

COMMODITY FUTURES MODERNIZATION ACT OF 2000

—
JUNE 29, 2000.—Ordered to be printed
—

Mr. COMBEST, from the Committee on Agriculture,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4541]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 4541) to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Commodity Futures Modernization Act of 2000”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
- Sec. 5. Legal certainty for excluded derivative transactions.
- Sec. 6. Excluded electronic trading facilities.
- Sec. 7. Hybrid instruments.
- Sec. 8. Futures on securities.
- Sec. 9. Transactions in exempt commodities.
- Sec. 10. Protection of the public interest.
- Sec. 11. Prohibited transactions.
- Sec. 12. Designation of boards of trade as contract markets.
- Sec. 13. Derivatives transaction execution facilities.
- Sec. 14. Derivatives clearing organizations.
- Sec. 15. Common provisions applicable to registered entities.

- Sec. 16. Exempt boards of trade.
- Sec. 17. Suspension or revocation of designation as contract market.
- Sec. 18. Authorization of appropriations.
- Sec. 19. Preemption.
- Sec. 20. Predispute resolution agreements for institutional customers.
- Sec. 21. Consideration of costs and benefits and antitrust laws.
- Sec. 22. Contract enforcement between eligible counterparties.
- Sec. 23. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.
- Sec. 24. Rule of construction.
- Sec. 25. Technical and conforming amendments.
- Sec. 26. Report to Congress.
- Sec. 27. Effective date.
- Sec. 28. International activities of the Commodity Futures Trading Commission.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to reauthorize the appropriation for the Commodity Futures Trading Commission;
- (2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act;
- (3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;
- (4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;
- (5) to provide the Commission jurisdiction over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;
- (6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;
- (7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and
- (8) to enhance the competitive position of United States financial institutions and financial markets.

SEC. 3. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

- (1) by redesignating paragraphs (8) through (12), (13) through (15), and (16) as paragraphs (15) through (19), (21) through (23), and (27), respectively;
- (2) by inserting after paragraph (7) the following:

“(8) DERIVATIVES CLEARING ORGANIZATION.—

“(A) IN GENERAL.—The term ‘derivatives clearing organization’ means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to a derivative agreement, contract, or transaction—

“(i) enables each party to the derivative agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

“(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by parties in the derivatives clearing organization; or

“(iii) otherwise provides clearing services or arrangements that mutualize or transfer among parties in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the parties.

“(B) EXCLUSIONS.—The term ‘derivatives clearing organization’ does not include an entity, facility, system, or organization solely because it arranges or provides for—

“(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a centralized counterparty;

“(ii) settlement or netting of cash payments through an interbank payment system; or

“(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

- “(9) ELECTRONIC TRADING FACILITY.—The term ‘electronic trading facility’ means a trading facility that—

“(A) operates by means of an electronic network; and

“(B) maintains a real-time audit trail of bids, offers, and the matching of orders or the execution of transactions.

“(10) ELIGIBLE COMMERCIAL PARTICIPANT.—The term ‘eligible commercial participant’ means a party or entity described in paragraph (11)(A)(i), (ii), (v), or (vii) or paragraph (11)(C), who, in connection with its business—

“(A) has a demonstrable capacity or ability, directly or through separate contractual arrangements, to make or take delivery of the underlying physical commodity;

“(B) incurs risks, in addition to price risk, related to the commodity; or

“(C) is a dealer that regularly provides hedging, risk management, or market-making services to the foregoing entities.

“(11) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ means—

“(A) acting for its own account—

“(i) a financial institution;

“(ii) an insurance company regulated by a State (including a subsidiary or affiliate of such an insurance company);

“(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

“(iv) a commodity pool that—

“(I) has total assets exceeding \$5,000,000; and

“(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

“(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

“(I) that has total assets exceeding \$10,000,000;

“(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

“(III) that—

“(aa) has a net worth exceeding \$1,000,000; and

“(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business;

“(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation—

“(I) that has total assets exceeding \$5,000,000; or

“(II) the investment decisions of which are made by—

“(aa) an investment advisor or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this Act;

“(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

“(cc) a financial institution; or

“(dd) an insurance company regulated by a State (including a subsidiary or affiliate of such an insurance company);

“(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

“(II) a multinational or supranational government entity; or

“(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

“(viii) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or

dealer or foreign person also meets the requirements of clause (v) or (xi);

“(ix) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

“(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

“(xi) a natural person with total assets exceeding \$10,000,000;

“(B)(i) a person described in any of clauses (i) through (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C);

“(ii) an investment adviser subject to regulation under the Investment Advisors Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in any of clauses (i) through (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

“(iii) a commodity trading advisor subject to regulation under this Act, having assets under management of not less than \$25,000,000 and acting as investment manager or fiduciary for another person and authorized by such person to commit such person to the transaction; or

“(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

“(12) EXCLUDED COMMODITY.—The term ‘excluded commodity’ means—

“(A) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, or index or measure of inflation;

“(B) any other rate, differential, index, or measure of economic or commercial risk, return, or value that—

“(i) is not within the control of any party to the relevant contract, agreement, or transaction; or

“(ii) is not based in substantial part on the value of a limited number of commodities not described in subparagraph (A) that have a finite supply; or

“(C) an occurrence, extent of an occurrence, or contingency beyond the control of the parties to the relevant contract, agreement, or transaction.

“(13) EXEMPT COMMODITY.—The term ‘exempt commodity’ means a commodity that is not an excluded commodity or an agricultural commodity.

“(14) FINANCIAL INSTITUTION.—The term ‘financial institution’ means—

“(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as ‘an agreement corporation’;

“(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an ‘Edge Act corporation’;

“(C) an institution that is regulated by the Farm Credit Administration;

“(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

“(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

“(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

“(G) a trust company; or

“(H) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (F).”;

(3) by inserting after paragraph (19) (as redesignated by paragraph (1)) the following:

“(20) HYBRID INSTRUMENT.—The term ‘hybrid instrument’ means a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) offered by a financial institution, or a security, having 1 or more payments indexed to the value, level, or rate of 1 or more commodities.”;

(4) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

“(24) NONEXEMPT SECURITY.—The term ‘nonexempt security’ means a security that is not an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934).

“(25) OPTION.—The term ‘option’ means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guaranty’.

“(26) ORGANIZED EXCHANGE.—The term ‘organized exchange’ means a trading facility that—

“(A) permits trading—

“(i) by or on behalf of a person that is not an eligible contract participant; or

“(ii) by persons other than on a principal-to-principal basis; or

“(B) has adopted (directly or through another nongovernmental entity) rules that—

“(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; or

“(ii) include disciplinary sanctions other than the exclusion of participants from trading.”; and

(5) by adding at the end the following:

“(28) REGISTERED ENTITY.—The term ‘registered entity’ means—

“(A) a board of trade designated as a contract market under section 5;

“(B) a derivatives transaction execution facility registered under section 5a; or

“(C) a derivatives clearing organization registered under section 5b.

“(29) SECURITY.—The term ‘security’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) as in effect on date of the enactment of this paragraph.

“(30) TRADING FACILITY.—

“(A) IN GENERAL.—The term ‘trading facility’ means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

“(B) EXCLUSIONS.—The term ‘trading facility’ does not include—

“(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple orders within a predetermined, nondiscretionary automated trade matching algorithm;

“(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms ‘government securities dealer’, ‘government securities broker’, and ‘government securities’ are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

“(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.”.

SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.

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

“(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—

- “(A) foreign currency;
- “(B) government securities;
- “(C) security warrants;
- “(D) security rights;
- “(E) resales of installment loan contracts;
- “(F) repurchase transactions in an excluded commodity; or
- “(G) mortgages or mortgage purchase commitments.

“(2) COMMISSION JURISDICTION.—

“(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS THAT ARE FUTURES TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

“(i) a contract of sale of a commodity for future delivery (or an option thereon), or an option on a commodity (other than foreign currency or a security), that is executed or traded on an organized exchange; or

“(ii) an option on foreign currency and is executed or traded on an organized exchange that is not a national securities exchange.

“(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

“(i) is a contract of sale for future delivery (or an option on such a contract) or an option; and

“(ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

“(I) a financial institution;

“(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) or a futures commission merchant registered under this Act;

“(III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h)) or section 4f(c)(2)(B) of this Act;

“(IV) an insurance company that is subject to State regulation (including a subsidiary or affiliate of such an insurance company);

“(V) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

“(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).”

SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE TRANSACTIONS.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 4) is amended by adding at the end the following:

“(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

“(1) IN GENERAL.—Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

“(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

“(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

“(2) ELECTRONIC TRADING FACILITY EXCLUSION.—Nothing in this Act (other than section 5a, 5b, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

“(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(11)(B)(ii) of this Act;

“(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants (as defined in sections 1a(11)(A), (B)(ii), and (C)) at the time at which the persons enter into the agreement, contract, or transaction; and

“(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.”

SEC. 6. EXCLUDED ELECTRONIC TRADING FACILITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 5) is amended by adding at the end the following:

“(e) EXCLUDED ELECTRONIC TRADING FACILITIES.—

“(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of sections 2(d)(2) and 2(h)(3)(B) of this Act.

“(2) EFFECT ON AUTHORITY TO ESTABLISH AND OPERATE.—Nothing in this Act shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or an exempt board of trade, from establishing and operating an excluded electronic trading facility excluded under this Act pursuant to paragraph (1).”

SEC. 7. HYBRID INSTRUMENTS.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 6) is amended by adding at the end the following:

“(f) EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.—

“(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security or depository instrument.

“(2) PREDOMINANCE.—A hybrid instrument shall be considered to be predominantly a security or depository instrument if—

“(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

“(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

“(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

“(D) the hybrid instrument is not marketed as a contract of sale for future delivery of a commodity (or option on such a contract) subject to this Act.

“(3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.”

SEC. 8. FUTURES ON SECURITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 7) is amended by adding at the end the following:

“(g) Notwithstanding any other provision of law:

“(1) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to the transaction acquires a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, on the date of enactment of the Futures Trading Act of 1982), including any group or index of securities and any interest in or based on the value of securities.

“(2) Nothing in this subsection governs or applies to—

“(A) an agreement, contract, or transaction in a commodity that is excluded under subsection (c) or (d);

“(B) an electronic trading facility that is excluded under subsection (e);

or

“(C) a hybrid instrument that is covered by an exclusion under subsection (f) or an exemption granted by the Commission under section 4(c) (whether or not the hybrid instrument is otherwise subject to this Act).

“(3) Except as provided in paragraph (4) of this subsection, or unless excluded by paragraph (2) of this subsection, a person shall not offer to enter into, enter into, or confirm the execution of any contract of sale (or option on the contract) for future delivery of any security or interest in or based on the value of a non-exempt security.

“(4)(A) Except as excluded by paragraph (2) of this subsection, this Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, or decline guaranty), and transactions involving, and may designate a board of trade as a contract market under section 5 or register the board of trade as a derivatives transaction execution facility under section 5a in, contracts of sale (or options on the contracts) for future delivery of 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934), including any group or index of securities and any interest in or based on the value of securities.

“(B) The Commission shall not designate a board of trade as a contract market under section 5 or register a board of trade as a derivatives transaction execution facility under section 5a with respect to any such contracts of sale (or options on the contracts) for future delivery unless the board of trade demonstrates and the Commission expressly finds that the specific contract (or option on the contract) with respect to which the application for the designation or recognition has been made meets the following requirements:

“(i) Settlement of or delivery on the contract (or option on the contract) shall be effected in cash or by means other than the transfer or receipt of a nonexempt security.

“(ii) SUSCEPTIBILITY TO PRICE MANIPULATION.—Trading in a contract (or option on such a contract) described in subparagraph (A) shall not be readily susceptible to—

“(I) manipulation of the price of the contract (or option on such a contract); or

“(II) causing or being used in the manipulation of the price of any underlying security, option on a security, or option on a group or index that includes a security.

“(iii) If the contract is based on a single nonexempt security, an option on the security underlying the contract would meet all Securities and Exchange Commission requirements for listing on a national securities exchange.

“(iv) If the contract is based on any group or index of nonexempt securities comprised of fewer than 5 securities, or on an index in which a single nonexempt security predominates, an option on each security comprising the group or index would meet all requirements for listing on a national securities exchange.

“(v) The contract will be traded on a board of trade that establishes the level of margin for futures contracts (or options on the contracts) based on a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, at a level consistent with the level of margin on comparable option contracts listed on any national securities exchange.

“(vi) The contract will be traded on a board of trade that prohibits a person who acts as a floor broker for any contract of sale (or options on the contract) for future delivery of a nonexempt security, an index based on fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, from trading that contract for the broker’s own account during the same trading session.

“(vii) The contract will be traded on a board of trade that collects, maintains, and promptly provides to the Securities and Exchange Commission such information as the Commission and the Securities and Exchange Commission jointly consider necessary to perform the enforcement responsibilities described in paragraph (6).

“(5) The Commission shall consult with the Securities and Exchange Commission with respect to any application submitted by a board of trade for designation as a contract market or derivatives transaction execution facility with respect to any contract of sale (or option on the contract) for future delivery of a nonexempt security or a group or index of such securities. If, not later than 15 days after the consultation, the Securities and Exchange Commission objects to the designation of a board of trade as a contract market or derivatives transaction execution facility in the contract (or option on the contract) on the ground that any requirement of paragraph (4)(B) is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing to be transcribed before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. The oral hearing shall be held before Commission action upon the application for the designation, and not less than 30 nor more than 45 days after the Securities and Exchange Com-

mission has objected. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market or recognizes the board of trade as a derivatives transaction execution facility with respect to any such contract (or option on the contract), the Securities and Exchange Commission may seek judicial review of the order in accordance with the procedural requirements set forth in section 6(c). If, pursuant to section 6, there is a hearing on the record with respect to an application for such designation, the Securities and Exchange Commission may participate in that hearing as an interested party.

“(6) Notwithstanding any other provision of this Act, the Securities and Exchange Commission may enforce against a person that purchases or sells any contract of sale (or option on the contract) for future delivery of any nonexempt security, any index comprised of fewer than 5 nonexempt securities, or any index in which a single nonexempt security predominates to the same extent as if the person had purchased or sold an option on the security or index under the following provisions of the securities laws and regulations with respect to the following categories of conduct:

“(A) Section 10(b) and 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b), 78u–1) with respect to insider trading.

“(B) Section 16(b) of such Act (15 U.S.C. 78p(b)) with respect to unfair use of information in short swing trading by a corporate insider.

“(C) Section 9 of such Act (15 U.S.C. 78i) with respect to manipulation of securities prices.

“(D) Section 10(b) of such Act (15 U.S.C. 78J(b)) and section 204A of the Investment Adviser’s Act of 1940 (15 U.S.C. 80b–4a) with respect to frontrunning.

“(E) Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) with respect to the pricing and integrity of tender offers.

“(F) Rule 144 of the rules of the Securities and Exchange Commission (17 C.F.R. 230.144) with respect to trading in restricted securities.

“(7)(A) Notwithstanding any other provision of this Act, any contract market or derivatives transaction execution facility in a nonexempt security or stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for the nonexempt security or stock index futures contract (or option on the contract).

“(B) The Board may at any time request any contract market or derivatives transaction execution facility to set the level of margin for any nonexempt security or stock index futures contract (or option on the contract) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility or its clearing system or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

“(C) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this paragraph to the Commission or an intermarket margin board as provided in subparagraph (D).

“(D) INTERMARKET MARGIN BOARD.—

“(i) ESTABLISHMENT.—With the concurrence of the Securities and Exchange Commission and the Commission, the Board may establish an intermarket margin board, consisting of representatives of any or all of the three agencies.

“(ii) DUTIES.—The intermarket margin board may set and maintain margin levels and rules pertaining to margin for futures on a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, listed on a contract market or derivatives transaction execution facility. In discharging these duties, the intermarket margin board shall endeavor to make the levels of margin for futures and options on a single nonexempt security consistent taking into account any material differences in such contracts, including—

“(I) the price volatility of the contracts;

“(II) the frequency with which margin calls are made; and

“(III) the period of time within which margin calls must be met.

“(E) This paragraph shall not be construed to supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market or derivatives transaction execution facility, on finding an emergency to exist, to

raise temporary emergency margin levels on any futures contract or option on the contract covered by this paragraph.

“(F) Any action taken by the Board under this paragraph, or by the Commission acting under the delegation of authority under subparagraph (C), directing a contract market or derivatives transaction execution facility to alter or supplement a contract market or derivatives transaction execution facility rule shall be subject to review only in the United States Court of Appeals for the judicial circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court determines, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

“(8) This subsection shall not be construed to prohibit—

“(A) an agreement, contract, or transaction excluded from this Act by paragraph (2); or

“(B) any hybrid instrument that is covered by the terms of any exemption granted by the Commission under section 4(c) (whether or not any such hybrid instrument is otherwise subject to this Act).

“(9)(A) No futures commission merchant, commodity trading advisor, or introducing broker shall recommend to any customer the purchase or sale of any contract of sale for future delivery of a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, unless the futures commission merchant, commodity trading advisor, or introducing broker complies with the rules described in subparagraph (B) of a registered futures association of which such merchant, advisor, or broker is a member.

“(B) Within 9 months of the date of enactment of the Commodity Futures Modernization Act of 2000, a registered futures association shall adopt rules requiring a futures commission merchant, a commodity trading advisor, or an introducing broker which recommends to any customer the purchase or sale of any contract of sale for future delivery of a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates to ascertain through reasonable due diligence that the recommendation is suitable for that customer in light of the customer’s financial position and trading goals. The registered futures association shall consult with the Commission and the Securities and Exchange Commission prior to the adoption of any such rule, and shall submit any such rule to the Commission for approval in the manner and according to the procedures described in section 17(j) of this Act, provided, that in such case the rule shall become effective if the Commission fails to disapprove such rule within 90 days of submission.

“(10)(A) Nothing in this Act shall be construed to require or authorize the Commission to review or approve, directly or indirectly, any contract, rule, regulation, or action adopted by a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market, relating to any transaction involving a contract of sale for future delivery (or option on such a contract) in or involving any security, including any foreign government debt security, or group or index of such securities, if—

“(i)(I) in the case of a contract of sale for future delivery (or option on such a contract) in or involving a single equity security, the United States is not the primary trading market for the underlying security; or

“(II) in the case of a contract of sale for future delivery (or option on such a contract) in or involving a group or index of equity securities, less than 25 percent of the weighting of the group or index is derived from securities for which the United States is the primary trading market for the securities underlying the contract for future delivery (or option on the contract); and

“(ii) settlement of or delivery on the contract for future delivery (or option on such a contract) is to be effected in cash or by means other than the transfer or receipt of a security in the United States other than an exempted security.

“(B) Within 90 days after the date of the enactment of this paragraph, the Commission shall adopt such procedures as it deems appropriate pursuant to which, consistent with this Act, the Commission shall authorize the offer and sale in the United States of any contract of sale for future delivery (or option on such a contract) of a security, other than a security of the type described in subparagraph (A)(i)(I) or a group or index of securities of the type described

in subparagraph (A)(i)(II), traded on or subject to the rules of a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market, except that such procedures shall not require a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market to apply for designation as a contract market under this Act with respect to such a contract for future delivery (or option on such a contract).”.

SEC. 9. TRANSACTIONS IN EXEMPT COMMODITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 8) is amended by adding at the end the following.

“(h) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

“(1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall apply to a contract, agreement or transaction in an exempt commodity which—

“(A) is entered into solely between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction; and

“(B) is not entered into on a trading facility.

“(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

“(A) sections 5b and 12(e)(2)(B) of this Act;

“(B) sections 4b and 4n of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act proscribing fraud in connection with commodity option transactions, to the extent such agreement, contract, or transaction is not between eligible commercial participants and would otherwise be subject to those provisions; and

“(C) sections 6(c) and 9(a)(2) of this Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce, to the extent such agreement, contract, or transaction would otherwise be subject to those provisions.

“(3) Except as provided in paragraph (4) of this subsection, nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity (other than a metal commodity enumerated in section 1a(3) of this Act) which—

“(A) is entered into solely between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

“(B) is executed or traded on an electronic trading facility.

“(4) An agreement, contract, or transaction described in paragraph (3) shall be subject to—

“(A) sections 5b and 12(e)(2)(B) of this Act;

“(B) sections 4b and 4n of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act proscribing fraud in connection with commodity option transactions and section 6(c) and 9(a)(2) of this Act, to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce, to the extent such agreement, contract, or transaction would otherwise be subject to those provisions; and

“(C) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions related to the commodity executed or traded on the electronic trading facility.”.

SEC. 10. PROTECTION OF THE PUBLIC INTEREST.

The Commodity Exchange Act is amended by striking section 3 (7 U.S.C. 5) and inserting the following:

“SEC. 3. FINDINGS AND PURPOSE.

“(a) FINDINGS.—The futures contracts and options contracts that are subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

“(b) PURPOSE.—It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market in-

tegrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.”

SEC. 11. PROHIBITED TRANSACTIONS.

Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by striking “SEC. 4c.” and all that follows through subsection (a) and inserting the following:

“SEC. 4c. PROHIBITED TRANSACTIONS.

“(a) IN GENERAL.—

“(1) PROHIBITION.—It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving any commodity if the transaction is used or may be used to—

“(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

“(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

“(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

“(2) TRANSACTION.—A transaction referred to in paragraph (1) is a transaction that—

“(A)(i) is, is of the character of, or is commonly known to the trade as, a ‘wash sale’ or ‘accommodation trade’; or

“(ii) is a fictitious sale; or

“(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.”.

SEC. 12. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

The Commodity Exchange Act is amended—

(1) by redesignating section 5b (7 U.S.C. 7b) as section 5e; and

(2) by striking sections 5 and 5a (7 U.S.C. 7, 7a) and inserting the following:

“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

“(a) APPLICATIONS.—A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.

“(b) CRITERIA FOR DESIGNATION.—

“(1) IN GENERAL.—To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

“(2) PREVENTION OF MARKET MANIPULATION.—The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(3) FAIR AND EQUITABLE TRADING.—The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. Such rules may authorize—

“(A) an exchange of—

“(i) futures in connection with a cash commodity transaction;

“(ii) futures for cash commodities;

“(iii) transfer trades or office trades; or

“(iv) futures for swaps; and

“(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

“(4) TRADE EXECUTION FACILITY.—The board of trade shall—

“(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and

“(B) demonstrate that the trading facility operates in accordance with the rules or specifications.

“(5) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.

“(6) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

“(7) PUBLIC ACCESS.—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

“(8) ABILITY TO OBTAIN INFORMATION.—The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

“(c) EXISTING CONTRACT MARKETS.—A board of trade that is designated as a contract market on the effective date of the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

“(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

“(1) IN GENERAL.—To maintain the designation of a board of trade as a contract market, a board of trade shall comply with the core principles specified in this subsection.

“(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

“(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

“(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

“(6) EMERGENCY AUTHORITY.—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

“(A) liquidate or transfer open positions in any contract;

“(B) suspend or curtail trading in any contract; and

“(C) require market participants in any contract to meet special margin requirements.

“(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B) the mechanisms for executing transactions on or through the facilities of the contract market.

“(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

“(9) EXECUTION OF TRANSACTIONS.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

“(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

“(11) FINANCIAL INTEGRITY OF CONTRACTS.—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market, including rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

“(12) PROTECTION OF MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

“(13) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

“(14) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

“(15) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

“(16) COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

“(17) RECORDKEEPING.—The board of trade shall—

“(A) maintain full records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of at least 5 years;

“(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

“(C) keep the records open to inspection by any representative of the Commission or the Department of Justice.

“(18) ANTI-TRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the contract market.

“(e) CURRENT AGRICULTURAL AND METAL COMMODITIES.—

“(1) Subject to paragraph (2), a contract for purchase or sale for future delivery of an agricultural or metal commodity enumerated in section 1a(3) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.

“(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options thereon to be conducted on a derivatives transaction execution facility.”

SEC. 13. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5 (as amended by section 12(2)) the following:

“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

“(a) IN GENERAL.—In lieu of compliance with the contract market designation requirements of section 5, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

“(1) designated as a contract market and meets the requirements of this section; or

“(2) registered as a derivatives transaction execution facility under subsection (c).

“(b) REQUIREMENTS FOR TRADING FUTURES CONTRACTS OR OTHER DERIVATIVES TRANSACTIONS.—

“(1) IN GENERAL.—A registered derivatives transaction execution facility under subsection (a) may trade any futures contract (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

“(2) REQUIREMENTS FOR UNDERLYING COMMODITIES.—A registered derivatives transaction execution facility may trade any futures contract only if—

“(A) the underlying commodity has a nearly inexhaustible deliverable supply;

“(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;

“(C) the underlying commodity has no cash market; or

“(D) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that

trading in the futures contract is highly unlikely to be susceptible to the threat of manipulation.

“(3) ELIGIBLE TRADERS.—To trade on a registered derivatives transaction execution facility, a person shall—

“(A) be authorized by the board of trade to trade on the facility; and

“(B)(i) be an eligible contract participant; or

“(ii) be a person trading through a futures commission merchant that—

“(I) is registered with the Commission;

“(II) is a member of a futures self-regulatory organization;

“(III) is a clearing member of a derivatives clearing organization; and

“(IV) has net capital of at least \$20,000,000.

“(4) TRADING BY CONTRACT MARKETS.—A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

“(A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or

“(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

“(c) CRITERIA FOR REGISTRATION.—

“(1) IN GENERAL.—To be registered as a registered derivatives transaction execution facility, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this paragraph.

“(2) DETERRENCE OF ABUSES.—The board of trade shall establish and enforce trading rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use technological means to—

“(i) provide market participants with impartial access to the market;

and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) TRADING PROCEDURES.—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. Such rules may authorize—

“(A) an exchange of—

“(i) futures in connection with a cash commodity transaction;

“(ii) futures for cash commodities;

“(iii) transfer trades or office trades; or

“(iv) futures for swaps; and

“(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, including rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

“(d) CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection.

“(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

“(3) MONITORING OF TRADING.—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

“(4) DISCLOSURE OF GENERAL INFORMATION.—The board of trade shall disclose publicly and to the Commission information concerning—

- “(A) contract terms and conditions;
- “(B) trading conventions, mechanisms, and practices;
- “(C) financial integrity protections; and
- “(D) other information relevant to participation in trading on the facility.

“(5) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the facility.

“(6) FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

“(7) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

“(8) RECORDKEEPING.—The board of trade shall—

- “(A) maintain full records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of at least 5 years;
- “(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and
- “(C) keep the records open to inspection by any representatives of the Commission or the Department of Justice.

“(9) ANTI-TRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

- “(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or
- “(B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

“(e) USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS INTERMEDIARIES.—

“(1) IN GENERAL.—A registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

- “(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and
- “(B) receive funds of customers to serve as margin or security for such transactions.

“(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are that—

- “(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and
- “(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

“(3) IMPLEMENTATION.—The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to facilitate the implementation of this subsection.

“(f) SEGREGATION OF CUSTOMER FUNDS.—Not later than 180 days after the effective date of the Commodity Futures Modernization Act of 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

“(g) ELECTION TO TRADE EXCLUDED COMMODITIES.—

“(1) IN GENERAL.—A board of trade that is a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded commodities that are otherwise excluded from this Act under section 2(c), 2(d), or 2(h).

“(2) EXCLUSIVE JURISDICTION OF THE COMMISSION.—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.”.

SEC. 14. DERIVATIVES CLEARING ORGANIZATIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5a (as added by section 13) the following:

“SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

“(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b), it shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(8).

“(b) EXCLUSION OF DERIVATIVES CLEARING ORGANIZATIONS SUBJECT TO OTHER REGULATORY AUTHORITIES.—A derivatives clearing organization shall not be required to register with the Commission, and the Commission shall have no jurisdiction with respect to the derivatives clearing organization, if the derivatives clearing organization—

“(1)(A) is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(B) is subject to the supervisory jurisdiction of a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or the National Credit Union Administration; or

“(C) is subject to the supervisory jurisdiction of a foreign regulatory authority that is recognized by the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Commission as overseeing a system of consolidated supervision comparable to that provided under applicable United States law; and

“(2) does not clear a contract of sale for future delivery, option on a contract of sale for future delivery, or option on a commodity that is not a security (unless the contract or option is excluded under subsection (c) or (d) of section 2).

“(c) VOLUNTARY REGISTRATION.—A derivatives clearing organization that is exempt from registration under subsection (b) may register with the Commission as a derivatives clearing organization.

“(d) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

“(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

“(2) CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph.

“(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization without interruption in various market conditions.

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—The applicant shall establish—

“(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

“(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

“(D) RISK MANAGEMENT.—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

“(E) SETTLEMENT PROCEDURES.—The applicant shall have the ability to—

“(i) complete settlements on a timely basis under varying circumstances;

“(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

- “(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.
- “(F) TREATMENT OF FUNDS.—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.
- “(G) DEFAULT RULES AND PROCEDURES.—The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.
- “(H) RULE ENFORCEMENT.—The applicant shall—
- “(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and
 - “(ii) have the authority and ability to discipline, limit, suspend, or terminate a member’s or participant’s activities for violations of rules of the applicant.
- “(I) SYSTEM SAFEGUARDS.—The applicant shall demonstrate that the applicant—
- “(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and
 - “(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.
- “(J) REPORTING.—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.
- “(K) RECORDKEEPING.—The applicant shall—
- “(i) maintain full records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of at least 5 years;
 - “(ii) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and
 - “(iii) keep the records open to inspection by any representative of the Commission or the Department of Justice.
- “(L) PUBLIC INFORMATION.—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.
- “(M) INFORMATION SHARING.—The applicant shall—
- “(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and
 - “(ii) use relevant information obtained from the agreements in carrying out the clearing organization’s risk management program.
- “(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid—
- “(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or
 - “(ii) imposing any material anticompetitive burden on trading on the contract market.
- “(3) ORDERS CONCERNING COMPETITION.—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this Act.
- “(e) EXISTING DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization shall be deemed to be registered under this section to the extent that—
- “(1) the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section; and
 - “(2) the Commission has reviewed and approved the rules of the derivatives clearing organization before that date.
- “(f) APPOINTMENT OF TRUSTEE.—
- “(1) IN GENERAL.—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission,

on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

“(2) ASSUMPTION OF JURISDICTION.—If the Commission applies for appointment of a trustee under paragraph (1)—

“(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

“(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

“(g) LINKING OF REGULATED CLEARING FACILITIES.—

“(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions.

“(2) COORDINATION.—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.”

SEC. 15. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 14) the following:

“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

“(a) ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.—

“(1) IN GENERAL.—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under such sections.

“(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

“(b) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—

“(1) IN GENERAL.—A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.

“(2) RESPONSIBILITY.—A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

“(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), a registered entity may elect to list for trading any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale for future delivery of a government security (or option thereon) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract, new rule, or rule amendment complies with this Act (including regulations under this Act).

“(2) PRIOR APPROVAL.—

“(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

“(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(3) of this Act (or any option thereon) traded through its facilities if such rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

“(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

“(3) APPROVAL.—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.

“(d) VIOLATION OF CORE PRINCIPLES.—

“(1) IN GENERAL.—If the Commission has reason to believe that a registered entity is violating any applicable provision specified in section 5(d), 5a(d), or 5b(d)(2), the Commission shall notify the registered entity in writing of the reasons for the preliminary determination by the Commission of a violation, including any data, materials, and facts the Commission relied on in making the preliminary determination.

“(2) INJUNCTIVE OR ADMINISTRATIVE ACTION.—The Commission may initiate an action for an injunction under section 6c or an administrative proceeding, to demonstrate, by the preponderance of the evidence, that—

“(A) the registered entity is violating any applicable provision specified in section 5(d), 5a(d), or 5b(d)(2); and

“(B) the Commission has recommended an appropriate remedial action to remove the deficiency based on an analysis of the costs and benefits in the public interest of the Commission recommendation.

“(3) BURDEN OF PROOF.—In making a determination that a registered entity is violating any applicable provision specified in section 5(d), 5a(d), or 5b(d)(2), the Commission shall have the burden of proving that the registered entity is violating the applicable core principle.

“(e) RESERVATION OF EMERGENCY AUTHORITY.—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9) of this Act.”.

SEC. 16. EXEMPT BOARDS OF TRADE.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5c (as added by section 15) the following:

“SEC. 5d. EXEMPT BOARDS OF TRADE.

“(a) IN GENERAL.—Except as otherwise provided in this section, a contract of sale (or option on such a contract) of a commodity for future delivery traded on or through the facilities of an exempt board of trade shall be exempt from all provisions of this Act, other than section 2(g).

“(b) CRITERIA FOR EXEMPTION.—To qualify for an exemption under subsection (a), a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts)—

“(1) that have—

“(A) a nearly inexhaustible deliverable supply;

“(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

“(C) no cash market;

“(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

“(3) that are not contracts of sale (or options on the contract) for future delivery of any security, including any group or index of securities or any interest in, or interest that is based on the value of, any security.

“(c) ANTIMANIPULATION REQUIREMENTS.—A party to a futures contract or related option that is traded on an exempt board of trade shall be subject to sections 4b, 4n, 6(c), and 9(a)(2), and the Commission shall enforce those provisions with respect to any such trading.

“(d) PRICE DISCOVERY.—If the Commission finds that an exempt board of trade is a significant source of price discovery for any underlying commodity in any transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

“(e) JURISDICTION.—The Commission shall have exclusive jurisdiction over any account, agreement, or transaction involving a contract of sale of a commodity for future delivery, or related option, to the extent that such account, agreement, or transaction is traded on an exempt board of trade.

“(f) SUBSIDIARIES.—A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.”.

SEC. 17. SUSPENSION OR REVOCATION OF DESIGNATION AS CONTRACT MARKET.

Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) (as redesignated by section 12(1)) is amended to read as follows:

“SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION AS REGISTERED ENTITY.

“The failure of a registered entity to comply with any provision of this Act, or any regulation or order of the Commission under this Act, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity in accordance with the procedures and subject to the judicial review provided in section 6(b).”.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended by striking “2000” and inserting “2005”.

SEC. 19. PREEMPTION.

Section 12(e) of the Commodity Exchange Act (7 U.S.C. 16(e)) is amended by striking paragraph (2) and inserting the following:

“(2) the application of any Federal or State law (including any regulation) to an agreement, contract, or transaction in or involving any commodity, product, right, service, or interest, except that this Act shall supersede and preempt—

“(A) in the case of any such agreement, contract, or transaction—

“(i) that is conducted on or subject to the rules of a registered entity or exempt board of trade;

“(ii) that is conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, or any territory or possession of the United States (in accordance with any terms or conditions specified by the Commission by regulation); and

“(iii) that is subject to regulation by the Commission under section 4c or 19; and

“(B) any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

“(i) an electronic trading facility under section 2(e); or

“(ii) an agreement, contract, or transaction that is excluded or exempt under section 2(c), 2(d), 2(f), or 2(h) or is covered by the terms of an exemption granted by the Commission under section 4(c) (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act); or”.

SEC. 20. PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.

Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended by striking subsection (g) and inserting the following:

“(g) PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.—Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant’s conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.”.

SEC. 21. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

Section 15 of the Commodity Exchange Act (7 U.S.C. 19) is amended by striking “Sec. 15. The Commission” and inserting the following:

“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

“(a) COSTS AND BENEFITS.—

“(1) IN GENERAL.—Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.

“(2) CONSIDERATIONS.—The costs and benefits of the proposed Commission action shall be evaluated in light of—

“(A) considerations of protection of market participants and the public;

“(B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;

“(C) considerations of price discovery;

“(D) considerations of sound risk management practices; and

“(E) other public interest considerations.

“(3) APPLICABILITY.—This subsection does not apply to the following actions of the Commission:

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

“(B) An emergency action.

“(C) A finding of fact regarding compliance with a requirement of the Commission.

“(b) ANTITRUST LAWS.—The Commission”.

SEC. 22. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction between eligible contract participants shall be void, voidable, or unenforceable, and no such eligible contract participant shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction, under this section based solely on the failure of the agreement, contract, or transaction to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.”.

SEC. 23. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

The Commodity Exchange Act, as otherwise amended by this Act, is amended by inserting after section 4o the following:

“SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

“(a) AUTHORITY.—The Commission shall consider issuing rules or orders which—

“(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(3) which is the subject of a contract for purchase or sale for future delivery;

“(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable such producers to hedge price risk associated with their production;

“(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and

“(4) encourage exchanges to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.

“(b) REPORT.—Within 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.”.

SEC. 24. RULE OF CONSTRUCTION.

Except as expressly provided in this Act or an amendment made by this Act, nothing in this Act or an amendment made by the Act supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission.

SEC. 25. TECHNICAL AND CONFORMING AMENDMENTS.

(a) COMMODITY EXCHANGE ACT.—

(1) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(A) in paragraph (3), by inserting “aluminum, copper, gold, palladium, platinum, silver,” after “orange juice,”

(B) in paragraphs (4), (5), (8), (9), (12), and (14), by inserting “or derivatives transaction execution facility” after “contract market” each place it appears; and

(C) in paragraph (15)—

(i) in the paragraph heading, by striking “CONTRACT MARKET” and inserting “REGISTERED ENTITY”; and

(ii) by striking “contract market” each place it appears and inserting “registered entity”.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

(A) by striking “SEC. 2. (a)(1)(A)(i) The” and inserting the following:

“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

“(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—

“(1) JURISDICTION OF COMMISSION.—

“(A) IN GENERAL.—The”; and

- (B) in subsection (a)—
- (i) in paragraph (1) (as amended by subparagraph (A))—
 - (I) by striking subparagraph (B);
 - (II) by striking “subparagraph (B) of this subparagraph” and inserting “subsection (g)”;
 - (III) by striking “contract market designated pursuant to section 5 of this Act” and inserting “contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a”;
 - (IV) by striking clause (ii); and
 - (V) in clause (iii), by striking “(iii) The” and inserting the following:
 - “(B) LIABILITY OF PRINCIPAL FOR ACT OF AGENT.—The”;
 - (ii) in paragraph (7), by striking “contract market” and inserting “registered entity”;
 - (iii) in paragraph (8)(B)(ii)—
 - (I) in the first sentence, by striking “designation as a contract market” and inserting “designation or registration as a contract market or derivatives transaction execution facility”;
 - (II) in the second sentence, by striking “designate a board of trade as a contract market” and inserting “designate or register a board of trade as a contract market or derivatives transaction execution facility”; and
 - (III) in the fourth sentence, by striking “designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act” and inserting “designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9))”, and by striking “designation, suspension, revocation, or emergency action” and inserting “designation, registration, suspension, revocation, or action”; and
 - (iv) by moving paragraphs (2) through (9) 2 ems to the right.
- (3) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—
- (A) in subsection (a)—
 - (i) in paragraph (1), by striking “designated by the Commission as a ‘contract market’ for” and inserting “designated or registered by the Commission as a contract market or derivatives transaction execution facility for”;
 - (ii) in paragraph (2), by striking “member of such”; and
 - (iii) in paragraph (3), by inserting “or derivatives transaction execution facility” after “contract market”; and
 - (B) in subsection (c)—
 - (i) in paragraph (1)—
 - (I) by striking “designated as a contract market” and inserting “designated or registered as a contract market or derivatives transaction execution facility”; and
 - (II) by striking “section 2(a)(1)(B)” and inserting “section 2(g)”;
 - and
 - (ii) in paragraph (2)(B)(ii), by inserting “or derivatives transaction execution facility” after “contract market”.
- (4) Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended—
- (A) in subsection (a)—
 - (i) in the first sentence, by inserting “or derivatives transaction execution facilities” after “contract markets”; and
 - (ii) in the second sentence, by inserting “or derivatives transaction execution facility” after “contract market”;
 - (B) in subsection (b)—
 - (i) in paragraph (1), by inserting “, or derivatives transaction execution facility or facilities,” after “markets”; and
 - (ii) in paragraph (2), by inserting “or derivatives transaction execution facility” after “contract market”; and
 - (C) in subsection (e)—
 - (i) by striking “contract market or” each place it appears and inserting “contract market, derivatives transaction execution facility, or”;

- (ii) by striking “licensed or designated” each place it appears and inserting “licensed, designated, or registered”; and
 - (iii) by striking “contract market, or” and inserting “contract market or derivatives transaction execution facility, or”.
- (5) Section 4b(a) of the Commodity Exchange Act (7 U.S.C. 6b(a)) is amended by striking “contract market” each place it appears and inserting “registered entity”.
- (6) Sections 4c(g), 4d, 4e, and 4f of the Commodity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f) are amended by inserting “or derivatives transaction execution facility” after “contract market” each place it appears.
- (7) Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended—
- (A) in subsection (b), by striking “clearinghouse and contract market” and inserting “registered entity”; and
 - (B) in subsection (f), by striking “clearinghouses, contract markets, and exchanges” and inserting “registered entities”.
- (8) Section 4h of the Commodity Exchange Act (7 U.S.C. 6h) is amended by striking “contract market” each place it appears and inserting “registered entity”.
- (9) Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended in the first sentence by inserting “or derivatives transaction execution facility” after “contract market”.
- (10) Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is repealed.
- (11) Section 4l of the Commodity Exchange Act (7 U.S.C. 6l) is amended by inserting “or derivatives transaction execution facilities” after “contract markets” each place it appears.
- (12) Section 4p of the Commodity Exchange Act (7 U.S.C. 6p) is amended—
- (A) in the third sentence of subsection (a), by striking “Act or contract markets” and inserting “Act, contract markets, or derivatives transaction execution facilities”; and
 - (B) in subsection (b), by inserting “derivatives transaction execution facility,” after “contract market.”
- (13) The Commodity Exchange Act (as amended by paragraphs (10), (11), and (12)) is amended by redesignating section 4k through 4p (7 U.S.C. 6k through 6p) as sections 4j through 4o, respectively.
- (14) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—
- (A) in subsection (a)—
 - (i) in the first sentence—
 - (I) by striking “board of trade desiring to be designated a ‘contract market’ shall make application to the Commission for such designation” and inserting “person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for such designation or registration”;
 - (II) by striking “above conditions” and inserting “conditions set forth in this Act”; and
 - (III) by striking “above requirements” and inserting “the requirements of this Act”;
 - (ii) in the second sentence, by striking “designation as a contract market within one year” and inserting “designation or registration as a contract market or derivatives transaction execution facility within 180 days”;
 - (iii) in the third sentence—
 - (I) by striking “board of trade” and inserting “person”; and
 - (II) by striking “one-year period” and inserting “180-day period”;
 - and
 - (iv) in the last sentence, by striking “designate as a ‘contract market’ any board of trade that has made application therefor, such board of trade” and inserting “designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, such person”;
 - (B) in subsection (b)—
 - (i) in the first sentence—
 - (I) by striking “designation of any board of trade as a ‘contract market’ upon” and inserting “designation or registration of any contract market or derivatives transaction execution facility on”;
 - (II) by striking “board of trade” each place it appears and inserting “contract market or derivatives transaction execution facility”;
 - and

- (III) by striking “designation as set forth in section 5 of this Act” and inserting “designation or registration as set forth in sections 5 through 5b”;
- (ii) in the second sentence—
 - (I) by striking “board of trade” the first place it appears and inserting “contract market or derivatives transaction execution facility”; and
 - (II) by striking “board of trade” the second and third places it appears and inserting “person”; and
 - (iii) in the last sentence, by striking “board of trade” each place it appears and inserting “person”;
- (C) in subsection (c)—
 - (i) by striking “contract market” each place it appears and inserting “registered entity”;
 - (ii) by striking “contract markets” each place it appears and inserting “registered entities”; and
 - (iii) by striking “trading privileges” each place it appears and inserting “privileges”;
- (D) in subsection (d), by striking “contract market” each place it appears and inserting “registered entity”; and
- (E) in subsection (e), by striking “trading on all contract markets” each place it appears and inserting “the privileges of all registered entities”.
- (15) Section 6a of the Commodity Exchange Act (7 U.S.C. 10a) is amended—
 - (A) in the first sentence of subsection (a), by striking “designated as a ‘contract market’ shall” and inserting “designated or registered as a contract market or a derivatives transaction execution facility”; and
 - (B) in subsection (b), by striking “designated as a contract market” and inserting “designated or registered as a contract market or a derivatives transaction execution facility”.
- (16) Section 6b of the Commodity Exchange Act (7 U.S.C. 13a) is amended—
 - (A) by striking “contract market” each place it appears and inserting “registered entity”;
 - (B) in the first sentence, by striking “designation as set forth in section 5 of this Act” and inserting “designation or registration as set forth in sections 5 through 5c”; and
 - (C) in the last sentence, by striking “the contract market’s ability” and inserting “the ability of the registered entity”.
- (17) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) by striking “contract market” and inserting “registered entity”.
- (18) Section 6d(1) of the Commodity Exchange Act (7 U.S.C. 13a–2(1)) is amended by inserting “derivatives transaction execution facility,” after “contract market.”
- (19) Section 7 of the Commodity Exchange Act (7 U.S.C. 11) is amended—
 - (A) in the first sentence—
 - (i) by striking “board of trade” and inserting “person”;
 - (ii) by inserting “or registered” after “designated”;
 - (iii) by inserting “or registration” after “designation” each place it appears; and
 - (iv) by striking “contract market” each place it appears and inserting “registered entity”;
 - (B) in the second sentence—
 - (i) by striking “designation of such board of trade as a contract market” and inserting “designation or registration of the registered entity”; and
 - (ii) by striking “contract markets” and inserting “registered entities”; and
 - (C) in the last sentence—
 - (i) by striking “board of trade” and inserting “person”; and
 - (ii) by striking “designated again a contract market” and inserting “designated or registered again a registered entity”.
- (20) Section 8(c) of the Commodity Exchange Act (7 U.S.C. 12(c)) is amended in the first sentence by striking “board of trade” and inserting “registered entity”.
- (21) Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended—
 - (A) by striking “contract market” each place it appears and inserting “registered entity”; and
 - (B) in paragraph (2)(F), by striking “trading privileges” and inserting “privileges”.

(22) Sections 8b and 8c(e) of the Commodity Exchange Act (7 U.S.C. 12b, 12c(e)) are amended by striking “contract market” each place it appears and inserting “registered entity”.

(23) Section 8e of the Commodity Exchange Act (7 U.S.C. 12e) is amended—
 (A) by striking “contract market” each place it appears and inserting “registered entity”;

(B) in subsection (a), by striking “section 5a(b)” and inserting “sections 5 through 5c”;

(C) in subsection (b)—

(i) in paragraph (1), by striking “contract market’s trade monitoring system implemented pursuant to section 5a(b)” and inserting “the trade monitoring system of a registered entity implemented pursuant to sections 5 through 5c”;

(ii) by striking paragraph (3) and inserting the following:

“(3) REMEDIES.—On becoming final, the Commission deficiency order may require the registered entity to—

“(A) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies in the order;

“(B) satisfy stated objective performance criteria to correct the deficiencies;

“(C) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources.”; and

(iii) in paragraph (5)—

(I) in the paragraph heading, by striking “DESIGNATION AS CONTRACT MARKET” and inserting “DESIGNATION OR REGISTRATION AS REGISTERED ENTITY”;

(II) by inserting “or registration” after “designation”; and

(III) by striking “board of trade” and inserting “person”;

(D) in subsection (d)(2), by striking “section 5b” and inserting “section 5e”; and

(E) in the paragraph heading of subsection (e)(2), by striking “CONTRACT MARKETS” and inserting “REGISTERED ENTITIES”.

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

(A) by striking “contract market” each place it appears and inserting “registered entity”; and

(B) in subsection (a)(2), by striking “section 4o(1),” and inserting “section 4n(1),”.

(25) Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended—

(A) in subsection (a)(1)(B), by striking “contract market” and inserting “registered entity”; and

(B) in subsection (f), by striking “contract markets” and inserting “registered entities”.

(26) Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by striking “contract market” each place it appears and inserting “registered entity”.

(27) Section 22 of the Commodity Exchange Act (7 U.S.C. 25) is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking “contract market, clearing organization of a contract market, licensed board of trade,” and inserting “registered entity”; and

(II) in subparagraph (C)(i), by striking “contract market” and inserting “registered entity”;

(ii) in paragraph (2), by striking “sections 5a(11),” and inserting “sections 5(d)(13), 5b(b)(1)(E),”; and

(iii) in paragraph (3), by striking “contract market” and inserting “registered entity”; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) by striking “contract market or clearing organization of a contract market” and inserting “registered entity”;

(II) by striking “section 5a(8) and section 5a(9) of this Act” and inserting “sections 5 through 5c”;

(III) by striking “contract market, clearing organization of a contract market, or licensed board of trade” and inserting “registered entity”; and

(IV) by striking “contract market or licensed board of trade” and inserting “registered entity”;

(ii) in paragraph (3)—

(I) by striking “a contract market, clearing organization, licensed board of trade,” and inserting “registered entity”; and

(II) by striking “contract market, licensed board of trade” and inserting “registered entity”;

(iii) in paragraph (4), by striking “contract market, licensed board of trade, clearing organization,” and inserting “registered entity”; and

(iv) in paragraph (5), by striking “contract market, licensed board of trade, clearing organization,” and inserting “registered entity”.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 402(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402(2)) is amended by striking subparagraph (B) and inserting the following:

“(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act.”.

SEC. 26. REPORT TO CONGRESS.

(a) The Commodity Futures Trading Commission (in this section referred to as the “Commission”) shall undertake and complete a study of the Commodity Exchange Act (in this section referred to as “the Act”) and the Commission’s rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act. The study shall identify—

(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission’s rules and regulations thereunder;

(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;

(3) the extent to which the Commission believes it can effect the changes identified in paragraph (1) of this subsection through its exemptive authority under section 4(c) of the Act; and

(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

(c) The Commission shall transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the results of its study, which shall include an analysis of comments received.

SEC. 27. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act takes effect on the date of enactment of this Act.

(b) JURISDICTION OF COMMISSION.—Section 8, and the amendments made by that section, take effect 1 year after the date of enactment of this Act.

SEC. 28. INTERNATIONAL ACTIVITIES OF THE COMMODITY FUTURES TRADING COMMISSION.

(a) FINDINGS.—The Congress finds that—

(1) derivatives markets serving United States industry are increasingly global in scope;

(2) developments in data processing and communications technologies enable users of risk management services to analyze and compare those services on a worldwide basis;

(3) financial services regulatory policy must be flexible to account for rapidly changing derivatives industry business practices;

(4) regulatory impediments to the operation of global business interests can compromise the competitiveness of United States businesses;

(5) events that disrupt financial markets and economies are often global in scope, require rapid regulatory response, and coordinated regulatory effort across international jurisdictions;

(6) through its membership in the International Organisation of Securities Commissions, the Commodity Futures Trading Commission has promoted beneficial communication among market regulators and international regulatory cooperation; and

(7) the Commodity Futures Trading Commission and other United States financial regulators and self-regulatory organizations should continue to foster

productive and cooperative working relationships with their counterparts in foreign jurisdictions.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, consistent with its responsibilities under the Commodity Exchange Act, the Commodity Futures Trading Commission should, as part of its international activities, continue to coordinate with foreign regulatory authorities, to participate in international regulatory organizations and forums, and to provide technical assistance to foreign government authorities, in order to encourage—

(1) the facilitation of cross-border transactions through the removal or lessening of any unnecessary legal or practical obstacles;

(2) the development of internationally accepted regulatory standards of best practice;

(3) the enhancement of international supervisory cooperation and emergency procedures;

(4) the strengthening of international cooperation for customer and market protection; and

(5) improvements in the quality and timeliness of international information sharing.

BRIEF EXPLANATION

H.R. 4541, the Commodity Futures Modernization Act of 2000, reauthorizes the regulatory body established under the Commodity Exchange Act (CEA or the Act), the Commodity Futures Trading Commission (CFTC). The legislation modernizes the regulatory structure of the U.S. futures markets and provides greater legal certainty to most over-the-counter (OTC) transactions.

Authorization for the CFTC under the CEA expires on September 30 of this year. H.R. 4541 reauthorizes the CFTC for five years and reforms the Act in three primary ways: (1) it incorporates many of the President's Working Group (PWG) findings on legal certainty for OTC derivatives; (2) it codifies regulatory relief provisions for the U.S. futures exchanges and their markets; and (3) it reforms the Shad-Johnson jurisdictional accord regarding futures on securities.

(1) *Legal Certainty for over-the-counter derivatives*: Because the terms “commodity” and “futures contract” have never been clearly defined, there has been much debate over who the appropriate regulator should be for many OTC derivatives. In 1998, the CFTC released a concept paper on OTC derivatives that was perceived by many as a precursor to regulating these instruments. The Treasury Department, the Federal Reserve (FED), and the Securities and Exchange Commission (SEC) opposed this release and requested that Congress enact a moratorium on the CFTC's ability to regulate these instruments until after the PWG could complete a study on the issue. In response, Congress enacted a six month moratorium on the CFTC's concept paper. In November 1999, the PWG released its unanimous report on OTC derivatives.

The report concluded that bilateral swap agreements entered into by eligible parties (large and/or sophisticated) and done on a principal-to-principal basis should be excluded from the CEA. The report also stated the PWG's belief that these agreements be allowed on certain electronic trading systems that should be excluded from the CEA and that clearing for these products should be encouraged to prevent systemic risk.

H.R. 4541 implements the PWG recommendations listed in the prior paragraph. Because of concerns over the possibility that products with a finite supply may be subject to manipulation, all agricultural and metal commodities will remain under the purview of

the CEA, unless they are conducted bilaterally by institutional or sophisticated parties.

(2) *Regulatory Relief for Futures Markets*: In February of this year, the CFTC issued a regulatory relief proposal that would provide relief to futures exchanges and their customers. Sections 12, 13, and 16 of the bill are based on this proposal. H.R. 4541 moves CFTC from a frontline regulatory role to an oversight regulatory role. Instead of listing specific requirements for complying with the CEA, the bill requires exchanges to meet internationally agreed-upon standards, which would provide needed flexibility for these fluid markets of today's world. The bill creates three levels of regulation for exchanges based on whether the underlying commodities being traded may be susceptible to manipulation or whether the users of the exchange are limited to institutional customers. The first level of regulation will be most like the current exchange structure. It will offer the most customer protection and be open to retail investors. The second level of regulation will be limited mainly to products not susceptible to manipulation and must be traded by or through appropriate persons. The third level of regulation will be open only to large or sophisticated investors who trade on products that are not considered susceptible to manipulation.

To address concerns voiced by some agricultural producer groups, the bill includes language that restates the Commission's emergency powers over agricultural or metal instruments. The bill also ensures that the producer groups have adequate input in the rule-making process. Agricultural and metal products are allowed to be traded only under the most stringent level of regulation, unless after public comment and rulemaking and adoption of appropriate regulations, the Commission determines agricultural transactions may be conducted on a derivatives transaction execution facility.

(3) *Reform of the Shad-Johnson Jurisdictional Accord*: In 1982, SEC Chairman John Shad and CFTC Chairman Phil Johnson reached an agreement on dividing jurisdiction between the agencies for those products that had characteristics of both securities and futures. Known as the Shad-Johnson Accord, this agreement prohibited single stock futures and delineated jurisdiction between the SEC and the CFTC on stock index futures and options. Meant as a temporary agreement, many have suggested that the Shad-Johnson accord should be repealed. The PWG unanimously agreed that the Accord can be repealed if regulatory disparities are resolved between the regulation of futures and securities. The U.S. General Accounting Office (GAO) released a report that found that single stock futures are being traded in foreign markets, in the options markets and in the OTC markets. This report concludes that futures on securities should be allowed under the appropriate regulatory framework. Earlier this year, the House and Senate Agriculture Committees requested that the CFTC and the SEC make recommendations and provide the Subcommittee legislative language to reform the Shad-Johnson Accord. The agencies agreed that they would share jurisdiction on regulating these products, that dual trading would be banned, that margins would be set equivalent to the levels on options markets, and that the SEC would enforce the insider trading laws on these products.

H.R. 4541 requires that to be eligible to be traded, a single stock futures contract must be (a) cash-settled; (b) traded on a security

with sufficient liquidity that it would be eligible for options trading under SEC requirements; (c) subject to margin levels that must be consistent with options margins for comparable securities; (d) traded on boards of trade that outlaw dual trading in single stock futures contracts; and (e) traded on boards of trade that will collect, maintain and promptly provide to the SEC any information the SEC needs to carry out its enforcement responsibilities. If the CFTC determines any of these conditions would not be met, it must deny a board of trade's application to trade these products. If the SEC believes that any of these conditions would not be met, it may so advise the CFTC and elect to pursue specified legal procedures, including judicial review, to vindicate its position.

GAO's report also identified three areas of significant concern—insider trading, margin and suitability. The issues addressed by the agencies and GAO report are incorporated into the bill by applying the appropriate securities law provisions and providing a level playing field for all markets. Specifically, the bill includes provisions on:

(1) Insider trading

The SEC is given express authority to enforce the insider trading prohibitions of federal securities laws against those who trade single stock futures on the same terms as stock options trading. Nothing will distinguish futures from options in terms of insider trading enforcement. In addition, the SEC is given authority to enforce five other provisions of federal securities law designed to promote fair trading and market integrity so that no trading in single stock futures could lead to questions about stock market integrity. These include prohibitions on short swing profits, front-running, trading in restricted securities and market manipulation. The SEC would be empowered to take unilateral action against futures market participants in each of these areas.

(2) Margin

For margin, the bill specifies that single stock futures margins, as determined by the FED, must be consistent with options margins for comparable securities. The bill also authorizes the FED to create an Intermarket Margin Board (consisting of the FED, CFTC and SEC) to facilitate the setting of appropriate margin level.

(3) Suitability

For suitability, the bill requires a registered futures association (the National Futures Association) to promulgate rules barring futures professionals from recommending unsuitable single stock futures trades to their customers. This provision would complement the National Futures Association's existing "know your customer" rule.

PURPOSE AND NEED

Since October, 1974, when Congress created the Commodity Futures Trading Commission (CFTC or the Commission), the CEA has been amended four times in an effort to accommodate the futures industry's rapid development of innovative risk management products. This innovation took place despite an arcane statutory

and regulatory structure, which Congress chose to deal with only piecemeal each time the CFTC needed reauthorization.

The fourth major set of amendments—those enacted in the Futures Trading Practices Act of 1992—recognized changes in the world financial services industry (an industry U.S. futures exchanges helped develop by giving agricultural risk management concepts to financial institutions) and sought an accommodation between the still innovative futures industry and the exploding growth in financial risk management tools developed and used outside traditional futures markets—over-the-counter or off-exchange markets created by the Nation's investment and commercial banking industry, energy firms and subsidiaries of major broker-dealers and used by small, large and multinational businesses in their everyday activities.

U.S. financial market makers and dealers and the user community were not the only ones who began to recognize the value and importance of futures and option markets. Countries around the world not having agricultural futures markets as models for financial futures began to develop financial derivatives, generally molding the U.S. model into a more flexible regulatory regime. Foreign regulation tended to let markets respond to business and economic developments whereas U.S. markets were still subjected to the whims of their federal regulators and occasional Congressional expressions of concern.

While the 1992 amendments provided a few years' of relief, rapid development of markets here and abroad began to put competitive pressures on all markets. This development was aided by the simultaneous explosion in information and telecommunications technologies, creating economic risks not known in the more sedate days of land lines communications and harbors of protectionism.

In 1996, U.S. futures exchanges began to ask for relief from the restrictions of the CEA. Legislation was introduced in early 1997 to provide that relief, but Congress took no action during the 105th Congress. Since then, seminars have been held, papers have been written and meetings have been assembled in an effort to find consensus about how to bring the CEA into the new century. It was generally agreed that fostering financial innovation while preserving market integrity and protecting traders and investors could be accomplished. Creating the perfect regulatory atmosphere to achieve those goals was not so easily done, however, because those who thought they were engineering new financial products were actually adopting forms of risk management that had been used by agricultural interests for hundreds of years. Forward rice contracts were conducted in Japan in the early 1700s, and the Osaka Rice Exchange was legally recognized in 1730. U.S. futures markets began in the mid-1850s.

Congress and federal regulators have wrestled for years with OTC markets and regulated futures exchanges trading instruments with similar or identical economic characteristics. OTC markets, which may have federal oversight, are operated with less regulation; futures exchanges, on the other hand, are operating under a federal presence that may be stultifying depending on the whims of the CFTC.

The current Commission elected some time ago to examine its regulatory program, and the result of that examination has been

a comprehensive proposal trimming its activities from the frontline regulator of earlier years into an oversight agency. The CFTC also has been active as a member of the PWG, which recommended recently a regulatory structure contemplating legal certainty for many financial instruments similarly structured to futures or option contracts. Unfortunately, the PWG was unable to reach consensus on reform of Shad-Johnson, even though the PWG determined that the problems were resolvable.

In addition, work of the GAO helped the Committee determine its course in reforming Shad-Johnson. GAO indicated that single stock futures should be allowed to trade, pointing out that such futures on foreign stocks are now trading and that stock options have traded untroubled for years. GAO identified three areas of concern—insider trading, margin and suitability—that would need to be addressed. The bill addresses each of these concerns.

The PWG and CFTC recommendations, as well as GAO's suggestions, have been substantially incorporated into the Committee's legislation.

For instance, foreign currencies may be marketed and sold to retail customers by banks and others while at the same time the CFTC is authorized to combat fraudulent foreign currency and other activities of boiler rooms or bucket shops.

Legal certainty for swaps and other OTC derivatives is secured, and the trading of derivatives using certain electronic trading facilities has been clarified.

Likewise, hybrid instruments involving depository or debt instruments with futures or option-like components are rationalized along trade practices instead of the predominance of the economic "play" of the commodity component that determines the periodic pay out rate.

Shad-Johnson has been reformed substantially within the jurisdiction of the Committee while providing the SEC full enforcement authorities in the event of problems in the futures or underlying securities markets.

The bill follows the CFTC's proposed regulatory relief initiative by providing three tiers of regulation: the designated contract market (highest level), the derivatives transaction execution facility [DTEF] (midlevel) and the exempt board of trade (lowest level), where derivatives may trade reasonably freely so long as the underlying commodity has a nearly inexhaustible deliverable supply, a deliverable supply sufficiently large and the cash market sufficiently liquid to make any contract highly unsusceptible to manipulation or no cash market at all. Only eligible contract participants may trade, and Treasury futures products are prohibited from trading.

Agricultural markets are retained at the highest level of regulation and further safeguards, such as making certain affected persons are provided ample opportunity to comment on any contract market rule proposal or rule change, are in place. Traditional agricultural markets and metals markets may trade at the DTEF level following procedures set in place in the bill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title and Table of Contents. The Act is entitled the Commodity Futures Modernization Act of 2000.

Section 2. Purposes. The section lists eight purposes for the bill including reauthorizing the CFTC; streamlining the CEA; eliminating unnecessary regulation for the futures exchanges; transforming the regulatory role of the CFTC; providing a legislative and regulatory framework for the trading of futures on securities; providing CFTC jurisdiction over the retail foreign exchange market and bucket shops; promoting innovation and reducing systemic risk for OTC derivatives; allowing clearing of OTC derivatives and enhancing the competitive position of the U.S. financial institutions and markets.

Section 3. Definitions. Adds definitions to section 1a of the CEA for the following terms: “derivatives clearing organization”; “designated future on a security”; “electronic trading facility”; “eligible commercial participant”, “eligible contract participant”; “exempt commodity”; “excluded commodity”; “financial institution”; “hybrid instrument”; “nonexempt security”; “option”; “organized exchange”; “registered entity”; “security”; and “trading facility”.

The Committee notes that the term “exempt commodity” means a commodity other than an “excluded commodity” or an “agricultural commodity.” For purposes of this definition, the Committee intends “agricultural commodity” to include all agricultural commodities, whether or not such agricultural commodities are specifically enumerated in the definition of “commodity” in section 1a(3) of the CEA.

Section 4. Agreements, Contracts, and Transactions in Foreign Currency, Government Securities and Certain Other Commodities. Clarifies section 2 of the CEA (the “Treasury Amendment”) with respect to CFTC jurisdiction over foreign currency transactions by adding a new subsection (c).

New paragraph (c)(2) excludes foreign currency transactions from CFTC regulation, other than those conducted on an organized exchange, between specified regulated entities and persons who are not eligible contract participants. These excluded transactions include transactions executed on an electronic facility in which only a single firm is entitled to act as a market maker and on which non-market-maker counterparties may not accept bids and offers of other non-market-maker counterparties (either directly or through the market maker running a matched book in which non-market-maker counterparties’ bids and offers become the bids and offers of the market maker).

The bill defines “organized exchange” as a trading facility that either allows retail customers, permits agency trades, or has a self-regulatory role. New subparagraph (c)(2)(B) provides the CFTC with jurisdiction over retail foreign currency transactions that are not traded on an organized exchange and that are not regulated by another federal regulator. This would allow the CFTC to take enforcement action against illegal bucket shops.

Section 5. Legal Certainty for Excluded Derivatives Transactions (Over-the-Counter Transactions). Amends section 2 of the CEA to create a new subsection (d), which states that nothing in the CEA applies to transactions in an excluded commodity if the transaction (1) is entered into on a principal to principal basis between parties trading for their own accounts; (2) is between eligible contract participants (large, institutional entities) and (3) is not executed on a trading facility (unless it is an excluded electronic trading facility).

The Committee intends for the exclusions for transactions conducted on a trading facility only apply to principal-to-principal transactions. The exclusion does not apply if an eligible contract participant acts as a broker or in an equivalent agency capacity for any other party or trades in its own name for the economic risk and benefit of any other party. This limitation does not preclude an eligible contract participant from transacting with a counterparty and contemporaneously entering into an economically identical hedging transaction, for the eligible contract participant's own account and risk, on a trading facility. The limitation also does not preclude certain regulated eligible contract participants from acting in a discretionary investment management or equivalent fiduciary capacity for another eligible contract participant as contemplated under the definition of eligible contract participant.

Section 6. Excluded Electronic Trading Facilities. Amends section 2 of the CEA to create a new subsection (e) that allows for the electronic trading of excluded commodities. Paragraph (e)(2) states that nothing in the CEA shall prohibit a contract market or derivatives transaction execution facility from establishing and operating an excluded electronic trading facility.

Section 7. Hybrid Instruments. Amends section 2 of the CEA to create a new subsection (f) that provides that nothing in the CEA applies to a hybrid instrument that is predominantly a security or depository instrument. New paragraph (f)(2) sets forth conditions for determining predominance to cover any hybrid instrument in which (1) the issuer of the instrument receives payment in full of the purchase price at the time the instrument is delivered; (2) the purchaser is not required to make additional payments; (3) the issuer of the instrument is not subject to mark-to-market margining requirements; and (4) the instrument is not marketed as a futures contract. New paragraph (3) clarifies that mark-to-market requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral for the instrument.

Section 8. Futures on Securities. Amends section 2 of the CEA by adding a new subsection (g) that reforms the Shad Johnson jurisdictional accord.

- Paragraph (1) provides that CFTC has no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to the transaction acquires a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, on the date of enactment of the Futures Trading Act of 1982), including any group or index of securities and any interest in or based on the value of securities.

- Paragraph (2) is a savings clause to ensure that excluded OTC equity derivatives remain outside the CEA and jurisdiction of the CFTC.

- Paragraph (3) states that it is illegal to provide for the trading of futures on securities except as provided for in the Act.

- Paragraph (4) provides CFTC with exclusive jurisdiction for futures on securities and provides criteria for contract market designation of these products including: cash settlement; insusceptibility to price manipulation (both of the contract and the

underlying stock or an option on that stock); margin requirements; and making information available to the regulators.

- Paragraph (5) requires the CFTC and SEC to consult with regard to the listing of a futures on a security. If the SEC is not satisfied that all requirements regarding a single stock future are being met by a contract market, the CFTC shall give the SEC an opportunity for an oral hearing. If the hearing is held and the SEC's objections are not resolved, the SEC may seek judicial review.

- Paragraph (6) authorizes the SEC to enforce the securities laws related to insider trading with respect to futures on securities.

- Paragraph (7) authorizes the FED to establish an Intermarket Margin Board with the concurrence of the CFTC and SEC. This would allow the CFTC, FED, and SEC to work jointly to set the margin on single stock futures at appropriate levels to preserve market financial integrity or to prevent systemic risk.

- Paragraph (8) provides that this subsection shall not be construed to prohibit any agreement, contract, or transaction excluded from this Act by paragraph (2); or any hybrid instrument that is covered by the terms of any exemption granted by CFTC.

- Paragraph (9) directs a registered futures association to adopt rules requiring a futures commission merchant (FCM), commodity trading advisor (CTA) or an introducing broker (IB) to determine if a customer is suitable to purchase single stock futures. FCM's already follow a "know your customer" rule, however, this paragraph will ensure customer protection adheres to suitability standards currently used when selling securities and options on securities.

- Paragraph (10) authorizes the offer and sale in the United States of any futures or option contracts on securities (excluding securities described in subparagraphs (A)(i) (I) or (II)), traded on a foreign board of trade without being a designated contract market under the CEA, if (1) for single stock futures, the United States is not the primary trading market for the underlying security; or (2) for stock index futures, less than 25 percent of the index is based on securities that are primarily traded in the United States; and settlement of the futures contract does not involve the transfer or receipt of a security in the United States. The CFTC is required to promulgate appropriate regulations implementing this section within 90 days of enactment.

The Committee notes that CFTC is required to adopt procedures for implementation of paragraph (10) within 90 days of enactment. Section 27 of this Act provides that Section 8 is to become effective one year after enactment of this Act. The Committee intends for the Commission to establish procedures and implement paragraph (10) within 90 days of enactment.

It has come to the attention of the Committee there may be discrepancies in the tax treatment of stock futures and other stock derivatives. To the extent these discrepancies can be identified, the Committee encourages the Congressional tax-writing committees to harmonize the tax treatment of all stock derivatives. The Committee notes that the relevant Committees of jurisdiction could deal with these matters during the one-year implementation period of the Shad-Johnson reform included in the reported bill.

Section 9. Transactions in Exempt Commodities. Amends section 2 of the CEA by adding a new subsection (h) to provide legal cer-

tainty for exempt commodities. Exempt commodities must be traded between eligible participants and not traded on a trading facility (except an electronic trading facility). The amendment further provides that transactions in an exempt commodity, other than a metal commodity, can be conducted between eligible contract participants and traded on an electronic trading facility. All transactions are also subject to the clearing system provisions of the bill, state fraud statutes, and the fraud and anti-manipulation provisions of the Act. In addition, CFTC may prescribe rules to ensure the timely dissemination of electronic trading facility data if CFTC determines that the electronic facility performs a significant prices discovery function.

Section 10. Protection of the Public Interest. Rewrites section 3 of the CEA that lists the responsibilities of the CFTC and purposes of the CEA in protecting the public interest. These include: protecting investors from fraud and manipulation; fostering efficiency and fairness with transparent price dissemination; preventing market manipulation and minimizing the risk of systemic failure; and promoting financial innovation and fair competition.

Section 11. Prohibited Transactions. Rewrites section 4c of the CEA for clarity.

Section 12. Designation of Boards of Trade as Contract Markets. Strikes current law sections 5 and 5a and adds a new section 5 to the CEA providing for the designation of boards of trade as contract markets. Subsection (b) contains criteria that boards of trade must meet in order to be designated as a contract market. These include establishing and enforcing rules preventing market manipulation; ensuring fair and equitable trading by authorizing various futures exchange transactions; specifying how the trade execution facility operates, including any electronic matching systems; ensuring the financial integrity of transactions; disciplining members or market participants who violate the rules; allowing for public access to the board of trade rules and enabling the board of trade to obtain information in order to enforce its rules. Existing contract markets are grandfathered in under new subsection (c). The 18 core principles that must be met to maintain designation as a contract market are contained in new subsection (d) and provide that a board of trade must:

- monitor and enforce compliance with the contract market rules;
- list only contracts that are not susceptible to manipulation;
- monitor trading to prevent manipulation, price distortion and delivery or settlement disruptions;
- adopt position limits for speculators and hedgers;
- adopt rules to provide for the exercise of emergency authority, including the authority to liquidate or transfer open positions, suspend trading and make margin calls;
- make available the terms and conditions of the contracts and the mechanisms for executing transactions;
- publish daily information on prices, bids, offers, volume, open interest, and opening and closing ranges;
- provide a competitive, open and efficient market and mechanism for executing transactions;

- provide for the safe storage of all trade information in a readily usable manner to assist in fraud prevention;
- provide for the financial integrity of the contracts, the futures commission merchants and customer funds;
- protect market participants from abusive practices;
- provide for alternative dispute resolutions for market participants and intermediaries;
- establish and enforce rules regarding fitness standards for those involved in market governance;
- establish and enforce rules to minimize conflicts of interest in a contract market;
- ensure that the governing board reflects the composition of the market participants (in the case of mutually owned exchanges);
- maintain records and make them available at any time for inspection by the Attorney General; and
- avoid taking any action that restrains trade or imposes anticompetitive burdens on the markets.

Subsection (e) provides that, with respect to futures contracts involving agricultural or metal commodities enumerated in section 1a(3) of the CEA, such contracts may only trade on designated contract markets. However, upon application by any person, the CFTC may prescribe rules and regulations to allow such agricultural or metal commodities to trade on a derivatives transaction execution facility in instances where it would promote responsible economic or financial innovation and fair competition.

Section 13. Derivatives Transaction Execution Facilities. Amends the CEA by adding a new section 5a authorizing a new trading designation called a derivatives transaction execution facility (DTEF). Under subsection (b), a board of trade may elect to operate as a DTEF rather than a contract market if they meet the DTEF designation requirements. A registered DTEF may trade any non-designated futures contract if the commodity underlying the contract has a nearly inexhaustible supply, is not susceptible to manipulation, and does not have a cash market in commercial practice. Eligible DTEF traders include authorized contract market participants and persons trading through registered futures commission merchants with capital of at least \$20,000,000 that are members of a self-regulatory organization (SRO) and a clearing organization. Boards of trade that have been designated as contract markets may operate as DTEFs if they provide a separate location for DTEF trading or, in the case of an electronic system, identify whether the trading is on a DTEF or contract market.

Subsection (c) provides criteria for boards of trade that wish to register as DTEFs, including: establishing and enforcing trading rules, by authorizing various futures exchange transactions, that will deter abuses and provide market participants impartial access to the markets and capture information that may be used in rule enforcement; and defining trading procedures to be used and provide for the financial integrity of DTEF transactions.

To maintain registration as a DTEF, a board of trade must comply with 9 core principles listed in subsection (d):

- maintain and enforce rules;
- ensure orderly trading and provide trading information to the CFTC;

- publicly disclose information regarding contract terms, trading practices, and financial integrity protections;
- provide information on prices, bids and offers to market participants as well as daily information in volume and open interest for the actively traded contracts;
- establish and enforce rules regarding fitness standards for those involved in DTEF governance;
- establish and enforce rules to minimize conflicts of interest in a derivatives transaction execution facility;
- maintain records and make them available at any time for inspection by the Attorney General; and
- avoid taking any action that restrains trade or imposes anticompetitive burdens on the markets.

Subsection (e) allows a broker-dealer, bank, or Farm Credit Institution in good standing to act as an intermediary on behalf of its customers and to receive customer funds serving as margin or security for the customer's transactions. If such entity holds the DTEF customer funds or accounts for more than 1 business day, such entity must be a registered FCM and a member of a registered futures association. The CFTC and SEC are to coordinate in adopting rules to implement this subsection.

Under subsection (f), the CFTC may adopt regulations to allow FCMs to give their customers the right to not segregate customer funds for purposes of trading on the DTEF.

Subsection (g) clarifies that a DTEF may trade derivatives that otherwise would be excluded, exempted or not subject to the CEA and the CFTC has exclusive jurisdiction only when these instruments are traded on a DTEF.

Section 14. Derivatives Clearing Organizations. Amends the CEA to create a new section 5b regarding derivatives clearing organizations.

Subsection (a) makes it unlawful for a derivatives clearing organization to operate unless it is registered with the CFTC.

For futures or options on non-security commodities, subsection (b) provides an exclusion to the requirements in subsection (a) if a clearing organization is registered with the another federal regulatory agency (SEC or a federal banking regulator) or is subject to a foreign regulatory authority recognized by U.S. federal regulators.

Subsection (c) provides that organizations excluded under subsection (b) may voluntarily register with CFTC as a clearing organization.

Subsection (d) sets forth the process for applying with CFTC to be a clearing organization under this section, and provides 14 core principles that must be met and maintained in order to maintain registration as a clearing organization.

Subsection (e) grandfathers in existing derivatives clearing organizations that have been designated by CFTC as contract markets prior to date of enactment.

Subsection (f) authorizes CFTC to seek the appointment of a trustee by an appropriate U.S. district court if the registration of a derivatives clearing organization is suspended or revoked by CFTC under section 5e.

Subsection (g) requires CFTC to facilitate and coordinate with other federal regulators with respect to clearing organizations registered under this Act and other regulated clearing facilities.

Section 15. Common Provisions Applicable to Registered Entities. Amends the CEA to create a new section 5c that contains provisions affecting all registered entities (contract markets, DTEFs, and derivatives clearing organizations).

Subsection (a) allows the CFTC to issue or approve interpretations to describe what would constitute an acceptable business practice under the core principals for registered entities.

Subsection (b) allows a registered entity to delegate its self regulatory functions to a registered futures association, while specifying that responsibility for carrying out these functions remain with the registered entity.

Subsection (c) enables the registered entity to trade new products or adopt or amend rules by providing the CFTC (or, in the case of a government security product, the Secretary of the Treasury) a written certification that the new contract or new rule or amendment complies with the CEA. This subsection would allow a registered entity to request that the CFTC grant prior approval of a new contract, new rule or rule amendment. For enumerated commodity products, a contract market (futures exchange) shall submit to the CFTC for prior approval each rule amendment that materially changes the terms and conditions of a contract that has already been listed and has substantial open interest.

Subsection (d) grants the CFTC the authority to informally resolve potential violations of the core principals for registered entities.

Subsection (e) reserves all of CFTC's emergency powers.

Section 16. Exempt Boards of Trade. Amends the CEA to create a new section 5d regarding exempt boards of trade. Under subsections (a) and (b), futures contracts traded on an exempt board of trade would be exempt from the CEA (except section 2(g) regarding equity futures) if:

- (1) the commodity underlying the futures contract has an inexhaustible deliverable supply, is not subject to manipulation, or has no cash market;
- (2) participants are eligible contract participants (large institutional investors); and
- (3) the contracts do not involve securities (including security indices).

Subsection (c) subjects futures contracts traded on an exempt board of trade to the anti-fraud and anti-manipulation provisions of the CEA.

Under subsection (d), if the CFTC finds that an exempt board of trade is a significant source of price discovery for the underlying commodity, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

Section 17. Suspension or Revocation of Designation as Contract Market. Amends redesignated section 5e of the CEA to authorize the CFTC to suspend the registration of a registered entity for 180 days for any violation of the CEA.

Section 18. Authorization of Appropriations. Amends section 12(d) of the CEA by striking 2000 and reauthorizing appropriations through fiscal year 2005.

Section 19. Preemption. Rewrites paragraph 12(e)(2) of the CEA for clarity and to conform with changes made in the bill. Restates the current provisions that the CEA supercedes and preempts other laws in the case of transactions conducted on a registered entity or subject to regulation by the CFTC (even if outside the United States), and adds that in the case of excluded electronic trading facilities and any agreements, contracts or transactions that are excluded commodities or covered by a 4(c) exemption, the CEA supercedes and preempts state gaming and bucket shop laws (except for the antifraud provisions of those laws that are generally applicable).

Section 20. Predispute Resolution Agreements for Institutional Customers. Amends subsection 14(g) of the CEA to clarify that futures commission merchants, as a condition of doing business, may require customers, that are eligible contract participants, to waive their right to file a reparations claim with the CFTC.

Section 21. Consideration of Costs and Benefits and Antitrust Laws. Amends section 15 of the CEA to add a new subsection (a) requiring the CFTC, before promulgating regulations and issuing orders, to consider the costs and benefits of its action. This does not apply to orders associated with an adjudicatory or investigative process, or to emergency actions or findings of fact regarding compliance with CFTC rules.

Section 22. Contract Enforcement Between Eligible Counterparties. Amends subsection 22(a) of the CEA to provide a safe harbor so that excluded transactions will not be voidable based solely on the failure of the transaction to comply with the terms or conditions of an exclusion or exemption from the Act or CFTC regulations.

The Committee acknowledges that categories of over-the-counter transactions, such as certain commodity swaps that may be traded under the current swaps exemption, have not been excluded or exempted under the terms of this Act. The Committee intends that any failure to provide a statutory exclusion or exemption for these categories of swaps transactions does not reflect, and should not be construed to reflect, a determination by Congress that these categories of swaps transactions are subject to the Commodity Exchange Act.

Section 23. Special procedures to encourage and facilitate bona fide hedging by agricultural producers. This section authorizes the CFTC to consider several factors to improve domestic agricultural producers' ability to use contract markets for hedging price risk. Specifically, this section authorizes CFTC, in issuing rules or orders, to consider: procedures to facilitate the orderly delivery of agricultural commodities, including temporary storage costs; the ease with which domestic agricultural producers may participate in contract markets, including cost and margin requirements; and flexibility in the minimum quantities of contract size. This section also requires the CFTC to report to the House and Senate Agriculture Committees regarding steps taken to implement this section.

Section 24. Rule of Construction. Provides that nothing in this Act supersedes, affects, or otherwise limits or expands the scope

and applicability of laws governing the Securities and Exchange Commission unless expressly provided.

Section 25. Technical and Conforming Amendments. Makes technical and conforming amendment throughout the CEA to reflect changes made by the bill.

Section. 26. Report to Congress. Requires the CFTC to study the CEA and its rules, regulations and orders governing the conduct of CFTC's registrants and report to Congress within one year.

Section. 27. Effective Date. The Act takes effect on the date of enactment, except section 8 (dealing with equity futures), which takes effect one year after enactment.

Section 28. International Activities of the Commodity Futures Trading Commission. This section contains Congressional findings about the changing and global nature of derivatives markets, the increase in the use of data processing and communications technologies that enable users of risk management services to analyze and compare services on a worldwide basis, and the need for financial regulatory policy to be flexible and to avoid compromising U.S. competitiveness.

This section also contains a Sense of Congress regarding the importance of the CFTC, as part of its international activities, to continue to coordinate with foreign regulatory authorities, participate in international regulatory organizations and forums, and provide technical assistance to foreign government authorities in order to encourage and facilitate cross-border transactions, reduce unnecessary obstacles, and enhance international cooperation and information sharing.

COMMITTEE CONSIDERATION

I—HEARINGS

The Subcommittee on Risk Management, Research, and Specialty Crops hosted public hearings for the purposes of receiving input regarding the Commodity Exchange Act. The Subcommittee commenced forums on May 18, 19, 20, June 8, 1999, in Washington, D.C. regarding reauthorization of the Commodity Futures Trading Commission (Serial No. 106-18); on August 5, 1999, in Washington, D.C. to review the Commodity Futures Trading Commissions' authority to provide U.S. futures exchanges with regulatory relief (Serial No. 106-32); on February 15, 2000, in Washington, D.C. regarding the President's Working Group on Financial Markets report on Over-the-Counter Derivative Markets and the Commodity Exchange Act (Serial No. 106-43); and on June 14, 2000, in Washington, D.C. to review H.R. 4541, the Commodity Futures Modernization Act of 2000.

II—SUBCOMMITTEE

Chairman Ewing called the Subcommittee on Risk Management, Research, and Specialty Crops business meeting to order on Thursday, June 22, 2000, for the purpose of considering H.R. 4541, the Commodity Futures Modernization Act of 2000, a bill by Mr. Ewing to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the counter derivatives, and for other purposes.

Chairman Ewing made brief opening comments, and he thanked all the parties who had worked so hard to present a substitute bill to the Subcommittee. Chairman Ewing encouraged all interested parties to continue to work together and to improve certain provisions in the bill before Full Committee markup, especially the provisions regarding Shad-Johnson reform.

Chairman Ewing offered an Amendment in the Nature of a Substitute to H.R. 4541, the Commodity Futures Modernization Act of 2000, and without objection, the Ewing Amendment in the Nature of a Substitute was considered as original text and open for amendment at any point.

Counsel was recognized for a brief explanation of the Amendment in the Nature of a Substitute to H.R. 4541.

All Members were given permission to submit additional statements for the hearing record, which would be kept open for ten days.

Mr. Smith was recognized to offer an amendment for him and Mr. Pomeroy. Mr. Smith explained the amendment that would instruct the Commodity Futures Trading Commission to explore ways to facilitate the use of contract markets by domestic agricultural producers who wish to hedge their risks.

Mr. Pomeroy was recognized and indicated his support for making commodity futures a tool more accessible to an average farmer.

Discussion occurred on the amendment, and Chairman Ewing announced his support for the amendment. By voice vote, the Smith-Pomeroy amendment was adopted.

Mr. Dooley was recognized to offer and explain the amendment, which would mandate regulation of clearing houses for over-the-counter derivatives by the appropriate functional regulator. Mr. Dooley indicated that he would withdraw the amendment because of the jurisdiction of other committees, but that he thought it was most important that the Committee on Agriculture make statements on the record in support of this concept. Mr. Dooley noted that the amendment was consistent with the recommendations of the President's Working Group and was consistent with the companion legislation of the Senate side, S. 2697. Mr. Dooley encouraged Chairman Ewing to ensure that this amendment would eventually be incorporated into the text of this legislation before it goes to the House Floor for consideration.

Chairman Ewing stated that he had made a commitment to Mr. Dooley to do his best to get the Dooley amendment incorporated into H.R. 4541.

Discussion occurred on the amendment. Mr. Ose expressed his concern about the clearinghouses being aligned with the proper regulatory jurisdiction to reduce systemic risk.

Without objection, the Dooley amendment was withdrawn.

Mr. Moran was recognized to discuss several issues that he felt deserved consideration as the bill proceeded to be marked up and brought to the House Floor. Mr. Moran's first concern was the delivery of agricultural commodities and possible flaws in the futures trading system. Mr. Moran's second concern was the effect of repealing Shad-Johnson, and Mr. Moran suggested a report, one year after the date of Shad-Johnson repeal, to examine the effects of this action. Mr. Moran's third issue was the promotion of sales of derivatives in all markets. Mr. Moran noted that this issue could

cause jurisdiction concerns, but that he looked forward to working on this issue with the Chairman as the legislation advanced toward the Floor.

Mr. Moran also expressed concern over the way the bill deals with energy products. He urged the Subcommittee to be very cautious about the regulatory structure in the energy derivatives market and the possibility of over-regulation.

Mr. Walden expressed regret that the CFTC and SEC as requested had not provided him and the Subcommittee with a specific outline of the technical differences regarding how some of the regulation should take place. Other Members expressed their concern that the agencies had not resolved these differences.

Full Committee Chairman Combest commended Subcommittee Chairman Ewing for the effort and time that he had put in on this difficult subject. The Chairman encouraged all Members to have discussions on their concerns and to try to resolve their differences before Full Committee markup, which would be held on Tuesday, June 27, 2000. The Chairman announced that the bill would be marked up on Tuesday, June 27, and that the bill would be reported by the end of the week so that the sequential referral to the Committee on Banking and Financial Services and the Committee on Commerce could begin. The Chairman noted that authorizing legislation for the Commodity Futures Trading Commission expires on September 30, and he hoped to have the legislation reauthorized by that date.

By voice vote, and in the presence of a quorum, the Amendment in the Nature of a Substitute, as amended, was adopted.

Mr. Dooley moved that H.R. 4541, as amended, be adopted and reported favorably to the Full Committee. By voice vote, and in the presence of a quorum, H.R. 4541, as amended, passed.

III—FULL COMMITTEE

Chairman Combest called the meeting to order for the purpose of considering H.R. 4541, the Commodity Futures Modernization Act of 2000, a bill by Mr. Ewing to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

Chairman Combest made brief opening comments and thanked all the Members for their cooperation in moving this complex piece of legislation. The Chairman gave special thanks to Mr. Ewing, Chairman of the Subcommittee on Risk Management, Research, and Specialty Crops. Chairman Combest noted that there were still unresolved issues that he would continue to pursue as the legislative process continued.

Ranking Minority Member Stenholm gave an opening statement and indicated his support for the bill and its expeditious enactment. Mr. Stenholm thanked the Commodity Futures Trading Commission for their help on the bill. Mr. Stenholm noted that the CFTC had reservations with provisions of the bill related to correcting violations of core principles, and that he shared that concern. Mr. Stenholm urged the CFTC to continue to advise the Committee on ways to address this concern and others so that the issues could be addressed when H.R. 4541 was taken up on the Floor for consideration.

Mr. Ewing, Chairman of the Subcommittee on Risk Management, Research, and Specialty Crops, thanked the Members for the praise that he had received. Mr. Ewing said that thanks should go to the staff and to the bipartisan way in which everyone had worked on the issue. Mr. Ewing also thanked the members of the President's Working Group for their assistance in developing the bill. Mr. Ewing requested that all parties continue to work together as the bill goes through the legislative process.

Mr. Boehner made brief comments and said that it was imperative that the bill be enacted into law this Congress. He indicated his support and commitment for getting this done.

Mr. Smith associated himself with the remarks of Mr. Stenholm, and Mr. Smith said that it was important that the Committee on Agriculture monitor the effect of this bill on American agriculture.

Mr. Combest placed before the Committee the Subcommittee Amendment in the Nature of a Substitute with technical modifications, and without objection, the Substitute Amendment was considered as original text and open for amendment at any point.

Chairman Combest offered an en bloc amendment and requested that Counsel explain the amendment. The Combest en bloc amendment would clarify the trading of off exchange exempt commodities such as energy and metals, would allow agricultural markets to be traded on a market that is less regulated, would establish a framework for the clearing of futures and other derivative instruments, and would allow U.S. citizens to purchase foreign stock futures sold by U.S. futures commission merchants. By voice vote, the Combest en bloc amendment was adopted.

Mr. Stenholm offered an amendment concerning international activities of the CFTC. The amendment states Congressional findings relating to the need for international regulatory cooperation. The amendment expresses the Sense of Congress that the CFTC should continue to coordinate with foreign regulatory authorities, to participate in international regulatory organizations and forums, and to provide technical assistance to foreign government authorities in order to encourage removal or lessening of unnecessary regulatory impediments to cross-border transactions, the development of international standards for best practices, the enhancement of international regulatory cooperation, and improvements in the quality and timeliness of international information sharing. By voice vote, the amendment was adopted.

By voice vote, and in the presence of a quorum, the Amendment in the Nature of a Substitute, as amended, was adopted.

Mr. Stenholm moved that H.R. 4541, as amended, be adopted and reported favorably to the House. By voice vote, and in the presence of a quorum, H.R. 4541, as amended, passed.

Mr. Stenholm moved that the Committee authorize the Chairman to offer such motions as may be necessary in the House to go to conference with the Senate on the bill H.R. 4541 or a similar Senate bill. By voice vote, the motion was adopted.

Chairman Combest indicated that there was adequate time to give Members two working days to file minority, supplemental, or additional views. Without objection, staff was given permission to make appropriate technical, clarifying, or conforming changes to the legislation.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, H.R. 4541 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 2000.

Hon. LARRY COMBEST,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4541, the Commodity Futures Modernization Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kenneth Johnson (for federal costs), and Susan Sieg Tompkins (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4541—Commodity Futures Modernization Act of 2000

Summary: H.R. 4541 would reauthorize funding for the activities of Commodity Futures Trading Commission (CFTC) during the 2001–2005 period. The bill also would allow trading of individual stock futures under certain conditions, with oversight being shared by the CFTC and the Securities and Exchange Commission (SEC). In addition, H.R. 4541 would clarify that certain over-the-counter derivative transactions are outside of the jurisdiction of the CFTC. The bill also would authorize the CFTC to designate boards of trade as contract markets or execution facilities for derivatives transactions.

Assuming appropriation of the necessary amounts, CBO estimates that implementing this legislation would cost \$353 million over the 2001–2005 period. Although most of this cost would be incurred by the CFTC, CBO estimates that the SEC would spend \$1 million a year to regulate futures on individual securities. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 4541 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs, if any, would not exceed the threshold established in that act (\$55 million in 2000, adjusted annually for inflation). The bill does not contain any new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4541 on CFTC spending is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CFTC Spending Under Current Law:						
Budget Authority ¹	63	0	0	0	0	0
Estimated Outlays	57	6	0	0	0	0
Proposed Changes:						
Estimated Authorization Level	0	67	69	72	74	77
Estimated Outlays	0	60	68	71	73	76
CFTC Spending Under H.R. 4541:						
Estimated Authorization Level ¹	63	67	69	72	74	77
Estimated Outlays	57	66	68	71	73	76

¹The 2000 level is the amount appropriated for that year.

In addition to affecting CFTC spending, implementing H.R. 4541 also would cost the SEC \$1 million each year over the 2001–2005 period.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 2000 and that the necessary amounts will be appropriated by the start of each fiscal year. Outlay estimates are based on historical spending rates for the CFTC.

H.R. 4541 would reauthorize funding for activities of the CFTC over the 2001–2005 period. Based on the agency's current budget and adjusting for anticipated inflation, this reauthorization would cost \$59 million in 2001 and a total of \$343 million over the five-year period.

The bill also would make several changes to the Commodity Exchange Act that would increase administrative costs of the CFTC and the SEC. Based on information from the two agencies, CBO estimates that these new administrative responsibilities would cost \$2 million in 2001, and \$10 million over the 2001–2005 period. H.R. 4541 requires that the CFTC and the SEC jointly regulate individual stock futures. The CFTC also would be authorized to designate boards of trade as contract markets or execution facilities for derivatives transactions. CBO estimates that these added regulatory responsibilities would require the CFTC and the SEC to hire new staff.

Pay-as-you-go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 4541 would preempt state laws affecting certain commodities transactions that are conducted in markets regulated by the Commodity Futures Trading Commission. Such a preemption would be a mandate as defined by UMRA. CBO estimates that the costs of this mandate if any, would not exceed the threshold in that act (\$55 million in 2000, adjusted annually for inflation). The bill would impose no other costs on state, local, or tribal governments.

Estimated impact on the private sector: The bill sets forth certain principles and requirements that would govern contract markets, execution facilities for derivative transactions, and derivative clearing organizations. Government and industry sources stated that these provisions appear to be a subset of current regulation. Thus, CBO expects that the bill would impose no new private-sector mandates.

Estimate prepared by: Federal Costs: Kenneth Johnson, Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins; Impact on the Private Sector: Judith Ruud.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform, as provided for in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, was available to the Committee with reference to the subject matter specifically addressed by H.R. 4541.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

* * * * *

SEC. 1a. DEFINITIONS.

As used in this Act:

(1) * * *

* * * * *

(3) **COMMODITY.**—The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, *aluminum, copper, gold, palladium, platinum, silver*, and all other goods and articles, except onions as provided in Public Law 85–839 (7 U.S.C. 13–1), and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.

(4) **COMMODITY POOL OPERATOR.**—The term “commodity pool operator” means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility*, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

(5) **COMMODITY TRADING ADVISOR.**—

(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, the term “commodity trading advisor” means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market *or derivatives transaction execution facility*;

* * * * *

(B) **EXCLUSIONS.**—Subject to subparagraph (C), the term “commodity trading advisor” does not include—

(i) * * *

* * * * *

(vi) any contract market or derivatives transaction execution facility; and

* * * * *

(8) **DERIVATIVES CLEARING ORGANIZATION.**—

(A) **IN GENERAL.**—The term “derivatives clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to a derivative agreement, contract, or transaction—

(i) enables each party to the derivative agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by parties in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among parties in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the parties.

(B) **EXCLUSIONS.**—The term “derivatives clearing organization” does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a centralized counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(9) **ELECTRONIC TRADING FACILITY.**—The term “electronic trading facility” means a trading facility that—

(A) operates by means of an electronic network; and

(B) maintains a real-time audit trail of bids, offers, and the matching of orders or the execution of transactions.

(10) **ELIGIBLE COMMERCIAL PARTICIPANT.**—The term “eligible commercial participant” means a party or entity described in paragraph (11)(A)(i), (ii), (v), or (vii) or paragraph (11)(C), who, in connection with its business—

(A) has a demonstrable capacity or ability, directly or through separate contractual arrangements, to make or take delivery of the underlying physical commodity;

(B) incurs risks, in addition to price risk, related to the commodity; or

(C) is a dealer that regularly provides hedging, risk management, or market-making services to the foregoing entities.

(11) **ELIGIBLE CONTRACT PARTICIPANT.**—The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company regulated by a State (including a subsidiary or affiliate of such an insurance company);

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding \$1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding \$5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment advisor or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or this Act;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company regulated by a State (including a subsidiary or affiliate of such an insurance company);

(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

(viii) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(ix) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) a natural person with total assets exceeding \$10,000,000;

(B)(i) a person described in any of clauses (i) through (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C);

(ii) an investment adviser subject to regulation under the Investment Advisors Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in any of clauses (i) through (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(iii) a commodity trading advisor subject to regulation under this Act, having assets under management of not less than \$25,000,000 and acting as investment manager or fiduciary for another person and authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

(12) **EXCLUDED COMMODITY.**—The term “excluded commodity” means—

(A) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, or index or measure of inflation;

(B) any other rate, differential, index, or measure of economic or commercial risk, return, or value that—

(i) is not within the control of any party to the relevant contract, agreement, or transaction; or

(ii) is not based in substantial part on the value of a limited number of commodities not described in subparagraph (A) that have a finite supply; or

(C) an occurrence, extent of an occurrence, or contingency beyond the control of the parties to the relevant contract, agreement, or transaction.

(13) **EXEMPT COMMODITY.**—The term “exempt commodity” means a commodity that is not an excluded commodity or an agricultural commodity.

(14) **FINANCIAL INSTITUTION.**—The term “financial institution” means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as “an agreement corporation”;

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an “Edge Act corporation”;

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

(G) a trust company; or

(H) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (F).

[(8)] (15) **FLOOR BROKER.**—The term “floor broker” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

[(9)] (16) **FLOOR TRADER.**—The term “floor trader” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account, any

commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility*.

[(10)] (17) FOREIGN FUTURES AUTHORITY.—The term “foreign futures authority” means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

[(11)] (18) FUTURE DELIVERY.—The term “future delivery” does not include any sale of any cash commodity for deferred shipment or delivery.

[(12)] (19) FUTURES COMMISSION MERCHANT.—The term “futures commission merchant” means an individual, association, partnership, corporation, or trust that—

(A) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility*; and

(B) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(20) HYBRID INSTRUMENT.—The term “hybrid instrument” means a deposit (as defined in section 3 of the *Federal Deposit Insurance Act (12 U.S.C. 1813)*) offered by a financial institution, or a security, having 1 or more payments indexed to the value, level, or rate of 1 or more commodities.

[(13)] (21) INTERSTATE COMMERCE.—The term “interstate commerce” means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same state, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

[(14)] (22) INTRODUCING BROKER.—The term “introducing broker” means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility* who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

[(15)] (23) MEMBER OF A [CONTRACT MARKET] REGISTERED ENTITY.—The term “member of a [contract market] registered entity” means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a [contract market] registered entity or given members’ trading privileges thereon.

(24) *NONEXEMPT SECURITY.*—The term “nonexempt security” means a security that is not an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934).

(25) *OPTION.*—The term “option” means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”.

(26) *ORGANIZED EXCHANGE.*—The term “organized exchange” means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; or

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

[(16)] (27) *PERSON.*—The term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(28) *REGISTERED ENTITY.*—The term “registered entity” means—

(A) a board of trade designated as a contract market under section 5;

(B) a derivatives transaction execution facility registered under section 5a; or

(C) a derivatives clearing organization registered under section 5b.

(29) *SECURITY.*—The term “security” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) as in effect on date of the enactment of this paragraph.

(30) *TRADING FACILITY.*—

(A) *IN GENERAL.*—The term “trading facility” means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

(B) *EXCLUSIONS.*—The term “trading facility” does not include—

(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications ex-

changed by the parties and not from interaction of multiple orders within a predetermined, nondiscretionary automated trade matching algorithm;

(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms “government securities dealer”, “government securities broker”, and “government securities” are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

【SEC. 2. (a)(1)(A)(i) The】

SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—

(1) JURISDICTION OF COMMISSION.—

(A) *IN GENERAL.*—The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in 【subparagraph (B) of this paragraph】 subsection (g), with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a 【contract market designated pursuant to section 5 of this Act】 contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 19 of this Act. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

【(ii) Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.】

[(iii) The]

(B) *LIABILITY OF PRINCIPAL FOR ACT OF AGENT.*—The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

[(B) Notwithstanding any other provision of law—

[(i) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

[(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”) and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however,* That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

[(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

[(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

[(III) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt se-

curities or a substantial segment thereof, or shall be comparable to such measure.

[(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph.

[(iv)(I) The Commission shall consult with the Securities and Exchange Commission with respect to any application which is submitted by a board of trade before December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. If, no later than fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) of this subparagraph is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(c) of this Act. If, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

[(II) Effective for any application submitted by a board of trade on or after December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities, the Commission shall transmit a copy of such application to the Securities and Exchange Commission for review. The Commission shall not approve any such application if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements set forth in clause (ii) of this subparagraph. Such determination shall be made by order no later than forty-five days after the close of the public comment period under clause (iii) of this subparagraph. In the event of such determination, the board of trade shall be afforded an opportunity for a hearing on the record before the Securities and Exchange Commission.

If a board of trade requests a hearing on the record, the hearing shall commence no later than thirty days following the receipt of the request, and a final determination shall be made no later than thirty days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review thereof in the same manner and under such terms and conditions as are provided in section 6(b) of this Act.

[(v) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph, any group or index of such securities or any interest therein or based on the value thereof.

[(vi)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for the stock index futures contract (or option thereon).

[(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

[(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this clause only to the Commission.

[(IV) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market, on finding an emergency to exist, to raise temporary emergency margin levels on any futures contract or option on the contract covered by this clause.

[(V) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III, under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after no-

tice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.】

* * * * *

(7) No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this Act during his term of office, nor shall he participate, directly or indirectly, in any 【contract market】 *registered entity* operations or transactions of a character subject to regulation by the Commission.

(8)(A) * * *

(B)(i) * * *

(ii) When a board of trade applies for 【designation as a contract market】 *designation or registration as a contract market or derivatives transaction execution facility* involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not 【designate a board of trade as a contract market】 *designate or register a board of trade as a contract market or derivatives transaction execution facility* based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In 【designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act】 *designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9))* with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such 【designation, suspension, revocation, or emergency action】 *designation, registration, suspension, revocation, or action* may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

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(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—

(1) *IN GENERAL.*—Except as provided in paragraph (2), nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—

- (A) foreign currency;
- (B) government securities;
- (C) security warrants;
- (D) security rights;
- (E) resales of installment loan contracts;
- (F) repurchase transactions in an excluded commodity; or
- (G) mortgages or mortgage purchase commitments.

(2) *COMMISSION JURISDICTION.*—

(A) *AGREEMENTS, CONTRACTS, AND TRANSACTIONS THAT ARE FUTURES TRADED ON AN ORGANIZED EXCHANGE.*—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

(i) a contract of sale of a commodity for future delivery (or an option thereon), or an option on a commodity (other than foreign currency or a security), that is executed or traded on an organized exchange; or

(ii) an option on foreign currency and is executed or traded on an organized exchange that is not a national securities exchange.

(B) *AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.*—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

(i) is a contract of sale for future delivery (or an option on such a contract) or an option; and

(ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

(I) a financial institution;

(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) or a futures commission merchant registered under this Act;

(III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h)) or section 4f(c)(2)(B) of this Act;

(IV) an insurance company that is subject to State regulation (including a subsidiary or affiliate of such an insurance company);

(V) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).

(d) **EXCLUDED DERIVATIVE TRANSACTIONS.**—

(1) **IN GENERAL.**—Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

(2) **ELECTRONIC TRADING FACILITY EXCLUSION.**—Nothing in this Act (other than section 5a, 5b, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(11)(B)(ii) of this Act;

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants (as defined in sections 1a(11)(A), (B)(ii), and (C)) at the time at which the persons enter into the agreement, contract, or transaction; and

(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.

(e) **EXCLUDED ELECTRONIC TRADING FACILITIES.**—

(1) **IN GENERAL.**—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of sections 2(d)(2) and 2(h)(3)(B) of this Act.

(2) **EFFECT ON AUTHORITY TO ESTABLISH AND OPERATE.**—Nothing in this Act shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or an exempt board of trade, from establishing and operating an excluded electronic trading facility excluded under this Act pursuant to paragraph (1).

(f) **EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.**—

(1) **IN GENERAL.**—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security or depository instrument.

(2) **PREDOMINANCE.**—A hybrid instrument shall be considered to be predominantly a security or depository instrument if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale for future delivery of a commodity (or option on such a contract) subject to this Act.

(3) *MARK-TO-MARKET MARGINING REQUIREMENTS.*—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(g) Notwithstanding any other provision of law:

(1) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to the transaction acquires a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, on the date of enactment of the Futures Trading Act of 1982), including any group or index of securities and any interest in or based on the value of securities.

(2) Nothing in this subsection governs or applies to—

(A) an agreement, contract, or transaction in a commodity that is excluded under subsection (c) or (d);

(B) an electronic trading facility that is excluded under subsection (e); or

(C) a hybrid instrument that is covered by an exclusion under subsection (f) or an exemption granted by the Commission under section 4(c) (whether or not the hybrid instrument is otherwise subject to this Act).

(3) Except as provided in paragraph (4) of this subsection, or unless excluded by paragraph (2) of this subsection, a person shall not offer to enter into, enter into, or confirm the execution of any contract of sale (or option on the contract) for future delivery of any security or interest in or based on the value of a nonexempt security.

(4)(A) Except as excluded by paragraph (2) of this subsection, this Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, or decline guaranty), and transactions involving, and may designate a board of trade as a contract market under section 5 or register the board of trade as a derivatives transaction execution facility under section 5a in, contracts of sale (or options on the contracts) for future delivery of 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934), including any group or index of securities and any interest in or based on the value of securities.

(B) The Commission shall not designate a board of trade as a contract market under section 5 or register a board of trade as a derivatives transaction execution facility under section 5a

with respect to any such contracts of sale (or options on the contracts) for future delivery unless the board of trade demonstrates and the Commission expressly finds that the specific contract (or option on the contract) with respect to which the application for the designation or recognition has been made meets the following requirements:

(i) Settlement of or delivery on the contract (or option on the contract) shall be effected in cash or by means other than the transfer or receipt of a nonexempt security.

(ii) SUSCEPTIBILITY TO PRICE MANIPULATION.—Trading in a contract (or option on such a contract) described in subparagraph (A) shall not be readily susceptible to—

(I) manipulation of the price of the contract (or option on such a contract); or

(II) causing or being used in the manipulation of the price of any underlying security, option on a security, or option on a group or index that includes a security.

(iii) If the contract is based on a single nonexempt security, an option on the security underlying the contract would meet all Securities and Exchange Commission requirements for listing on a national securities exchange.

(iv) If the contract is based on any group or index of nonexempt securities comprised of fewer than 5 securities, or on an index in which a single nonexempt security predominates, an option on each security comprising the group or index would meet all requirements for listing on a national securities exchange.

(v) The contract will be traded on a board of trade that establishes the level of margin for futures contracts (or options on the contracts) based on a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, at a level consistent with the level of margin on comparable option contracts listed on any national securities exchange.

(vi) The contract will be traded on a board of trade that prohibits a person who acts as a floor broker for any contract of sale (or options on the contract) for future delivery of a nonexempt security, an index based on fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, from trading that contract for the broker's own account during the same trading session.

(vii) The contract will be traded on a board of trade that collects, maintains, and promptly provides to the Securities and Exchange Commission such information as the Commission and the Securities and Exchange Commission jointly consider necessary to perform the enforcement responsibilities described in paragraph (6).

(5) The Commission shall consult with the Securities and Exchange Commission with respect to any application submitted by a board of trade for designation as a contract market or derivatives transaction execution facility with respect to any contract of sale (or option on the contract) for future delivery of a nonexempt security or a group or index of such securities. If, not later than 15 days after the consultation, the Securities and Ex-

change Commission objects to the designation of a board of trade as a contract market or derivatives transaction execution facility in the contract (or option on the contract) on the ground that any requirement of paragraph (4)(B) is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing to be transcribed before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. The oral hearing shall be held before Commission action upon the application for the designation, and not less than 30 nor more than 45 days after the Securities and Exchange Commission has objected. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market or recognizes the board of trade as a derivatives transaction execution facility with respect to any such contract (or option on the contract), the Securities and Exchange Commission may seek judicial review of the order in accordance with the procedural requirements set forth in section 6(c). If, pursuant to section 6, there is a hearing on the record with respect to an application for such designation, the Securities and Exchange Commission may participate in that hearing as an interested party.

(6) Notwithstanding any other provision of this Act, the Securities and Exchange Commission may enforce against a person that purchases or sells any contract of sale (or option on the contract) for future delivery of any nonexempt security, any index comprised of fewer than 5 nonexempt securities, or any index in which a single nonexempt security predominates to the same extent as if the person had purchased or sold an option on the security or index under the following provisions of the securities laws and regulations with respect to the following categories of conduct:

(A) Section 10(b) and 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b), 78u-1) with respect to insider trading.

(B) Section 16(b) of such Act (15 U.S.C. 78p(b)) with respect to unfair use of information in short swing trading by a corporate insider.

(C) Section 9 of such Act (15 U.S.C. 78i) with respect to manipulation of securities prices.

(D) Section 10(b) of such Act (15 U.S.C. 78J(b)) and section 204A of the Investment Adviser's Act of 1940 (15 U.S.C. 80b-4a) with respect to frontrunning.

(E) Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) with respect to the pricing and integrity of tender offers.

(F) Rule 144 of the rules of the Securities and Exchange Commission (17 C.F.R. 230.144) with respect to trading in restricted securities.

(7)(A) Notwithstanding any other provision of this Act, any contract market or derivatives transaction execution facility in a nonexempt security or stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of

margin (initial and maintenance) for the nonexempt security or stock index futures contract (or option on the contract).

(B) The Board may at any time request any contract market or derivatives transaction execution facility to set the level of margin for any nonexempt security or stock index futures contract (or option on the contract) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility or its clearing system or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(C) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this paragraph to the Commission or an intermarket margin board as provided in subparagraph (D).

(D) INTERMARKET MARGIN BOARD.—

(i) ESTABLISHMENT.—With the concurrence of the Securities and Exchange Commission and the Commission, the Board may establish an intermarket margin board, consisting of representatives of any or all of the three agencies.

(ii) DUTIES.—The intermarket margin board may set and maintain margin levels and rules pertaining to margin for futures on a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, listed on a contract market or derivatives transaction execution facility. In discharging these duties, the intermarket margin board shall endeavor to make the levels of margin for futures and options on a single nonexempt security consistent taking into account any material differences in such contracts, including—

(I) the price volatility of the contracts;

(II) the frequency with which margin calls are made;

and

(III) the period of time within which margin calls must be met.

(E) This paragraph shall not be construed to supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market or derivatives transaction execution facility, on finding an emergency to exist, to raise temporary emergency margin levels on any futures contract or option on the contract covered by this paragraph.

(F) Any action taken by the Board under this paragraph, or by the Commission acting under the delegation of authority under subparagraph (C), directing a contract market or derivatives transaction execution facility to alter or supplement a contract market or derivatives transaction execution facility rule shall be subject to review only in the United States Court of Appeals for the judicial circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit.

The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court determines, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(8) This subsection shall not be construed to prohibit—

(A) an agreement, contract, or transaction excluded from this Act by paragraph (2); or

(B) any hybrid instrument that is covered by the terms of any exemption granted by the Commission under section 4(c) (whether or not any such hybrid instrument is otherwise subject to this Act).

(9)(A) No futures commission merchant, commodity trading advisor, or introducing broker shall recommend to any customer the purchase or sale of any contract of sale for future delivery of a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates, unless the futures commission merchant, commodity trading advisor, or introducing broker complies with the rules described in subparagraph (B) of a registered futures association of which such merchant, advisor, or broker is a member.

(B) Within 9 months of the date of enactment of the Commodity Futures Modernization Act of 2000, a registered futures association shall adopt rules requiring a futures commission merchant, a commodity trading advisor, or an introducing broker which recommends to any customer the purchase or sale of any contract of sale for future delivery of a single nonexempt security, an index of fewer than 5 nonexempt securities, or an index in which a single nonexempt security predominates to ascertain through reasonable due diligence that the recommendation is suitable for that customer in light of the customer's financial position and trading goals. The registered futures association shall consult with the Commission and the Securities and Exchange Commission prior to the adoption of any such rule, and shall submit any such rule to the Commission for approval in the manner and according to the procedures described in section 17(j) of this Act, provided, that in such case the rule shall become effective if the Commission fails to disapprove such rule within 90 days of submission.

(10)(A) Nothing in this Act shall be construed to require or authorize the Commission to review or approve, directly or indirectly, any contract, rule, regulation, or action adopted by a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market, relating to any transaction involving a contract of sale for future delivery (or option on such a contract) in or involving any security, including any foreign government debt security, or group or index of such securities, if—

(i)(I) in the case of a contract of sale for future delivery (or option on such a contract) in or involving a single eq-

uity security, the United States is not the primary trading market for the underlying security; or

(II) in the case of a contract of sale for future delivery (or option on such a contract) in or involving a group or index of equity securities, less than 25 percent of the weighting of the group or index is derived from securities for which the United States is the primary trading market for the securities underlying the contract for future delivery (or option on the contract); and

(ii) settlement of or delivery on the contract for future delivery (or option on such a contract) is to be effected in cash or by means other than the transfer or receipt of a security in the United States other than an exempted security.

(B) Within 90 days after the date of the enactment of this paragraph, the Commission shall adopt such procedures as it deems appropriate pursuant to which, consistent with this Act, the Commission shall authorize the offer and sale in the United States of any contract of sale for future delivery (or option on such a contract) of a security, other than a security of the type described in subparagraph (A)(i)(I) or a group or index of securities of the type described in subparagraph (A)(i)(II), traded on or subject to the rules of a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market, except that such procedures shall not require a foreign board of trade, exchange, or market, or a clearinghouse for such a board of trade, exchange, or market to apply for designation as a contract market under this Act with respect to such a contract for future delivery (or option on such a contract).

(h) **LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.**—

(1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall apply to a contract, agreement or transaction in an exempt commodity which—

(A) is entered into solely between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction; and

(B) is not entered into on a trading facility.

(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

(A) sections 5b and 12(e)(2)(B) of this Act;

(B) sections 4b and 4n of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act prescribing fraud in connection with commodity option transactions, to the extent such agreement, contract, or transaction is not between eligible commercial participants and would otherwise be subject to those provisions; and

(C) sections 6(c) and 9(a)(2) of this Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce, to the extent such agreement, contract, or transaction would otherwise be subject to those provisions.

(3) Except as provided in paragraph (4) of this subsection, nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity (other than a metal commodity enumerated in section 1a(3) of this Act) which—

(A) is entered into solely between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

(B) is executed or traded on an electronic trading facility.

(4) An agreement, contract, or transaction described in paragraph (3) shall be subject to—

(A) sections 5b and 12(e)(2)(B) of this Act;

(B) sections 4b and 4n of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act prescribing fraud in connection with commodity option transactions and section 6(c) and 9(a)(2) of this Act, to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce, to the extent such agreement, contract, or transaction would otherwise be subject to those provisions; and

(C) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions related to the commodity executed or traded on the electronic trading facility.

[SEC. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as “futures” are affected with a national public interest. Such futures transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce. The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce. Such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price. The transactions and prices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, rendering regulation imperative for the protection of such commerce and the national public interest therein. Furthermore, transactions which are of the character of, or are commonly known to the trade as, “options” are or may be utilized by commercial and other entities for risk shifting and other purposes. Options transactions are in interstate commerce or affect such commerce and the national economy, rendering regulation of such transactions imperative for the protection of such commerce and the national public interest.]

SEC. 3. FINDINGS AND PURPOSE.

(a) *FINDINGS.*—*The futures contracts and options contracts that are subject to this Act are entered into regularly in interstate and*

international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) *PURPOSE.—It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.*

SEC. 4. (a) Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been **designated by the Commission as a “contract market” for** *designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;*

(2) such contract is executed or consummated by or through a **member of such** contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.*

* * * * *

(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade **designated as a contract market**) *designated or registered as a contract market or derivatives transaction execution facility* for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms

or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except [section 2(a)(1)(B)] *section 2(g)*), if the Commission determines that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) * * *

(B) the agreement, contract, or transaction—

(i) * * *

(ii) will not have a material adverse effect on the ability of the Commission or any contract market *or derivatives transaction execution facility* to discharge its regulatory or self-regulatory duties under this Act.

* * * * *

SEC. 4a. (a) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets *or derivatives transaction execution facilities* causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility* as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as “spreads” or “straddles” or “arbitrage” or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word “arbitrage” in domestic markets shall be defined to mean the same as a “spread” or “straddle”. The Commission is authorized to define the term “international arbitrage”.

(b) The Commission shall, in such rule, regulation, or order, fix a reasonable time (not to exceed ten days) after the promulgation of the rule, regulation, or order; after which, and until such rule,

regulation, or order is suspended, modified, or revoked, it shall be unlawful for any person—

(1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets, or *derivatives transaction execution facility or facilities*, to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility* in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

* * * * *

(e) Nothing in this section shall prohibit or impair the adoption by any **[contract market or]** *contract market, derivatives transaction execution facility*, or by any other board of trade **[licensed or designated]** *licensed, designated, or registered* by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such **[contract market, or]** *contract market or derivatives transaction execution facility*, or under options on such contracts or commodities traded on or subject to the rules of such **[contract market or]** *contract market, derivatives transaction execution facility*, or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such **[contract market or]** *contract market, derivatives transaction execution facility*, or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any **[contract market or]** *contract market, derivatives transaction execution facility*, or other board of trade **[licensed or designated]** *licensed, designated, or registered* by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: *Provided*, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits.

* * * * *

SEC. 4b. (a) It shall be unlawful (1) for any member of a **[contract market]** *registered entity*, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in

interstate commerce, made, or to be made, on or subject to the rules of any **contract market** *registered entity*, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or by products thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(i) * * *

* * * * *

SEC. 4c. (a) It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

[(A) if such transaction is, is of the character of, or is commonly known to the trade as, a “wash sale”, “cross trade”, or “accommodation trade”, or is a fictitious sale; or

[(B) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission.]

SEC. 4c. PROHIBITED TRANSACTIONS.

(a) *IN GENERAL.*—

(1) *PROHIBITION.*—*It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving any commodity if the transaction is used or may be used to—*

(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

(2) *TRANSACTION.*—*A transaction referred to in paragraph (1) is a transaction that—*

(A)(i) is, is of the character of, or is commonly known to the trade as, a “wash sale” or “accommodation trade”; or

(ii) is a fictitious sale; or

(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

* * * * *

(g) The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market or *derivatives transaction execution facility* placed by a member of the contract market who is present on the floor at the time such order is placed.

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or *derivatives transaction execution facility* unless—

(1) * * *

(2) such person shall, if a futures commission merchant, whether a member or nonmember of a contract market or *derivatives transaction execution facility*, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market or *derivatives transaction execution facility*, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearing-house organization of such contract market or *derivatives transaction execution facility* or with any member of such contract market or *derivatives transaction execution facility*, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further,* That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further,* That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments

to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

SEC. 4e. It shall be unlawful for any person to act as floor trader in executing purchases and sales, or as floor broker in executing any orders for the purchase or sale, of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless such person shall have registered, under this Act, with the Commission as such floor trader or floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. (a) * * *

(b) Notwithstanding any other provisions of this Act, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market or derivatives transaction execution facility and conforms to minimum financial standards and related reporting requirements set by such contract market or derivatives transaction execution facility in its bylaws, rules, regulations, or resolutions and approved by the Commission as adequate to effectuate the purposes of this subsection.

(c)(1) * * *

* * * * *

(3)(A) * * *

(B) The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a contract market or derivatives transaction execution facility or other self-regulatory organization with primary responsibility for examining the registered futures commission merchant's financial and operational condition.

* * * * *

SEC. 4g. (a) * * *

(b) Every [clearinghouse and contract market] registered entity shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

* * * * *

(f) Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different **clearinghouses, contract markets, and exchanges** *registered entities* when such determinations are warranted in the judgment of the Commission.

SEC. 4h. It shall be unlawful for any person falsely to represent such person to be a member of a **contract market** *registered entity* or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any **contract market** *registered entity*.

SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility*—

(1) * * *

* * * * *

SEC. 4j. (a)(1) The Commission shall issue regulations to prohibit the privilege of dual trading on each contract market which has not been exempted from such regulations under paragraph (3). The regulations issued by the Commission under this paragraph—

(A) shall provide that the prohibition of dual trading thereunder shall take effect not less than thirty days after the issuance of the regulations;

(B) shall provide for exceptions, as the Commission determines necessary and appropriate, to ensure fairness and orderly trading in affected contract markets, including—

(i) transition measures and a reasonable phase-in period,

(ii) exceptions for spread transactions and the correction of trading errors,

(iii) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this paragraph, and

(iv) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest;

(C) shall establish procedures for the application for and issuance of exemptions under paragraph (3) which, among other things, shall specify the relevant data required to be submitted by the board of trade with each application;

(D) shall specify the methodology by which it shall determine the average daily trading volume on a contract market for purposes of paragraph (4) based on a moving daily average of either six or twelve months; and

(E) shall establish an expeditious procedure to revoke an exemption granted under paragraph (3) providing sufficient no-

tice, opportunity for hearing, and findings to assure fundamental fairness.

[(2) As used in this section, the term “dual trading” means the execution of customer orders by a floor broker during any trading session in which the floor broker executes any trade in the same contract market for—

[(A) the account of such floor broker;

[(B) an account for which such floor broker has trading discretion; or

[(C) an account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d).

[(3) The Commission shall exempt a contract market from the regulations issued under paragraph (1), either unconditionally or on stated conditions (including stated periods of time) relevant to the attainment or maintenance of compliance with the standards in subparagraphs (A) and (B), upon finding that—

[(A) the trade monitoring system in place at the contract market satisfies the requirements of section 5a(b) with regard to violations attributable to dual trading at such contract market; or

[(B)(i) there is a substantial likelihood that a dual trading suspension would harm the public interest in hedging or price basing at such contract market, and

[(ii) other corrective actions, such as those described in section 8e, are sufficient and appropriate to bring the contract market into compliance with the standard in subparagraph (A).

[(4)(A) The regulations issued by the Commission under paragraph (1) shall not apply to any contract market in which the Commission determines that the average daily trading volume is less than the threshold trading level established for the contract market under this paragraph.

[(B) The threshold trading level shall be set initially at eight thousand contracts.

[(C) The Commission may, by rule or order—

[(i) increase, or

[(ii) at any time following the date three years after the date of enactment of this paragraph, decrease, the threshold trading level for specific contract markets after taking into consideration the actual or potential effects of a dual trading ban on the public interest in hedging or price basing at the affected contract market.

[(D) The Commission shall provide the affected contract market with adequate notice of any such increase or decrease.

[(5) Before the Commission denies an application for an exemption under paragraph (3) or exempts a contract market subject to conditions, it shall—

[(A) provide the affected board of trade with notice of the reason or reasons that the application was not approved as submitted, including—

[(i) any reason the Commission has to believe that the trade monitoring system in place at the contract market does not satisfy the requirements of paragraph (3)(A) and the basis for such reason;

[(ii) any corrective action or actions, such as those described in section 8e, that the Commission believes the affected contract market must take to satisfy the requirements of paragraph (3)(A), and an acceptable timetable for such corrective action; and

[(iii) any conditions or limitations that the Commission proposes to attach to the exemption under paragraph (3);
 [(B) provide the affected board of trade with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the board of trade, through an oral presentation of views and comments to the Commission, in order to make the demonstration required under paragraph (3) or otherwise to petition the Commission with respect to its application; and

[(C) make findings, based on the information, views, and arguments placed before it in connection with the application, as to whether—

[(i) the standard in either paragraph (3)(A) or (3)(B) applies, and

[(ii) any conditions or limitations which the Commission proposes to attach under paragraph (3) are appropriate in light of the purposes of this subsection.

The Commission shall publish in the Federal Register notice of any exemptive petitions filed under paragraph (3) and any proposed or final actions the Commission may take on such petitions. Unless the Commission determines that more immediate action is appropriate in the public interest, any Commission order denying an application or exempting a contract market conditionally shall not take effect for at least twenty days following the issuance of the order.

[(6) Violation of an order issued under this subsection shall be considered a violation of an order of the Commission for purposes of—

[(i) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 6b or 6c; or

[(ii) initiating proceedings under section 5b or 6(a).

[(7) Any board of trade which has applied to the Commission to exempt a contract market from the regulations issued under paragraph (1) may obtain judicial review of any final action of the Commission to deny such application, to issue an exemption subject to conditions, or to revoke an exemption, only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5, United States Code.

[(8)(A) The Commission shall issue the regulations required under paragraph (1) not later than two hundred and seventy days after the enactment of this section. If, prior to the effective date of the prohibition on dual trading under such regulations, a board of trade submits to the Commission an application for an exemption for a contract market under paragraph (3), the Commission shall not apply the prohibition against dual trading under paragraph (1)

to the contract market until the Commission has approved or denied the application.

[(B) The Commission shall approve or deny any application for an exemption under paragraph (3) within seventy-five days after receipt of the application, or as soon as practicable.

[(b) If, in addition to the regulations issued pursuant to subsection (a), the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a), the Commission shall make a determination, after notice and opportunity for hearing, whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted: *Provided*, That any such determination shall, at a minimum, take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

[(c) The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required, make a determination, after notice and opportunity for hearing, whether or not a futures commission merchant may trade for its own account or any proprietary account, as defined by the Commission, and if the Commission determines that such trades shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades shall be conducted: *Provided*, That any such determination, at a minimum, shall take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

[(d)(1) Except as provided in paragraph (2), a floor broker may not execute an order of a customer if such floor broker knows the opposite party to the transaction to be a floor broker or floor trader with whom such trader or broker has a relationship involving trading on such contract market as—

[(A) a partner in a partnership;

[(B) an employer or employee; or

[(C) Such other affiliation as the Commission may specify by rule.

[(2) Paragraph (1) shall not apply—

[(A) if the Commission has adopted rules that the Commission certifies to Congress require procedures and standards designed to prevent violations of this Act attributable to the trading described in paragraph (1); or

[(B) to any contract market that has implemented rules designed to prevent violations of this Act attributable to the trading described in paragraph (1), except that, if the Commission determines, by rule or order, that such rules are not adequate to prevent such violations, paragraph (1) shall become effective with respect to such contract market after a reasonable period determined by the Commission.]

SEC. [4k.] 4j. (1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection.

* * * * *

SEC. [4l.] 4k. It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets or *derivatives transaction execution facilities*; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets or *derivatives transaction execution facilities*.

SEC. [4m.] 4l. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than

fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 14 of this Act.

* * * * *

SEC. [4n.] 4m. (1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this Act by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) * * *

* * * * *

SEC. [4o.] 4n. (1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) * * *

* * * * *

SEC. [4p.] 4o. (a) The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this [Act or contract markets] Act, contract markets, or derivatives transaction execution facilities may adopt written proficiency examinations to be given to applicants for registration and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the

degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal.

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, *derivatives transaction execution facility*, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

(a) *AUTHORITY.*—*The Commission shall consider issuing rules or orders which—*

(1) *prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(3) which is the subject of a contract for purchase or sale for future delivery;*

(2) *increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable such producers to hedge price risk associated with their production;*

(3) *provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and*

(4) *encourage exchanges to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.*

(b) *REPORT.*—*Within 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.*

[SEC. 5. The Commission is hereby authorized and directed to designate any board of trade as a “contract market” when, and only when, such board of trade complies with and carries out the following conditions and requirements:

[(1) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture or the Commission for the purpose: *Provided,* That any board of trade not so located shall be designated as a “contract market” if

such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Commission.

【(2) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Commission may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Commission, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions or transactions for future delivery consummated on or subject to the rules of a board of trade, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Commission may direct, showing the details and terms of all cash and future transactions entered into by them, consummated on or subject to the rules of a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and shall at all times be open to the inspection of any representative of the Commission or United States Department of Justice.

【(3) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

【(4) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

【(5) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

【(6) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of section 6(c), and the orders issued pursuant to the provisions of section 5a of this Act, and for compliance in all other respects with the requirements applicable to such board of trade under this Act.

【(7) When such board of trade demonstrates that transactions for future delivery in the commodity for which designa-

tion as a contract market is sought will not be contrary to the public interest.

[(8) When such board of trade demonstrates that every contract market for which such board of trade is designated complies with the requirements of section 5a(b).

[SEC. 5a. (a) Each contract market shall—

[(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

[(2) keep all books, records, minutes, and journals of proceedings of such contract market, and its governing board, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed by such contract market, governing board, committees, subsidiaries and affiliates and reveal any action taken in such matters, and allow inspection at all times by any authorized representative of the Commission or United States Department of Justice of all such books, records, minutes, and journals of proceedings. Such books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct;

[(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Commission may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the Commission or United States Department of Justice;

[(4) when so directed by order of the Commission, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Commission finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent “squeezes” and market congestion endangering price stability, it shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as it finds will prevent or tend to prevent such “squeezes” and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

[(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Commission finds that the giving of longer notice of delivery is necessary to prevent or di-

minish unfair practices in trading in any one or more commodities or markets, it shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as it finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

【(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated and adopted by the Commission;

【(7) require that receipts issued under the United States Warehouse Act (U.S.C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes: *And provided further,* That this subsection shall apply only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act;

【(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, that (i) have been approved by the Commission pursuant to paragraph (12) of this section, (ii) have become effective under such paragraph, or (iii) must be enforced pursuant to any Commission rule, regulation, or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, that has been disapproved by the Commission;

【(9) enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market, and which have been approved by the Commission;

【(10) permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract mar-

ket an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives: *Provided*, That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open: *And provided further*, That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points;

[(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the contract market, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a contract market, such procedure shall provide, to the extent appropriate—

[(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

[(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation;

[(12)(A) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ("rules") made or issued by such contract market, or by the governing board thereof or any com-

mittee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph.

[(B)(i) The Commission shall issue regulations to specify the terms and conditions under which, in an emergency as defined by the Commission, a contract market may, by a two-thirds vote of its governing board, make a rule (hereinafter referred to as an "emergency rule") effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under subparagraph (A), or during

any period of review by the Commission, if the contract market makes every effort practicable to notify the Commission of such emergency rule, along with a complete explanation of the emergency involved, prior to making the emergency rule effective. If the contract market does not provide the Commission with such notification and explanation before making the emergency rule effective, the contract market shall provide the Commission with such notification and explanation at the earliest possible date. The Commission may delegate the power to receive such notification and explanation to such individuals as the Commission determines necessary and appropriate.

[(ii) Within ten days of the receipt from a contract market of notification of such an emergency rule and an explanation of the emergency involved, or as soon as practicable, the Commission shall determine whether it is appropriate either—

[(I) to permit such rule to remain in effect during the pendency of the emergency, or

[(II) to suspend the effect of such rule pending review either under the procedures of subparagraph (A) or otherwise.

The Commission shall submit a report on its determination and the basis thereof with respect to such emergency rule to the affected contract market, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the report is submitted more than ten days after the Commission's receipt of notification of such an emergency rule from a contract market, the report shall explain why submission within such ten-day period was not practicable. A determination by the Commission to suspend the effect of a rule under this subparagraph shall be subject to judicial review on the same basis as an emergency determination under section 8a(9). Nothing in this paragraph shall be construed to limit the authority of the Commission under section 8a(9);

[(13) provide for disclosure to the contract market and the Commission of any trade, business, or financial partnership, cost-, profit-, or capital-sharing agreements or other formal arrangement among or between floor brokers and traders on such contract market where such partnership agreement or arrangement is material and known to the floor broker or floor trader;

[(14)(A) provide for meaningful representation on the governing board of the contract market's board of trade of a diversity of interests, including—

[(i) futures commission merchants;

[(ii) producers of, and consumers, processors, distributors, or merchandisers of, principal commodities traded on the board of trade;

[(iii) floor brokers and traders; and

[(iv) participants in a variety of pits or principal groups of commodities traded on the exchange.

[(B) provide that no less than 20 percent of the regular voting members of such board be comprised of nonmembers of such contract market's board of trade with—

[(i) expertise in futures trading, or the regulation thereof, or in commodities traded through contracts on the board of trade; or

[(ii) other eminent qualifications making such person capable of participating in and contributing to board deliberations.

[(C) provide that no less than 10 percent of the regular voting members of such board be comprised where applicable of farmers, producers, merchants, or exporters of principal commodities traded on the exchange;

[(15)(A) provide on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.

[(B) Consistent with Commission rules, a major disciplinary committee hearing a disciplinary matter shall include—

[(i) a majority of qualified persons representing a trading status other than that of the subject of the proceeding; and

[(ii) where appropriate to carry out the purposes of this Act, qualified persons who are not members of the exchange.

[(C) For purposes of this paragraph, a trading status on a contract market may include, consistent with Commission rules, such categories as

[(i) floor brokers and traders;

[(ii) producers, consumers, processors, distributors, or merchandisers of commodities;

[(iii) futures commission merchants; and

[(iv) members of the aforementioned categories who participate in particular contract markets or principal groups of commodities on the board of trade.

[(D) If a contract market takes final disciplinary action against a member for a violation that involves the execution of a customer transaction and results in financial harm to such customer, the contract market shall promptly inform the futures commission merchant identified on the records of such contract market as having cleared such transaction, and such futures commission merchant shall promptly inform the person identified on its records as the owner of the account for which such transaction was executed, of the disciplinary action and the principal facts thereof;

[(16) provide that no member found by the Commission, a contract market, a registered futures association, or a court of competent jurisdiction to have committed any violation of this Act or any other provision of law that would reflect on the fitness of the member may serve on any contract market oversight or disciplinary panel for an appropriate period (as defined by Commission rule); and

[(17)(A) provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and oversight committees. In order to comply with this subparagraph, each contract market shall adopt rules and procedures to require, at a minimum, that—

[(i) any member of a governing board or a disciplinary or other oversight committee must abstain from confidential deliberations and voting on any matter where the named party in interest is the member, the member's employer, the member's employee, or any other person that has a business, employment, or family relationship with the member that warrants abstention by the member;

[(ii) any member of a governing board or a disciplinary or other oversight committee must abstain from voting on any significant action that would not be submitted to the Commission for its prior approval, if, as determined in accordance with regulations promulgated by the Commission, the member knowingly has a direct and substantial financial interest in the result of the vote, based either on positions held personally or at an affiliated firm;

[(iii) prior to the deliberations of the governing board, disciplinary board, or other oversight committee, acting directly or indirectly through an authorized member or contract market official, the positions of the members of such board or committee, and positions of the firm or firms with which such members are affiliated, are reviewed: *Provided, however,* That no contract market or official, employee, member, other than the member whose position or positions are being reviewed, or agent thereof shall be subject to liability, except for liability in an action initiated by the Commission, for having conducted this review and for having taken or not taken further action; and

[(iv) the board or committee shall clearly reflect, in the minutes of such meeting, that the review required in clause (iii) occurred and any decisions by a member to abstain or by the board or committee whether to direct a member or members to abstain from deliberations or voting on the matter before the board or committee.

Any member prohibited from voting on a rule pursuant to this paragraph shall not be included in determining whether there has been a two-thirds vote of members of the governing board or committee as required by subparagraph (12).

[(B) For the purposes of this paragraph, the term "significant action that would not be submitted to the Commission for its prior approval" includes—

[(i) any nonphysical emergency rule; or

[(ii) any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect on prices in any contract traded on such contract market, but does not include any rule not submitted for prior Commission approval because such rule is unrelated to terms and conditions of any contract traded on such contract market.

[(C) Notwithstanding the provisions of subparagraph (A)(ii), the Commission shall issue rules establishing the conditions under which a member of a board or committee who is required to abstain from voting on a significant action, as provided in subparagraph (A)(ii), may participate in deliberations on that action prior to such vote, where the member's participation is consistent with the public interest.

[(b)(1) Each contract market shall maintain and utilize a system to monitor trading to detect and deter violations of the contract market's rules and regulations committed in the making of trades and the execution of customer orders on the floor or subject to the rules of such contract market. The system shall include—

[(A) physical observation of trading areas;

[(B) audit trail and recordkeeping systems able to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and out-trades);

[(C) systems capable of reviewing, and used to review, data on trades effectively on a regular basis to detect violations committed in making trades and executing customer orders on the floor or subject to the rules of such contract market, including—

[(i) all types of violations attributable to dual trading; and

[(ii) to the full extent feasible, as determined by the Commission, all other types of violations involving the making of trades and the execution of customer orders;

[(D) the use of information gathered through such system on a consistent basis to bring appropriate disciplinary actions against violators;

[(E) the commitment of resources to such system necessary for such system to be effective in detecting and deterring such violations, including adequate staff to develop and prosecute disciplinary actions; and

[(F) the assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

[(2) The audit trail system of the contract market shall, consistent with Commission regulations, accurately record—

[(A) the times of trades in increments of no more than one minute in length; and

[(B) the sequence of trades for each floor trader and broker.

[(3) Beginning three years after the date of enactment of this subsection, the audit trail system of each contract market, except as provided in paragraph (5) and except to the extent the Commission determines that circumstances beyond the control of the contract market prevent compliance despite the contract market's affirmative good faith efforts to comply, shall—

[(A) for all trades, record accurately and promptly the essential data on terms, participants, and times as required by the Commission by rule, including the time of execution of such trade, through a means that—

[(i) records such data in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

[(ii) continually provides such data to the contract market;

[(iii) identifies such time, to the extent practicable as determined by the Commission—

[(I) independently of the person making the trade;

[(II) through a mechanism that records the time automatically when entered by the person making the trade; or

[(ii) to the extent determined appropriate by the Commission, for categories of customer orders with respect to which the Commission finds that such orders are transmitted to and reported from the trading pit in an extremely rapid manner such that substantial compliance with the objectives of paragraph (3) can be otherwise achieved.

[(B) For purposes of subparagraph (A)(i)(I) the Commission shall find that the volume of trading at an exchange is relatively small if, among other things, the Commission determines that the average daily trading volume for each contract market for which the board of trade is designated is less than the threshold trading level established for the contract market under section 4j(a)(4).

[(6) Any rule or order adopted by the Commission under paragraphs (4) and (5) shall become effective thirty legislative days or ninety calendar days, whichever is later, after submission of such rule or order to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. For purposes of this paragraph, the term “legislative day” means any day on which either House of Congress is in session.

[SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules, regulations, or orders of the Commission or the commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a “contract market” in accordance with the procedure and subject to the judicial review provided in section 6(b) of this Act.]

SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

(a) *APPLICATIONS.*—A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.

(b) *CRITERIA FOR DESIGNATION.*—

(1) *IN GENERAL.*—To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

(2) *PREVENTION OF MARKET MANIPULATION.*—The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(3) *FAIR AND EQUITABLE TRADING.*—The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. Such rules may authorize—

(A) an exchange of—

(i) futures in connection with a cash commodity transaction;

(ii) futures for cash commodities;

(iii) transfer trades or office trades; or

(iv) futures for swaps; and

(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract

for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(4) **TRADE EXECUTION FACILITY.**—The board of trade shall—

(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and

(B) demonstrate that the trading facility operates in accordance with the rules or specifications.

(5) **FINANCIAL INTEGRITY OF TRANSACTIONS.**—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.

(6) **DISCIPLINARY PROCEDURES.**—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(7) **PUBLIC ACCESS.**—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

(8) **ABILITY TO OBTAIN INFORMATION.**—The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(c) **EXISTING CONTRACT MARKETS.**—A board of trade that is designated as a contract market on the effective date of the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

(d) **CORE PRINCIPLES FOR CONTRACT MARKETS.**—

(1) **IN GENERAL.**—To maintain the designation of a board of trade as a contract market, a board of trade shall comply with the core principles specified in this subsection.

(2) **COMPLIANCE WITH RULES.**—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

(3) **CONTRACTS NOT READILY SUBJECT TO MANIPULATION.**—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) **MONITORING OF TRADING.**—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

(5) **POSITION LIMITATIONS OR ACCOUNTABILITY.**—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

(6) *EMERGENCY AUTHORITY.*—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

- (A) liquidate or transfer open positions in any contract;
- (B) suspend or curtail trading in any contract; and
- (C) require market participants in any contract to meet special margin requirements.

(7) *AVAILABILITY OF GENERAL INFORMATION.*—The board of trade shall make available to market authorities, market participants, and the public information concerning—

- (A) the terms and conditions of the contracts of the contract market; and
- (B) the mechanisms for executing transactions on or through the facilities of the contract market.

(8) *DAILY PUBLICATION OF TRADING INFORMATION.*—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) *EXECUTION OF TRANSACTIONS.*—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

(10) *TRADE INFORMATION.*—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

(11) *FINANCIAL INTEGRITY OF CONTRACTS.*—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market, including rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(12) *PROTECTION OF MARKET PARTICIPANTS.*—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

(13) *DISPUTE RESOLUTION.*—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

(14) *GOVERNANCE FITNESS STANDARDS.*—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

(15) *CONFLICTS OF INTEREST.*—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

(16) *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.*—In the case of a mutually owned contract

market, the board of trade shall ensure that the composition of the governing board reflects market participants.

(17) **RECORDKEEPING.**—The board of trade shall—

(A) maintain full records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of at least 5 years;

(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(C) keep the records open to inspection by any representative of the Commission or the Department of Justice.

(18) **ANTITRUST CONSIDERATIONS.**—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

(B) imposing any material anticompetitive burden on trading on the contract market.

(e) **CURRENT AGRICULTURAL AND METAL COMMODITIES.**—

(1) Subject to paragraph (2), a contract for purchase or sale for future delivery of an agricultural or metal commodity enumerated in section 1a(3) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options thereon to be conducted on a derivatives transaction execution facility.

SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

(a) **IN GENERAL.**—In lieu of compliance with the contract market designation requirements of section 5, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

(1) designated as a contract market and meets the requirements of this section; or

(2) registered as a derivatives transaction execution facility under subsection (c).

(b) **REQUIREMENTS FOR TRADING FUTURES CONTRACTS OR OTHER DERIVATIVES TRANSACTIONS.**—

(1) **IN GENERAL.**—A registered derivatives transaction execution facility under subsection (a) may trade any futures contract (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

(2) **REQUIREMENTS FOR UNDERLYING COMMODITIES.**—A registered derivatives transaction execution facility may trade any futures contract only if—

(A) the underlying commodity has a nearly inexhaustible deliverable supply;

(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;

(C) the underlying commodity has no cash market; or

(D) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the futures contract is highly unlikely to be susceptible to the threat of manipulation.

(3) **ELIGIBLE TRADERS.**—To trade on a registered derivatives transaction execution facility, a person shall—

(A) be authorized by the board of trade to trade on the facility; and

(B)(i) be an eligible contract participant; or

(ii) be a person trading through a futures commission merchant that—

(I) is registered with the Commission;

(II) is a member of a futures self-regulatory organization;

(III) is a clearing member of a derivatives clearing organization; and

(IV) has net capital of at least \$20,000,000.

(4) **TRADING BY CONTRACT MARKETS.**—A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

(A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or

(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

(c) **CRITERIA FOR REGISTRATION.**—

(1) **IN GENERAL.**—To be registered as a registered derivatives transaction execution facility, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this paragraph.

(2) **DETERRENCE OF ABUSES.**—The board of trade shall establish and enforce trading rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

(A) obtain information necessary to perform the functions required under this section; or

(B) use technological means to—

(i) provide market participants with impartial access to the market; and

(ii) capture information that may be used in establishing whether rule violations have occurred.

(3) **TRADING PROCEDURES.**—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering

and executing orders traded on the facilities of the board of trade. Such rules may authorize—

(A) an exchange of—

(i) futures in connection with a cash commodity transaction;

(ii) futures for cash commodities;

(iii) transfer trades or office trades; or

(iv) futures for swaps; and

(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.

(4) *FINANCIAL INTEGRITY OF TRANSACTIONS.*—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, including rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(d) *CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.*—

(1) *IN GENERAL.*—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection.

(2) *COMPLIANCE WITH RULES.*—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

(3) *MONITORING OF TRADING.*—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

(4) *DISCLOSURE OF GENERAL INFORMATION.*—The board of trade shall disclose publicly and to the Commission information concerning—

(A) contract terms and conditions;

(B) trading conventions, mechanisms, and practices;

(C) financial integrity protections; and

(D) other information relevant to participation in trading on the facility.

(5) *DAILY PUBLICATION OF TRADING INFORMATION.*—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the facility.

(6) *FITNESS STANDARDS.*—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

(7) *CONFLICTS OF INTEREST.*—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

(8) *RECORDKEEPING.*—The board of trade shall—

(A) maintain full records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of at least 5 years;

(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(C) keep the records open to inspection by any representatives of the Commission or the Department of Justice.

(9) *ANTITRUST CONSIDERATIONS.*—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

(B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

(e) *USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS INTERMEDIARIES.*—

(1) *IN GENERAL.*—A registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and

(B) receive funds of customers to serve as margin or security for such transactions.

(2) *REQUIREMENTS.*—The requirements referred to in paragraph (1) are that—

(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and

(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

(3) *IMPLEMENTATION.*—The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopt-

ing rules and taking any other appropriate action to facilitate the implementation of this subsection.

(f) *SEGREGATION OF CUSTOMER FUNDS.*—Not later than 180 days after the effective date of the Commodity Futures Modernization Act of 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

(g) *ELECTION TO TRADE EXCLUDED COMMODITIES.*—

(1) *IN GENERAL.*—A board of trade that is a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded commodities that are otherwise excluded from this Act under section 2(c), 2(d), or 2(h).

(2) *EXCLUSIVE JURISDICTION OF THE COMMISSION.*—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.

SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

(a) *REGISTRATION REQUIREMENT.*—Except as provided in subsection (b), it shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(8).

(b) *EXCLUSION OF DERIVATIVES CLEARING ORGANIZATIONS SUBJECT TO OTHER REGULATORY AUTHORITIES.*—A derivatives clearing organization shall not be required to register with the Commission, and the Commission shall have no jurisdiction with respect to the derivatives clearing organization, if the derivatives clearing organization—

(1)(A) is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(B) is subject to the supervisory jurisdiction of a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or the National Credit Union Administration; or

(C) is subject to the supervisory jurisdiction of a foreign regulatory authority that is recognized by the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Commission as overseeing a system of consolidated supervision comparable to that provided under applicable United States law; and

(2) does not clear a contract of sale for future delivery, option on a contract of sale for future delivery, or option on a commodity that is not a security (unless the contract or option is excluded under subsection (c) or (d) of section 2).

(c) *VOLUNTARY REGISTRATION.*—A derivatives clearing organization that is exempt from registration under subsection (b) may register with the Commission as a derivatives clearing organization.

(d) *REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—*

(1) *APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).*

(2) *CORE PRINCIPLES.—*

(A) *IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph.*

(B) *FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization without interruption in various market conditions.*

(C) *PARTICIPANT AND PRODUCT ELIGIBILITY.—The applicant shall establish—*

(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

(D) *RISK MANAGEMENT.—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.*

(E) *SETTLEMENT PROCEDURES.—The applicant shall have the ability to—*

(i) complete settlements on a timely basis under varying circumstances;

(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

(F) *TREATMENT OF FUNDS.—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.*

(G) *DEFAULT RULES AND PROCEDURES.—The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.*

(H) *RULE ENFORCEMENT.—The applicant shall—*

(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

(I) **SYSTEM SAFEGUARDS.**—The applicant shall demonstrate that the applicant—

(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

(J) **REPORTING.**—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

(K) **RECORDKEEPING.**—The applicant shall—

(i) maintain full records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of at least 5 years;

(ii) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(iii) keep the records open to inspection by any representative of the Commission or the Department of Justice.

(L) **PUBLIC INFORMATION.**—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

(M) **INFORMATION SHARING.**—The applicant shall—

(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

(ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

(N) **ANTITRUST CONSIDERATIONS.**—Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid—

(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

(ii) imposing any material anticompetitive burden on trading on the contract market.

(3) **ORDERS CONCERNING COMPETITION.**—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this Act.

(e) *EXISTING DERIVATIVES CLEARING ORGANIZATIONS.*—A derivatives clearing organization shall be deemed to be registered under this section to the extent that—

(1) the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section; and

(2) the Commission has reviewed and approved the rules of the derivatives clearing organization before that date.

(f) *APPOINTMENT OF TRUSTEE.*—

(1) *IN GENERAL.*—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

(2) *ASSUMPTION OF JURISDICTION.*—If the Commission applies for appointment of a trustee under paragraph (1)—

(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

(g) *LINKING OF REGULATED CLEARING FACILITIES.*—

(1) *IN GENERAL.*—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions.

(2) *COORDINATION.*—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

(a) *ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.*—

(1) *IN GENERAL.*—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under such sections.

(2) *EFFECT OF INTERPRETATION.*—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

(b) *DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.*—

(1) *IN GENERAL.*—A contract market or derivatives transaction execution facility may comply with any applicable core

principle through delegation of any relevant function to a registered futures association or another registered entity.

(2) *RESPONSIBILITY.*—A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

(c) *NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.*—

(1) *IN GENERAL.*—Subject to paragraph (2), a registered entity may elect to list for trading any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale for future delivery of a government security (or option thereon) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract, new rule, or rule amendment complies with this Act (including regulations under this Act).

(2) *PRIOR APPROVAL.*—

(A) *IN GENERAL.*—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) *PRIOR APPROVAL REQUIRED.*—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(3) of this Act (or any option thereon) traded through its facilities if such rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) *DEADLINE.*—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(3) *APPROVAL.*—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.

(d) *VIOLATION OF CORE PRINCIPLES.*—

(1) *IN GENERAL.*—If the Commission has reason to believe that a registered entity is violating any applicable provision specified in section 5(d), 5a(d), or 5b(d)(2), the Commission shall notify the registered entity in writing of the reasons for the preliminary determination by the Commission of a violation, including any data, materials, and facts the Commission relied on in making the preliminary determination.

(2) *INJUNCTIVE OR ADMINISTRATIVE ACTION.*—The Commission may initiate an action for an injunction under section 6c or an administrative proceeding, to demonstrate, by the preponderance of the evidence, that—

(A) the registered entity is violating any applicable provision specified in section 5(d), 5a(d), or 5b(d)(2); and

(B) the Commission has recommended an appropriate remedial action to remove the deficiency based on an analysis of the costs and benefits in the public interest of the Commission recommendation.

(3) **BURDEN OF PROOF.**—In making a determination that a registered entity is violating any applicable provision specified in section 5(d), 5a(d), or 5b(d)(2), the Commission shall have the burden of proving that the registered entity is violating the applicable core principle.

(e) **RESERVATION OF EMERGENCY AUTHORITY.**—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9) of this Act.

SEC. 5d. EXEMPT BOARDS OF TRADE.

(a) **IN GENERAL.**—Except as otherwise provided in this section, a contract of sale (or option on such a contract) of a commodity for future delivery traded on or through the facilities of an exempt board of trade shall be exempt from all provisions of this Act, other than section 2(g).

(b) **CRITERIA FOR EXEMPTION.**—To qualify for an exemption under subsection (a), a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts)—

(1) that have—

(A) a nearly inexhaustible deliverable supply;

(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

(C) no cash market;

(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

(3) that are not contracts of sale (or options on the contract) for future delivery of any security, including any group or index of securities or any interest in, or interest that is based on the value of, any security.

(c) **ANTIMANIPULATION REQUIREMENTS.**—A party to a futures contract or related option that is traded on an exempt board of trade shall be subject to sections 4b, 4n, 6(c), and 9(a)(2), and the Commission shall enforce those provisions with respect to any such trading.

(d) **PRICE DISCOVERY.**—If the Commission finds that an exempt board of trade is a significant source of price discovery for any underlying commodity in any transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

(e) **JURISDICTION.**—The Commission shall have exclusive jurisdiction over any account, agreement, or transaction involving a contract of sale of a commodity for future delivery, or related option, to the extent that such account, agreement, or transaction is traded on an exempt board of trade.

(f) **SUBSIDIARIES.**—A board of trade that is designated as a contract market or registered as a derivatives transaction execution fa-

cility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.

SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION AS REGISTERED ENTITY.

The failure of a registered entity to comply with any provision of this Act, or any regulation or order of the Commission under this Act, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity in accordance with the procedures and subject to the judicial review provided in section 6(b).

SEC. 6. (a) Any [board of trade desiring to be designated a “contract market” shall make application to the Commission for such designation.] *person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for such designation or registration and accompany the same with a showing that it complies with the [above conditions] conditions set forth in this Act, and with a sufficient assurance that it will continue to comply with the [above requirements] the requirements of this Act.* The Commission shall approve or deny an application for [designation as a contract market within one year] *designation or registration as a contract market or derivatives transaction execution facility within 180 days* of the filing of the application. If the Commission notifies the [board of trade] *person* that its application is materially incomplete and specifies the deficiencies in the application, the running of the [one-year period] *180-day period* shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to [designate as a “contract market” any board of trade that has made application therefor, such board of trade] *designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, such person* shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the [designation of any board of trade as a “contract market” upon] *designation or registration of any contract market or derivatives transaction execution facility on a showing that such [board of trade] contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government made a condition of its [designation as set forth in section 5 of this Act] designation or registration as set forth in sections 5 through 5b or that such [board of trade] contract market or derivatives transaction execution facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission or the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the [board of trade] contract market or derivatives*

transaction execution facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such **[board of trade]** *person* appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such **[board of trade]** *person* will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the **[board of trade]** *person* that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such **[board of trade]** *person* for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(c) If the Commission has reason to believe that any person (other than a **[contract market]** *registered entity*) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any **[contract market]** *registered entity*, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission or the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any **[contract market]** *registered entity*, and directing that all **[contract markets]** *registered entities* refuse all **[trading privileges]** *privileges* to such person, until further notice of the Commission and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for

the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in the fifth sentence of this subsection) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States, any State or any foreign country or jurisdiction at any designated place of hearing. A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any **[contract market]** *registered entity* and require all **[contract markets]** *registered entities* to refuse such person all **[trading privileges]** *privileges* thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation and (4) require restitution to customers of damages proximately caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said **[contract markets]** *registered entities*. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending

person praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(d) If any person (other than a **contract market** registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any **contract market** registered entity, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission or the commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph 9(a) or 9(b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.

(e)(1) In determining the amount of the money penalty assessed under subsection (c), the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under subsection (c) shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by subsection (c) has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from **trading on all contract markets** the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under subsection (c) takes an appeal and if the Commission prevails or

the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from [trading on all contract markets] *the privileges of all registered entities*; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

* * * * *

SEC. 6a. (a) No board of trade which has been [designated as a “contract market” shall] *designated or registered as a contract market or a derivatives transaction execution facility* exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days’ notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such Commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said Commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 6(b) of this Act, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade [designated as a contract market] *designated or registered as a contract market or a derivatives transaction execution facility* shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connec-

tion with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any **【contract market】** *registered entity* is not enforcing or has not enforced its rules of government made a condition of its **【designation as set forth in section 5 of this Act】** *designation or registration as set forth in sections 5 through 5c*, or if any **【contract market】** *registered entity*, or any director, officer, agent, or employee of any **【contract market】** *registered entity* otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 6(b) of this Act, make and enter an order directing that such **【contract market】** *registered entity*, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than \$500,000 for each such violation. If such **【contract market】** *registered entity*, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such **【contract market】** *registered entity*, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending **【contract market】** *registered entity* or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a **【contract market】** *registered entity* shall further consider whether the amount of the penalty will materially impair **【the contract market's ability】** *the ability of the registered entity* to carry on its operations and duties.

SEC. 6c. (a) Whenever it shall appear to the Commission that any **【contract market】** *registered entity* or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order

which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this Act shall be issued ex parte by said court.

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SEC. 6d. (1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, *derivatives transaction execution facility*, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this Act, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

* * * * *

SEC. 7. Any [board of trade] *person* that has been designated or registered a [contract market] *registered entity* in the manner herein provided may have such designation or registration vacated and set aside by giving notice in writing to the Commission requesting that its designation or registration as a [contract market] *registered entity* be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation or registration shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the [designation of such board of trade as a contract market] *designation or registration of the registered entity*, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other [contract markets] *registered entities*. From and after the date upon which the vacation became effective the said [board of trade] *person* can thereafter be [designated again a contract market] *designated or registered again a registered entity* by making application to the Commission in the manner herein provided for an original application.

SEC. 8. (a) * * *

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(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any [board of trade] *registered entity* or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings

brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

* * * * *

SEC. 8a. The Commission is authorized—

(1) * * *

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) * * *

* * * * *

(F) if such person is subject to an outstanding order of the Commission denying **[trading privileges]** *privileges* on any **[contract market]** *registered entity* to such person, denying, suspending, or revoking such person's membership in any **[contract market]** *registered entity* or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a **[contract market]** *registered entity* or with a member of a registered futures association;

* * * * *

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

(A) * * *

* * * * *

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a **[contract market]** *registered entity*, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such **[contract market]** *registered entity*, association, self-regulatory organization, or foreign regulatory body;

* * * * *

(6) to communicate to the proper committee or officer of any **[contract market]** *registered entity*, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate

the purposes of this Act: *Provided*, That any information furnished by the Commission under this paragraph shall not be disclosed by such **【contract market】 registered entity**, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a **【contract market】 registered entity** insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a **【contract market】 registered entity** that such **【contract market】 registered entity** effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such **【contract market】 registered entity** has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such **【contract market】 registered entity**, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such **【contract market】 registered entity**. Such rules, regulations, or orders may specify changes with respect to such matters as—

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such **【contract market】 registered entity**;

* * * * *

(8) to make and promulgate such rules and regulations with respect to those persons registered under this Act, who are not members of a **【contract market】 registered entity**, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the **【contract market】 registered entity**, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the time the determination was made. The

court reviewing the Commission’s action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a **【contract market】 registered entity** to the terms “market emergency”, “emergency”, or equivalent language in its own bylaws, rules, regulations, or resolutions;

* * * * *

SEC. 8b. It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any **【contract market】 registered entity**, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any **【contract market】 registered entity**.

SEC. 8c. (a) * * *

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(e)(1) The Commission shall issue regulations requiring each **【contract market】 registered entity** to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such **【contract market】 registered entity**.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any individual who is found to have committed any major violation from service on the governing board of any **【contract market】 registered entity** or registered futures association, or on any disciplinary committee thereof.

* * * * *

SEC. 8e. COMMISSION OVERSIGHT; DEFICIENCY ORDERS.

(a) ASSESSMENTS.—At least once every two years, to the extent practicable, the Commission shall assess whether the trade monitoring system of each **【contract market】 registered entity** satisfies **【section 5a(b)】 sections 5 through 5c**.

(b) DEFICIENCY ORDERS.—

(1) CAUSES.—The Commission may issue a proposed deficiency order in accordance with paragraph (2), or take such other administrative or enforcement action as the Commission determines is appropriate, if, based on its assessment or on other information, the Commission at any time has reason to believe that **【a contract market’s trade monitoring system implemented pursuant to section 5a(b)】 the trade monitoring system of a registered entity implemented pursuant to sections 5 through 5c** does not satisfy one or more of the requirements of such section.

(2) CONTENTS.—A proposed deficiency order issued under this subsection shall specify—

(A) the deficiencies the Commission has reason to believe exist in the trade monitoring system of the **【contract market】 registered entity** and a statement of reasons supporting the Commission’s belief that those deficiencies exist;

(B) the corrective action that the Commission believes that the **[contract market]** *registered entity* must take and an acceptable timetable for such corrective action; and

(C) a date, not less than twenty days from the date of issuance of the proposed deficiency order, when such deficiency order will become final, subject to subsection (d).

[(3) REMEDIES.—On becoming final, the Commission deficiency order may—

[(A) require the contract market to—

[(i) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies noted therein;

[(ii) satisfy stated objective performance criteria to correct such deficiencies;

[(iii) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources; or

[(B) revoke any exemption of the contract market from the regulations prohibiting the privilege of dual trading under section 4j(a), if the deficiency noted in such deficiency order relates to—

[(i) the audit trail system the contract market is required to maintain under paragraph (2), (3), or (4) of section 5a(b); or

[(ii) the prevention, detection, or disciplining of violations attributable to such trading at such contract market, subject to the standards, exceptions, and duration provisions of section 4j(a); or

[(C) take any combination of the actions described in subparagraphs (A) and (B).]

(3) *REMEDIES.—On becoming final, the Commission deficiency order may require the registered entity to—*

(A) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies in the order;

(B) satisfy stated objective performance criteria to correct the deficiencies;

(C) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources.

(4) *REMOVAL.—If the Commission finds, after notice and opportunity for a hearing on the record prior to such deficiency order becoming final, that a named officer, director, committee member, or employee of such [contract market] registered entity has willfully—*

(A) violated this Act, the rules or regulations of the Commission thereunder, or the rules of such [contract market] registered entity;

(B) abused the authority of such person; or

(C) without reasonable justification or excuse, failed to enforce compliance with any provision of the rules of such [contract market] registered entity by any member or person associated with a member thereof,

the Commission may issue a deficiency order under this section to remove such officer, director, committee member, or employee.

(5) **DESIGNATION AS CONTRACT MARKET REGISTERED ENTITY.**—Notwithstanding section 6, during the period that a proposed or final deficiency order under this section is in effect, the Commission may refrain from approving any application for designation or registration as a **contract market registered entity** made by the **board of trade person** whose **contract market registered entity** is the subject of such deficiency order.

(6) **DELEGATION.**—The Commission shall not delegate the authority to issue deficiency orders under this subsection.

(c) **RESCISSION, MODIFICATION, OR DELAY OF DEFICIENCY ORDERS.**—Before any proposed deficiency order issued by the Commission under subsection (b) may become final, the Commission shall—

(1) provide the affected **contract market registered entity** with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the **contract market registered entity**, through an oral presentation of views and comments to the Commission, in order to petition the Commission to rescind, modify, or delay such deficiency order; and

(2) rule on such petition, not less than twenty days before the deficiency order takes effect, making findings, as appropriate, as to whether—

(A) the deficiencies cited by the Commission have been corrected or are being corrected under an expeditious timetable acceptable to the Commission;

(B) the trade monitoring system of the **contract market registered entity** is deficient as noted in the deficiency order; or

(C) the timetable for corrective action by the **contract market registered entity** in the proposed deficiency order, and the particular corrective action proposed, is appropriate in light of the deficiencies noted and the purposes of this Act.

(d) **PENALTIES.**—Violation of a final deficiency order issued under subsection (c) shall be considered a violation of an order of the Commission for purposes of—

(1) establishing liability and assessing penalties against a **contract market registered entity** or any director, officer, agent, or employee thereof under section 6b or 6c; or

(2) initiating proceedings under section **5b** 5e or 6(a).

(e) **JUDICIAL REVIEW.**—

(1) **PERSONS.**—Any person, other than a **contract market registered entity**, aggrieved by a deficiency order issued under subsection (b)(4), may obtain review of such deficiency order when issued by the Commission under the terms and conditions in section 6(b).

(2) **CONTRACT MARKETS REGISTERED ENTITIES.**—Any **contract market registered entity** that has petitioned the Commission to rescind, modify, or delay any proposed deficiency order issued under subsection (b) may obtain judicial review of any

final such deficiency order only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5, United States Code.

SEC. 9. (a) It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

(1) * * *

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any **contract market registered entity**, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, subsections (a) through (e) of subsection 4c, section 4h, **section 4o(1), section 4n(1)**, or section 19.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule or regulation thereunder or any undertaking contained in a registration statement required under this Act, or by any **contract market registered entity** or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a **contract market registered entity**, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

* * * * *

(f) It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, **contract market registered entity**, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any

material nonpublic information obtained through special access related to the performance of such duties.

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, **[contract market]** *registered entity*, or registered futures association.

Such felony shall be punishable by a fine of not more than \$500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment for not more than five years, or both, together with the costs of prosecution.

* * * * *

SEC. 12. (a) * * *

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(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through **[2000]** *2005*.

(e) Nothing in this Act shall supersede or preempt—

(1) criminal prosecution under any Federal criminal statute;

[(2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or, in the case of any State or local law that prohibits or regulates gaming or the operation of "bucket shops" (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 4 of this Act, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4c or 19 of this Act; or]

(2) the application of any Federal or State law (including any regulation) to an agreement, contract, or transaction in or involving any commodity, product, right, service, or interest, except that this Act shall supersede and preempt—

(A) in the case of any such agreement, contract, or transaction—

(i) that is conducted on or subject to the rules of a registered entity or exempt board of trade;

(ii) that is conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, or any territory or possession of the United States (in accordance with any terms or conditions specified by the Commission by regulation); and

(iii) that is subject to regulation by the Commission under section 4c or 19; and

(B) any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than anti-fraud provisions of general applicability) in the case of—

- (i) an electronic trading facility under section 2(e); or
- (ii) an agreement, contract, or transaction that is excluded or exempt under section 2(c), 2(d), 2(f), or 2(h) or is covered by the terms of an exemption granted by the Commission under section 4(c) (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act); or

* * * * *

SEC. 14. (a)(1) Any person complaining of any violation of any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—

(A) * * *

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a **contract market** registered entity, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

* * * * *

(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all **contract markets** registered entities and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

[(g) The provisions of this section shall not become effective until fifteen months after the date of its enactment: *Provided*, That

claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such 15-month period.]

(g) *PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.*—*Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant's conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.*

[SEC. 15. The Commission]

SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

(a) *COSTS AND BENEFITS.*—

(1) *IN GENERAL.*—*Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.*

(2) *CONSIDERATIONS.*—*The costs and benefits of the proposed Commission action shall be evaluated in light of—*

- (A) *considerations of protection of market participants and the public;*
- (B) *considerations of the efficiency, competitiveness, and financial integrity of futures markets;*
- (C) *considerations of price discovery;*
- (D) *considerations of sound risk management practices;*
- and
- (E) *other public interest considerations.*

(3) *APPLICABILITY.*—*This subsection does not apply to the following actions of the Commission:*

- (A) *An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.*
- (B) *An emergency action.*
- (C) *A finding of fact regarding compliance with a requirement of the Commission.*

(b) *ANTITRUST LAWS.*—*The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.*

* * * * *

SEC. 17. (a) * * *

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(b) An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that—

(1) * * *

(2) the rules of the association provide that any person registered under this Act, **[contract market]** *registered entity*, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of

such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated within the meaning of “associated person” as set forth in section 4k of this Act, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a **[contract market] registered entity** or has been and is barred or suspended from being associated with all members of such **[contract market] registered entity**, for violation of any rule of such **[contract market] registered entity**;

(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall be admitted to or continued in membership in such association, if such person—

(A) has been and is suspended or expelled from a registered futures association or from a **[contract market] registered entity** or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such **[contract market] registered entity**, for violation of any rule of such association or **[contract market] registered entity** which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade;

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 6(c) of this Act, or expelling or suspending him from membership in a registered futures association or a **[contract market] registered entity**, or barring or suspending him from being associated with a futures commission merchant;

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such **[contract market] registered entity** or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

* * * * *

(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the association, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a **contract market** *registered entity*, such procedure shall provide, to the extent appropriate—

(i) * * *

* * * * *

(o)(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a **contract market** *registered entity* and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to section 17(j) of this Act, and subject to the provisions of this Act applicable to registrations granted by the Commission.

* * * * *

(q)(1) The Commission shall issue regulations requiring each registered futures association to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered futures association.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any member of a registered futures association who is found to have committed any major violation from service on the governing board of any registered futures association or **contract market** *registered entity*, or on any disciplinary committee thereof.

* * * * *

SEC. 22. (a)(1) Any person (other than a **contract market, clearing organization of a contract market, licensed board of trade,** *registered entity* or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person—

(A) * * *

* * * * *

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 4c of this Act (other than an option purchased or sold on a **contract market** *registered entity* or other board of trade);

* * * * *

(2) Except as provided in subsection (b), the rights of action authorized by this subsection and by [sections 5a(11),] *sections 5(d)(13), 5b(b)(1)(E), 14, and 17(b)(10)* of this Act shall be the exclusive remedies under this Act available to any person who sustains loss as a result of any alleged violation of this Act. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

(3) In any action arising from a violation in the execution of an order on the floor of a [contract market] *registered entity*, the person referred to in paragraph (1) shall be liable for—

(A) * * *

* * * * *

(4) *CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction between eligible contract participants shall be void, voidable, or unenforceable, and no such eligible contract participant shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction, under this section based solely on the failure of the agreement, contract, or transaction to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.*

(b)(1)(A) A [contract market or clearing organization of a contract market] *registered entity* that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by [section 5a(8) and section 5a(9) of this Act] *sections 5 through 5c*, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any [contract market, clearing organization of a contract market, or licensed board of trade] *registered entity* that in enforcing any such bylaw, rule, regulation, or resolution violates this Act or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such [contract market or licensed board of trade] *registered entity* to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions.

* * * * *

(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of a [contract market, clearing organization, licensed board of trade,] *registered entity* or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such [contract market, licensed board of trade] *registered entity* or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the **【contract market, licensed board of trade, clearing organization,】** *registered entity* registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person who sustains a loss as a result of (A) the alleged failure by a **【contract market, licensed board of trade, clearing organization,】** *registered entity* or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is alleged to have violated this Act, or any Commission rule, regulation, or order.

* * * * *

SECTION 402 OF THE FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

SEC. 402. DEFINITIONS.

For purposes of this subtitle—

(1) * * *

* * * * *

(2) **CLEARING ORGANIZATION.**—The term “clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) * * *

* * * * *

【(B) that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act.】

(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act.

* * * * *

DISSENTING VIEWS

Section 8 of H.R. 4541 would repeal the current ban on single stock and narrow-based stock index futures contracts (“stock futures”). It would permit stock futures to be traded only on futures exchanges, subject to the Commodity Exchange Act.

Stock futures are surrogates for stocks and stock options. As permitted under the bill, stock futures would trade on public markets and be marketed to retail investors in a manner similar to stocks and stock options. They would offer investors and market professionals a new choice in the menu of available equity-based financial products. I support this goal of the bill. However, H.R. 4541 fails to address a number of significant competitive disparities that would provide stock futures traded under the jurisdiction of the Commodities Futures Trading Commission with an unfair competitive advantage vis-a-vis stocks and stock options traded under the jurisdiction of the Securities and Exchange Commission. The most noteworthy disparities include the following:

Tax treatment

The bill would result in a situation where customers would receive favorable 60/40 tax treatment on stock futures but would not receive that treatment on exchange-listed equity options. Essentially, investors of exchange-listed equity options would be subject to higher tax rates than investors of stock futures. This disparity would violate the congressional policy of providing equivalent tax treatment for competing products on the options and futures exchanges.

Margin

Margin refers generally to the deposit amount that a customer or other financial entity must pay towards the purchase (and in some cases, sale) of a financial instrument. Lower margin requirements translate into lower out-of-pocket requirements and higher leverage opportunities for investors. Many investors seek out the lowest possible margin costs in choosing a financial instrument. The bill would require that margin levels for stock futures be “consistent with” margin levels that apply to stock options traded on a securities exchange. This provision would not “harmonize” margin treatment between the securities and futures markets. First, the term “consistent with” provides an unreasonable amount of permitted variation in margin levels, particularly in a setting where no single regulator will be acting as a referee with a mandate to assure that competitive fairness is maintained. Second, dealing only with margin “levels” ignores many other components that are relevant in addressing the harmonization of margin, including cover provisions, margin offsets, and acceptable collateral.

Section 31 fees

Exchange-traded stocks and stock options are subject to a transaction fee known as a "Section 31 fee." The purpose of this fee is to support the funding of the Securities & Exchange Commission ("SEC"). It currently has no counterpart on the futures markets. While this tax only represents a fraction of one percent on a per trade basis, over the course of time heavy traders can end up paying a significant dollar amount. The bill does not extend the fee to stock futures, notwithstanding that Section 8 requires the SEC to police the stock futures markets against violations of several federal securities laws addressing fraud and manipulation, including insider trading.

These disparities could unfairly divert business to those markets with the lowest regulatory and tax cost. Since the bill would essentially give birth to the trading of stock futures, Congress, in permitting these disparities to exist, could be viewed as creating them. It certainly has an opportunity and obligation to address them. In establishing a legal framework to permit the trading of stock futures, Congress should seek to establish a level playing field that does not provide an unfair competitive advantage to a particular trading venue. Unfortunately, H.R. 4541 would establish a regulatory and tax scheme that, at least in several key respects, treats competing businesses involved in the marketing of nearly identical financial products in very different ways. I am opposed to this result.

DOUG OSE.

