers of the Commission to re-
19 spond to emergencies as provided in section
20 8a(9).”.

21 **SEC. 7. CONTRACT DESIGNATION.**

22 (a) IN GENERAL.—Section 5 of the Commodity Ex-
23 change Act (7 U.S.C. 7) is amended—

24 (1) by striking the matter preceding paragraph
25 (1) and inserting the following:

1 **“SEC. 5. DESIGNATION OF A BOARD OF TRADE AS A CON-**
2 **TRACT MARKET.**

3 “(a) IN GENERAL.—The Commission shall designate
4 a board of trade as a contract market if the board of trade
5 complies with and carries out the following conditions and
6 requirements:”;

7 (2) by striking paragraph (7);

8 (3) by redesignating paragraph (8) as para-
9 graph (7); and

10 (4) by adding at the end the following:

11 “(b) EXISTING AND FUTURE DESIGNATIONS.—

12 “(1) IN GENERAL.—If a board of trade is des-
13 ignated as a contract market by the Commission
14 under subsection (a) and section 6, the board of
15 trade shall retain the designation for all existing or
16 future contracts, unless the Commission suspends or
17 revokes the designation or the board of trade relin-
18 quishes the designation.

19 “(2) EXISTING DESIGNATIONS.—A board of
20 trade that has been designated as a contract market
21 as of the date of enactment of this subsection shall
22 retain the designation unless the Commission finds
23 that a violation of this Act or a rule, regulation, or
24 order of the Commission by the contract market jus-
25 tifies suspension or revocation of the designation

1 under section 6(b), or the board of trade relin-
2 quishes the designation.

3 “(c) NEW CONTRACT SUBMISSIONS.—Except as pro-
4 vided in subsection (e), a board of trade that has been
5 designated as a contract market under subsection (a) shall
6 submit to the Commission all rules that establish the
7 terms and conditions of a new contract of sale in accord-
8 ance with subsection (d) (referred to in this section as a
9 ‘new contract’), other than a rule relating to the setting
10 of levels of margin and other rules that the Commission
11 may specify by regulation.

12 “(d) PROCEDURES FOR NEW CONTRACTS.—

13 “(1) REQUIRED SUBMISSION TO COMMISSION.—
14 Except as provided in subsection (e), a contract
15 market shall submit new contracts to the Commis-
16 sion in accordance with subsection (c).

17 “(2) EFFECTIVENESS OF NEW CONTRACTS.—A
18 contract market may make effective a new contract
19 and may implement trading in the new contract—

20 “(A) not earlier than 10 business days
21 after the receipt of the new contract by the
22 Commission; or

23 “(B) earlier if authorized by the Commis-
24 sion by rule, regulation, order, or written no-
25 tice.

1 “(3) NOTICE TO CONTRACT MARKET.—The new
2 contract shall become effective and may be traded on
3 the contract market, unless, within the 10-business-
4 day period beginning on the date of the receipt of
5 the new contract by the Commission, the Commis-
6 sion notifies the contract market in writing—

7 “(A) of the determination of the Commis-
8 sion that the proposed new contract appears
9 to—

10 “(i) violate a specific provision of this
11 Act (including paragraphs (1) through (7)
12 of section 5(a)) or a rule, regulation, or
13 order of the Commission; or

14 “(ii) be contrary to the public interest;
15 and

16 “(B) that the Commission intends to re-
17 view the new contract.

18 “(4) NOTICE IN THE FEDERAL REGISTER.—
19 Notwithstanding the determination of the Commis-
20 sion to review a new contract under paragraph (3)
21 and except as provided in subsection (e), the con-
22 tract market may make the new contract effective,
23 and may implement trading in the new contract, on
24 a date that is not earlier than 15 business days after
25 the determination of the Commission to review the

1 new contract unless within the period of 15 business
2 days the Commission institutes proceedings to dis-
3 approve the new contract by providing notice in the
4 Federal Register of the information required under
5 paragraph (5)(A).

6 “(5) DISAPPROVAL PROCEEDINGS.—

7 “(A) NOTICE OF PROPOSED VIOLATIONS.—

8 If the Commission institutes proceedings to de-
9 termine whether to disapprove a new contract
10 under this subsection, the Commission shall
11 provide the contract market with written notice,
12 including an explanation and analysis of the
13 substantive basis for the proposed grounds for
14 disapproval, of what the Commission has reason
15 to believe are the grounds for disapproval, in-
16 cluding, as applicable—

17 “(i) the 1 or more specific provisions
18 of this Act or a rule, regulation, or order
19 of the Commission that the Commission
20 has reason to believe the new contract vio-
21 lates or, if the new contract became effec-
22 tive, would violate; or

23 “(ii) the 1 or more specific public in-
24 terests to which the Commission has rea-
25 son to believe the new contract is contrary,

1 or if the new contract became effective
2 would be contrary.

3 “(B) DISAPPROVAL PROCEEDINGS AND DE-
4 TERMINATION.—

5 “(i) OPPORTUNITY TO PARTICIPATE;
6 HEARING.—Before deciding to disapprove
7 a new contract, the Commission shall give
8 interested persons (including the board of
9 trade) an opportunity to participate in the
10 disapproval proceedings through the sub-
11 mission of written data, views, or argu-
12 ments following appropriate notice and an
13 opportunity for a hearing on the record be-
14 fore the Commission.

15 “(ii) DETERMINATION OF DIS-
16 APPROVAL.—At the conclusion of the dis-
17 approval proceeding, the Commission shall
18 determine whether to disapprove the new
19 contract.

20 “(iii) GROUNDS FOR DISAPPROVAL.—
21 The Commission shall disapprove the new
22 contract if the Commission determines that
23 the new contract—

1 “(I) violates this Act or a rule,
2 regulation, or order of the Commis-
3 sion; or

4 “(II) is contrary to public inter-
5 est.

6 “(iv) SPECIFICATIONS FOR DIS-
7 APPROVAL.—Each disapproval determina-
8 tion shall specify, as applicable—

9 “(I) the 1 or more specific provi-
10 sions of this Act or a rule, regulation,
11 or order of the Commission, that the
12 Commission determines the new con-
13 tract violates or, if the new contract
14 became effective, would violate; or

15 “(II) the 1 or more specific pub-
16 lic interests to which the Commission
17 determines the new contract is con-
18 trary, or if the new contract became
19 effective would be contrary.

20 “(C) FAILURE TO TIMELY COMPLETE DIS-
21 APPROVAL DETERMINATION.—If the Commis-
22 sion does not conclude a disapproval proceeding
23 as provided in subparagraph (B) for a new con-
24 tract by the date that is 120 calendar days
25 after the Commission institutes the proceeding,

1 the new contract may be made effective, and
2 trading in the new contract may be imple-
3 mented, by the contract market until such time
4 as the Commission disapproves the new con-
5 tract in accordance with this paragraph.

6 “(D) APPEALS.—A board of trade that has
7 been subject to disapproval of a new contract by
8 the Commission under this subsection shall
9 have the right to an appeal of the disapproval
10 to the court of appeals as provided in section
11 6(b).

12 “(6) CONTRACT MARKET DEEMED DES-
13 IGNATED.—A board of trade shall be deemed to be
14 designated a contract market for a new contract of
15 sale for future delivery when the new contract be-
16 comes effective and trading in the new contract be-
17 gins.

18 “(e) REQUIRED INTERAGENCY REVIEW.—Notwith-
19 standing subsection (d), no board of trade may make ef-
20 fective a new contract (or option on the contract) that is
21 subject to the requirements and procedures of clauses (ii)
22 through (v) of paragraph (1)(B), and paragraph
23 (8)(B)(ii), of section 2(a) until the requirements and pro-
24 cedures are satisfied and carried out.”.

1 (b) CONFORMING AMENDMENT.—Section 6(a) of the
2 Commodity Exchange Act (7 U.S.C. 8(a)) is amended in
3 the first sentence by striking “Any board of trade desir-
4 ing” and inserting “A board of trade that has not obtained
5 any designation as a contract market for a contract of sale
6 for a commodity under section 5 that desires”.

7 **SEC. 8. DELIVERY BY FEDERALLY LICENSED WAREHOUSES.**

8 Section 5a(a) of the Commodity Exchange Act (7
9 U.S.C. 7a(a)) is amended by striking paragraph (7) and
10 inserting the following:

11 “(7) Repealed;”.

12 **SEC. 9. SUBMISSION OF RULES TO COMMISSION.**

13 Section 5a(a) of the Commodity Exchange Act (7
14 U.S.C. 7a(a)(12)) is amended by striking paragraph (12)
15 and inserting the following:

16 “(12)(A)(i) except as otherwise provided in this
17 paragraph, submit to the Commission all bylaws,
18 rules, regulations, and resolutions (collectively re-
19 ferred to in this subparagraph as ‘rules’) made or is-
20 sued by the contract market, or by the governing
21 board or committee of the contract market (except
22 those relating to the setting of levels of margin,
23 those submitted pursuant to section 5 or 6(a), and
24 those the Commission may specify by regulation)
25 and may make a rule effective not earlier than 10

1 business days after the receipt of the submission by
2 the Commission or earlier, if approved by the Com-
3 mission by rule, regulation, order, or written notice,
4 unless, within the 10-business-day period, the Com-
5 mission notifies the contract market in writing of its
6 determination to review such rules for disapproval
7 and of the specific sections of this Act or the regula-
8 tions of the Commission that the Commission deter-
9 mines the rule would violate. The determination to
10 review such rules for disapproval shall not be dele-
11 gable to any employee of the Commission. Not later
12 than 45 calendar days before disapproving a rule of
13 major economic significance (as determined by the
14 Commission), the Commission shall publish a notice
15 of the rule in the Federal Register. The Commission
16 shall give interested persons an opportunity to par-
17 ticipate in the disapproval process through the sub-
18 mission of written data, views, or arguments. The
19 determination by the Commission whether a rule is
20 of major economic significance shall be final and not
21 subject to judicial review. The Commission shall dis-
22 approve, after appropriate notice and opportunity
23 for hearing (including an opportunity for the con-
24 tract market to have a hearing on the record before

1 the Commission), a rule only if the Commission de-
2 termines the rule at any time to be in violation of
3 this Act or a regulation of the Commission. If the
4 Commission institutes proceedings to determine
5 whether a rule should be disapproved pursuant to
6 this paragraph, the Commission shall provide the
7 contract market with written notice of the proposed
8 grounds for disapproval, including the specific sec-
9 tions of this Act or the regulations of the Commis-
10 sion that would be violated. At the conclusion of the
11 proceedings, the Commission shall determine wheth-
12 er to disapprove the rule. Any disapproval shall
13 specify the sections of this Act or the regulations of
14 the Commission that the Commission determines the
15 rule has violated or, if effective, would violate. If the
16 Commission does not institute disapproval proceed-
17 ings with respect to a rule within 45 calendar days
18 after receipt of the rule by the Commission, or if the
19 Commission does not conclude a disapproval pro-
20 ceeding with respect to a rule within 120 calendar
21 days after receipt of the rule by the Commission, the
22 rule may be made effective by the contract market
23 until such time as the Commission disapproves the
24 rule in accordance with this paragraph.

1 “(B)(i) The Commission shall issue regulations
2 to specify the terms and conditions under which, in
3 an emergency as defined by the Commission, a con-
4 tract market may, by a two-thirds vote of the gov-
5 erning board of the contract market, make a rule
6 (referred to in this subparagraph as an ‘emergency
7 rule’) immediately effective without compliance with
8 the 10-day notice requirement under subparagraph
9 (A), if the contract market makes every effort prac-
10 ticable to notify the Commission of the emergency
11 rule, and provide a complete explanation of the
12 emergency involved, prior to making the emergency
13 rule effective.

14 “(ii) If the contract market does not provide
15 the Commission with the requisite notification and
16 explanation before making the emergency rule effec-
17 tive, the contract market shall provide the Commis-
18 sion with the notification and explanation at the ear-
19 liest practicable date.

20 “(iii) The Commission may delegate the power
21 to receive the notification and explanation to such
22 individuals as the Commission determines necessary
23 and appropriate.

24 “(iv) Not later than 10 days after the receipt
25 from a contract market of notification of such an

1 emergency rule and an explanation of the emergency
2 involved, or as soon as practicable, the Commission
3 shall determine whether to suspend the effect of the
4 rule pending review by the Commission under the
5 procedures of subparagraph (A).

6 “(v)(I) The Commission shall submit a report
7 on the determination of the Commission on the
8 emergency rule under clause (iv), and the basis for
9 the determination, to the affected contract market,
10 the Committee on Agriculture of the House of Rep-
11 resentatives, and the Committee on Agriculture, Nu-
12 trition, and Forestry of the Senate.

13 “(II) If the report is submitted more than 10
14 days after the Commission’s receipt of notification of
15 the emergency rule from a contract market, the re-
16 port shall explain why submission within the 10-day
17 period was not practicable.

18 “(III) A determination by the Commission to
19 suspend the effect of a rule under this subparagraph
20 shall be subject to judicial review on the same basis
21 as an emergency determination under section 8a(9).

22 “(IV) Nothing in this paragraph limits the au-
23 thority of the Commission under section 8a(9);”.

1 **SEC. 10. AUDIT TRAIL.**

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

4 (1) in paragraph (3), by inserting “selected by
5 the contract market” after “means” each place it
6 appears; and

7 (2) by adding at the end the following:

8 “(7) The requirements of this subsection establish
9 performance standards and do not mandate the use of a
10 specific technology to satisfy the requirements.”.

11 **SEC. 11. CONSIDERATION OF EFFICIENCY, COMPETITION,**
12 **RISK MANAGEMENT, AND ANTITRUST LAWS.**

13 Section 15 of the Commodity Exchange Act (7 U.S.C.
14 19) is amended—

15 (1) by striking “SEC. 15. The Commission” and
16 inserting the following:

17 “SEC. 15. (a)(1) Prior to adopting a rule or regula-
18 tion authorized by this Act or adopting an order (except
19 as provided in subsection (b)), the Commission shall con-
20 sider the costs and benefits of the action of the Commis-
21 sion.

22 “(2) The costs and benefits of the proposed Commis-
23 sion action shall be evaluated in light of considerations of
24 protection of market participants, the efficiency, competi-
25 tiveness, and financial integrity of futures markets, price

1 discovery, sound risk management practices, and other ap-
2 propriate factors, as determined by the Commission.

3 “(b) Subsection (a) shall not apply to the following
4 actions of the Commission:

5 “(1) An order that initiates, is part of, or is the
6 result of an adjudicatory or investigative process of
7 the Commission.

8 “(2) An emergency action.

9 “(3) A finding of fact regarding compliance
10 with a requirement of the Commission.

11 “(c) The Commission”; and

12 (2) by striking “requiring or approving” and in-
13 serting “requiring, reviewing, or disapproving”.

14 **SEC. 12. DISCIPLINARY AND ENFORCEMENT ACTIVITIES.**

15 (a) IN GENERAL.—It is the sense of Congress that
16 the Commodity Futures Trading Commission should—

17 (1) to the extent practicable, avoid unnecessary
18 duplication of effort in pursuing disciplinary and en-
19 forcement actions if adequate self-regulatory actions
20 have been taken by contract markets and registered
21 futures associations; and

22 (2) retain an oversight and disciplinary role
23 over the self-regulatory activities by contract mar-
24 kets and registered futures associations in a manner

1 that is sufficient to safeguard financial and market
2 integrity and the public interest.

3 (b) REPORT.—Not later than 1 year after the date
4 of enactment of this Act, the Commission shall submit a
5 report to the Committee on Agriculture of the House of
6 Representatives and the Committee on Agriculture, Nutri-
7 tion, and Forestry of the Senate that evaluates the effec-
8 tiveness of the enforcement activities of the Commission,
9 including an evaluation of the experience of the Commis-
10 sion in preventing, deterring, and disciplining violations
11 of the Commodity Exchange Act (7 U.S.C. 1 et seq.) and
12 Commission regulations involving fraud against the public
13 through the bucketing of orders and similar abuses.

14 **SEC. 13. DELEGATION OF FUNCTIONS BY THE COMMISSION.**

15 (a) IN GENERAL.—It is the sense of Congress that
16 the Commodity Futures Trading Commission should—

17 (1) review its rules and regulations that dele-
18 gate any of its duties or authorities under the Com-
19modity Exchange Act (7 U.S.C. 1 et seq.) to con-
20 tract markets or registered futures associations;

21 (2) consistent with the public interest and law,
22 determine which additional functions, if any, per-
23 formed by the Commission should be delegated to
24 contract markets or registered futures associations;
25 and

1 (3) establish procedures (such as spot checks,
2 random audits, reporting requirements, pilot
3 projects, or other means) to ensure adequate per-
4 formance of the additional functions that are dele-
5 gated to contract markets or registered futures asso-
6 ciations.

7 (b) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Commission shall report the
9 results of its review and actions under subsection (a) to
10 the Committee on Agriculture of the House of Representa-
11 tives and the Committee on Agriculture, Nutrition, and
12 Forestry of the Senate.

13 **SEC. 14. TECHNICAL AND CONFORMING AMENDMENTS.**

14 (a) Section 1a(13)(B) of the Commodity Exchange
15 Act (7 U.S.C. 1a(13)(B)) is amended by striking “state”
16 and inserting “State”.

17 (b) Section 2(a)(1)(B)(iv)(I) of the Commodity Ex-
18 change Act (7 U.S.C. 2a(iv)(I)) is amended in the last
19 sentence by striking “section 6 of this Act” and inserting
20 “section 6(a)”.

21 (c) Section 4(c)(3)(H) of the Commodity Exchange
22 Act (7 U.S.C. 6(c)(3)(H)) is amended by striking “state”
23 and inserting “State”.

1 (d) Section 4a(e) of the Commodity Exchange Act (7
2 U.S.C. 6a(e)) is amended in the last sentence by striking
3 “section 9(c) of this Act” and inserting “section 9(a)(5)”.

4 (e) Section 4c(d)(2)(A)(iv) of the Commodity Ex-
5 change Act (7 U.S.C. 6c(d)(2)(A)(iv)) is amended by
6 striking “78c(a)(12)),” and inserting “78c(a)(12))),”.

7 (f) Section 4f(c)(4)(B)(i) of the Commodity Ex-
8 change Act (7 U.S.C. 6f(c)(4)(B)(i)) is amended—

9 (1) by striking “compiled” and inserting “com-
10 plied”; and

11 (2) by striking “1817(a),” and inserting
12 “1817(a)),”.

13 (g) Section 5a(a) of the Commodity Exchange Act (7
14 U.S.C. 7a(a)) is amended—

15 (1) in paragraph (11)(ii), by striking the second
16 semicolon at the end;

17 (2) in paragraph (15)(C), by striking “cat-
18 egories as” and inserting “categories as—”; and

19 (3) in paragraph (17)—

20 (A) in subparagraph (A), by striking “min-
21 imum, that” and inserting “minimum, that—”;

22 and

23 (B) in subparagraph (B)(ii), by striking
24 “affect” and inserting “effect”.

1 (h) Sections 5b, 6(b), 6(c), 6(d), and 13(c) of the
2 Commodity Exchange Act (7 U.S.C. 7b, 8(b), 9, 13b, and
3 13c(e)) are amended by striking “or the Commission”
4 after “the Commission” each place it appears.

5 (i) Section 6(c) of the Commodity Exchange Act (7
6 U.S.C. 9) is amended in the tenth sentence by inserting
7 a comma after “such violation”.

8 (j) Section 6a(a) of the Commodity Exchange Act (7
9 U.S.C. 10a(a)) is amended in the second sentence by strik-
10 ing “Such Commission” and inserting “The Commission”.

11 (k) Section 8 of the Commodity Exchange Act (7
12 U.S.C. 12) is amended—

13 (1) in subsection (a)(1)(B), by striking “in any
14 receivership proceeding commenced involving a re-
15 ceiver appointed in a judicial proceeding by the
16 United States or the Commission” and inserting “in
17 any receivership proceeding involving a receiver ap-
18 pointed in a judicial proceeding commenced by the
19 United States or the Commission”; and

20 (2) in the last sentence of subsection (e), by
21 striking “authority.” and inserting “authority”.

22 (l) Section 8a of the Commodity Exchange Act (7
23 U.S.C. 12a) is amended—

24 (1) in paragraph (2)—

1 (A) in subparagraph (B), by striking “the
2 provisions of paragraph (3) of this section” and
3 inserting “the provisions of this paragraph or
4 paragraph (3)”;

5 (B) in subparagraph (C), by adding a
6 semicolon at the end;

7 (C) in subparagraph (D), by inserting
8 “pleaded guilty to or has” after “such person
9 has”; and

10 (D) in subparagraph (E), by striking “In-
11 vestors” and inserting “Investor”;

12 (2) in paragraph (3)—

13 (A) in subparagraph (B), by striking “In-
14 vestors” and inserting “Investor”;

15 (B) by striking subparagraph (D) and in-
16 serting the following:

17 “(D) the person has pleaded guilty to or
18 has been convicted of a felony other than a fel-
19 ony of the type specified in paragraph (2)(D),
20 or has pleaded guilty to or has been convicted
21 of a felony of the type specified in paragraph
22 (2)(D) more than 10 years preceding the filing
23 of the application;”; and

1 (C) in subparagraph (H), by striking “or
2 has been convicted in a State court,” and in-
3 serting “or has pleaded guilty to, or has been
4 convicted, in a State court,”; and

5 (3) in paragraph (11)(F), by striking “section
6 6(b)” and inserting “section 6(c)”.

7 (m) Section 8c(a)(2) of the Commodity Exchange Act
8 (7 U.S.C. 12c(a)(2)) is amended in the second sentence
9 by inserting after “denied access,” the following: “to any
10 other exchange, to any other registered futures associa-
11 tion,”.

12 (n) Section 8e(d)(1) of the Commodity Exchange Act
13 (7 U.S.C. 12e(d)(1)) is amended by striking “section 6b”
14 and inserting “section 6(c)”.

15 (o) Section 9 of the Commodity Exchange Act (7
16 U.S.C. 13) is amended—

17 (1) by redesignating subsection (f) as sub-
18 section (e); and

19 (2) in subsection (e)(1) (as so redesignated), by
20 striking the period at the end and inserting “; or”.

21 (p) Section 12(b) of the Commodity Exchange Act
22 (7 U.S.C. 16(b)) is amended by aligning the margin of
23 paragraph (4) so as to align with paragraph (3).

1 (q) Section 14(a) of the Commodity Exchange Act
2 (7 U.S.C. 18(a)) is amended by aligning the margin of
3 paragraph (2) so as to align with subsection (b).

4 (r) Section 17 of the Commodity Exchange Act (7
5 U.S.C. 21) is amended—

6 (1) in subsection (b)—

7 (A) in paragraph (9)(D), by striking the
8 semicolon at the end and inserting a period;

9 (B) in paragraph (10)(C)(ii), by striking
10 “and” at the end;

11 (C) in paragraph (11), by striking the pe-
12 riod at the end and inserting a semicolon;

13 (D) in paragraph (12)—

14 (i) by striking “(12)(A)” and insert-
15 ing “(12)”; and

16 (ii) by striking the period at the end
17 and inserting “; and”; and

18 (E) in paragraph (13), by striking “A
19 major” and inserting “a major”;

20 (2) in subsection (h)(1)—

21 (A) in the first sentence, by inserting after
22 “person associated with a member,” the follow-
23 ing: “takes any membership action against any
24 member or associate responsibility action

1 against any person associated with a member,”;
2 and

3 (B) by adding at the end the following:

4 “The association shall make public its findings
5 and the reasons for the association action (in-
6 cluding the action and penalty imposed) in any
7 action described in the first sentence, except
8 that evidence obtained in the action shall not be
9 disclosed other than to an exchange, the Com-
10 mission, or the member or person who is being
11 disciplined, who is subject to a member respon-
12 sibility action, who is being denied admission to
13 the futures association, or who is being barred
14 from associating with members of the futures
15 association.”;

16 (3) in the last sentence of subsection (j)—

17 (A) by striking “one hundred and eighty
18 days” and inserting “45 calendar days”; and

19 (B) by striking “one year” and inserting
20 “120 calendar days”; and

1 (4) by redesignating subsection (q) (as added
2 by section 206(b)(2) of the Futures Trading Prac-
3 tices Act of 1992 (Public Law 102–546)) as sub-
4 section (r) and moving such subsection to the end of
5 the section.

○