

Calendar No. 191

109TH CONGRESS
1ST SESSION**S. 1566****[Report No. 109-119]**

To reauthorize the Commodity Exchange Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. CHAMBLISS from the Committee on Agriculture, Nutrition, and Forestry reported the following original bill; which was read twice and placed on the calendar

A BILL

To reauthorize the Commodity Exchange Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commodity Exchange
5 Reauthorization Act of 2005”.

6 **SEC. 2. CONTRACTS DESIGNED TO DEFRAUD OR MISLEAD.**

7 Section 4b of the Commodity Exchange Act (7 U.S.C.
8 6b) is amended—

1 (1) by redesignating subsections (b) and (c) as
2 subsections (c) and (d), respectively; and

3 (2) by striking “Sec. 4b” and all that follows
4 through the end of subsection (a) and inserting the
5 following:

6 **“SEC. 4b. CONTRACTS DESIGNED TO DEFRAUD OR MIS-**
7 **LEAD.**

8 “(a) UNLAWFUL ACTIONS.—It shall be unlawful—

9 “(1) for any person, in or in connection with
10 any order to make, or the making of, any contract
11 of sale of any commodity in interstate commerce or
12 for future delivery that is made, or to be made, on
13 or subject to the rules of a designated contract mar-
14 ket, for or on behalf of any other person; or

15 “(2) for any person, in or in connection with
16 any order to make, or the making of, any contract
17 of sale of any commodity for future delivery, or
18 other agreement, contract, or transaction subject to
19 paragraphs (1) and (2) of section 5a(g), that is
20 made, or to be made, for or on behalf of, or with,
21 any other person, other than on or subject to the
22 rules of a designated contract market—

23 “(A) to cheat or defraud or attempt to
24 cheat or defraud such other person;

1 “(B) willfully to make or cause to be made
2 to such other person any false report or state-
3 ment or willfully to enter or cause to be entered
4 for such other person any false record;

5 “(C) willfully to deceive or attempt to de-
6 ceive such other person by any means whatso-
7 ever in regard to any order or contract or the
8 disposition or execution of any order or con-
9 tract, or in regard to any act of agency per-
10 formed, with respect to any order or contract
11 for or, in the case of paragraph (2), with such
12 other person; or

13 “(D)(i) to bucket an order if such order is
14 either represented by such person as an order
15 to be executed, or is required to be executed, on
16 or subject to the rules of a designated contract
17 market; or

18 “(ii) to fill an order by offset against the
19 order or orders of any other person, or willfully
20 and knowingly and without the prior consent of
21 such other person to become the buyer in re-
22 spect to any selling order of such other person,
23 or become the seller in respect to any buying
24 order of such other person, if such order is ei-
25 ther represented by such person as an order to

1 be executed, or is required to be executed, on or
2 subject to the rules of a designated contract
3 market unless such order is executed in accord-
4 ance with the rules of the designated contract
5 market.

6 “(b) CLARIFICATION.—Subsection (a)(2) shall not
7 obligate any person, in or in connection with a transaction
8 in a contract of sale of a commodity for future delivery,
9 or other agreement, contract or transaction subject to
10 paragraphs (1) and (2) of section 5a(g), with another per-
11 son, to disclose to such other person nonpublic information
12 that may be material to the market price, rate or level
13 of such commodity or transaction, except as necessary to
14 make any statement made to such other person in or in
15 connection with such transaction, not misleading in any
16 material respect.”.

17 **SEC. 3. CRIMINAL AND CIVIL PENALTIES.**

18 (a) ENFORCEMENT POWERS OF THE COMMISSION.—
19 Section 6(c) of the Commodity Exchange Act (7 U.S.C.
20 9, 15) is amended in paragraph (3) of the 10th sentence—

21 (1) by inserting “(A)” after “assess such per-
22 son”; and

23 (2) by inserting after “each such violation” the
24 following: “, or (B) in any case of manipulation of,
25 or attempt to manipulate, the price of any com-

1 modity, a civil penalty of not more than the greater
2 of \$1,000,000 or triple the monetary gain to such
3 person for each such violation.”.

4 (b) NONENFORCEMENT OF RULES OF GOVERNMENT
5 OR OTHER VIOLATIONS.—Section 6b of the Commodity
6 Exchange Act (7 U.S.C. 13a) is amended—

7 (1) in the 1st sentence, by inserting before the
8 period at the end the following: “, or, in any case
9 of manipulation of, or an attempt to manipulate, the
10 price of any commodity, a civil penalty of not more
11 than \$1,000,000 for each such violation”; and

12 (2) in the 2nd sentence, by inserting before the
13 period at the end the following: “, except that if the
14 failure or refusal to obey or comply with the order
15 involved any offense under section 9(a)(2), the reg-
16 istered entity, director, officer, agent, or employee
17 shall be guilty of a felony and, on conviction, shall
18 be subject to penalties under section 9(a)(2)”.

19 (c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—
20 Section 6c(d) of the Commodity Exchange Act (7 U.S.C.
21 13a–1(d)) is amended by striking “(d)” and all that fol-
22 lows through the end of the paragraph (1) and inserting
23 the following:

24 “(d) CIVIL PENALTIES.—

1 “(1) IN GENERAL.—In any action brought
2 under this section, the Commission may seek and
3 the court shall have jurisdiction to impose, on a
4 proper showing, on any person found in the action
5 to have committed any violation—

6 “(A) a civil penalty in the amount of not
7 more than the greater of \$100,000 or triple the
8 monetary gain to the person for each violation;
9 or

10 “(B) in any case of manipulation of, or an
11 attempt to manipulate, the price of any com-
12 modity, a civil penalty in the amount of not
13 more than the greater of \$1,000,000 or triple
14 the monetary gain to the person for each viola-
15 tion.”.

16 (d) VIOLATIONS GENERALLY.—

17 (1) IN GENERAL.—Section 9 of the Commodity
18 Exchange Act (7 U.S.C. 13) is amended—

19 (A) in subsection (a), in the matter pre-
20 ceding paragraph (1)—

21 (i) by striking “(or \$500,000 in the
22 case of a person who is an individual)”;
23 and

24 (ii) by striking “five years” and in-
25 serting “10 years”;

1 (B) by redesignating subsection (f) as sub-
2 section (e);

3 (C) in paragraph (1) of subsection (e) (as
4 redesignated by subparagraph (B)), by striking
5 the period at the end and inserting “; or”; and

6 (D) by adding at the end the following:

7 “(f) COMMISSION ADMINISTRATIVE AND CIVIL AU-
8 THORITY.—The Commission may bring an administrative
9 or civil action under this Act for an alleged violation of
10 any provision of this section.”.

11 (2) EFFECT OF CLARIFICATION.—The amend-
12 ment made by paragraph (1)(D) restates, without
13 substantive change, Commission civil enforcement
14 authority in effect on the date of enactment of this
15 Act, which continues to apply to any action pending
16 on or commenced after the date of enactment of this
17 Act for any alleged violation occurring before, on, or
18 after, that date.

19 **SEC. 4. CLARIFICATION OF AUTHORITY.**

20 Section 2(c)(2) of the Commodity Exchange Act (7
21 U.S.C. 2(c)(2)) is amended by striking subparagraphs (B)
22 and (C) and inserting the following:

23 “(B) AGREEMENTS, CONTRACTS, AND
24 TRANSACTIONS IN RETAIL FOREIGN CUR-
25 RENCY.—

1 “(i) IN GENERAL.—This Act applies
2 to, and the Commission shall have jurisdic-
3 tion over, any agreement, contract, or
4 transaction in foreign currency (including
5 agreements, contracts, or transactions de-
6 scribed in subsection (a)(1)(A)), and any
7 person who engages in any activity in con-
8 nection with any agreement, contract, or
9 transaction in foreign currency, that is—

10 “(I) offered to, or entered into
11 with, a person that is not an eligible
12 contract participant;

13 “(II) offered, or entered into, on
14 a leveraged, margined, or financed on
15 a similar basis; and

16 “(III) offered, or entered into,
17 for purposes other than commercial or
18 personal use of such foreign currency,
19 except that personal use shall include
20 only those agreements, contracts, or
21 transactions in which a person takes
22 immediate ownership and possession
23 of foreign currency.

24 “(ii) EXCLUSIONS.—Subparagraph
25 (B)(i) shall not apply if the counterparty,

1 or the person offering to be the
2 counterparty, of the person that is not an
3 eligible contract participant is—

4 “(I) a financial institution;

5 “(II) a broker or dealer reg-
6 istered under section 15(b) of the Se-
7 curities Exchange Act of 1934 (15
8 U.S.C. 78o(b)) (except notice registra-
9 tion under paragraph (11)(A) of that
10 section) or under section 15C of that
11 Act (15 U.S.C. 78o-5), provided that
12 each person who participates in the
13 solicitation or recommendation of the
14 agreement, contract, or transaction
15 is—

16 “(aa) registered under sec-
17 tion 15(b) or 15C of that Act (15
18 U.S.C. 78o(b), 78o-5);

19 “(bb) an individual reg-
20 istered with a securities associa-
21 tion registered under section
22 15A(a) of that Act (15 U.S.C.
23 78o-3(a)); and

24 “(cc) a member or associate
25 of a securities association reg-

1 istered under section 15A(a) of
2 that Act (15 U.S.C. 78o-3(a));

3 “(III) a person that is registered
4 as a futures commission merchant
5 under this Act, provided that each
6 person who participates in the solici-
7 tation or recommendation of the
8 agreement, contract, or transaction
9 is—

10 “(aa) registered under sec-
11 tion 4d, 4k, or 4m; and

12 “(bb) a member or associate
13 of a futures association reg-
14 istered under section 17;

15 “(IV) an insurance company de-
16 scribed in section 1a(12)(A)(ii), or a
17 regulated subsidiary or affiliate of
18 such an insurance company;

19 “(V) a financial holding company
20 (as defined in section 2 of the Bank
21 Holding Company Act of 1956 (12
22 U.S.C. 1841)); or

23 “(VI) an investment bank hold-
24 ing company (as defined in section

1 17(i) of the Securities Exchange Act
2 of 1934 (15 U.S.C. 78q)).

3 “(C) Notwithstanding subclause (III) of
4 subparagraph (B)(ii), agreements, contracts, or
5 transactions described in subparagraph (B),
6 and persons who engage in any activity in con-
7 nection with agreements, contracts, or trans-
8 actions described in subparagraph (B), shall be
9 subject to subsection (a)(1)(B) and sections
10 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the
11 extent that sections 6(c) and 6(d) prohibit ma-
12 nipulation of the market price of any com-
13 modity in interstate commerce, or for future de-
14 livery on or subject to the rules of any market),
15 6c, 6d, 8(a), 13(a), and 13(b) if the agree-
16 ments, contracts, or transactions are offered, or
17 entered into, by a person that is registered as
18 a futures commission merchant under this Act.

19 “(D) Sections 4(b) and 4b shall apply to
20 any agreement, contract, or transaction in for-
21 eign currency described in subparagraphs (B)
22 and (C) as though the agreement, contract, or
23 transaction were a contract of sale of a com-
24 modity for future delivery.”.

1 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 12(d) of the Commodity Exchange Act (7
3 U.S.C. 16(d)) is amended by striking “2005” and insert-
4 ing “2010”.

5 **SEC. 6. LIAISON WITH DEPARTMENT OF JUSTICE.**

6 Section 2(a)(9) of the Commodity Exchange Act (7
7 U.S.C. 2(a)(9)) is amended by adding at the end the fol-
8 lowing:

9 “(C) LIAISON WITH DEPARTMENT OF JUS-
10 TICE.—

11 “(i) IN GENERAL.—The Commission
12 shall, in cooperation with the Attorney
13 General, maintain a liaison between the
14 Commission and the Department of Jus-
15 tice to coordinate civil and criminal inves-
16 tigation and prosecutions of violations of
17 this Act as appropriate.

18 “(ii) DESIGNATION.—The Attorney
19 General shall designate a person as liaison
20 and take such steps as are necessary to fa-
21 cilitate communications described in clause
22 (i).”.

23 **SEC. 7. SINGLE STOCK FUTURES MARGINING PILOT PRO-**
24 **GRAM.**

25 Section 2(a)(1) of the Commodity Exchange Act (7
26 U.S.C. 2(a)(1)) is amended—

1 (1) in subparagraph (C)(v)—

2 (A) in subclause (I)—

3 (i) by striking “other than” both
4 places it appears and inserting “or”; and

5 (ii) by striking “contract or option”
6 and inserting “contract, option, or security
7 futures product”;

8 (B) in the first sentence of subclause (II),
9 by striking “other than” and inserting “or”;
10 and

11 (C) in subclause (III), by striking “other
12 than” and inserting “or”; and

13 (2) in subparagraph (D)(i)—

14 (A) by striking “(XI) The margin require-
15 ments” and inserting the following:

16 “(XI) MARGIN REQUIRE-
17 MENTS.—

18 “(aa) IN GENERAL.—The
19 margin requirement;” and

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

21 “(bb) PILOT PROGRAM FOR
22 MARGINING SECURITY FUTURES
23 PRODUCTS.—Notwithstanding
24 any other provision of law, for a
25 period of 2 years beginning on

1 the date of enactment of this
2 item, an entity that is designated
3 or registered as a contract mar-
4 ket or derivatives transaction
5 execution facility under section 5
6 and that is also notice-registered
7 as a national securities exchange
8 under section 6(g) of the Securi-
9 ties Exchange Act of 1934 (15
10 U.S.C. 78f(g)), and its clearing
11 organization, a futures commis-
12 sion merchant registered under
13 this Act, and a broker or dealer
14 registered under section 15(b) of
15 that Act (15 U.S.C. 78o(b)),
16 shall not be required to comply
17 with item (aa) or subparagraph
18 (C)(v)(IV).

19 “(cc) ACTING IN RELI-
20 ANCE.—Any entity acting in reli-
21 ance upon item (bb) shall not be
22 required to comply with regula-
23 tions promulgated under section
24 7(c)(2)(B) of the Securities Ex-
25 change Act of 1934 (15 U.S.C.

1 78g(c)(2)(B)), or with the rules
2 of a self-regulatory organization
3 (as defined in section 3(a)(26) of
4 that Act (15 U.S.C. 78c(a)(26)),
5 pertaining to levels of initial and
6 maintenance margin, or with any
7 regulation that operates to pre-
8 clude the implementation of risk-
9 based portfolio margining sys-
10 tems.

11 “(dd) PROMULGATION OF
12 FINAL RULES.—Subject to item
13 (ee), an entity designated or reg-
14 istered as a contract market or
15 derivatives transaction execution
16 facility under section 5 and that
17 is notice-registered as a national
18 securities exchange under section
19 6(g) of the Securities Exchange
20 Act of 1934 (15 U.S.C. 78f(g))
21 and its clearing organization
22 shall be permitted to promulgate
23 final rules to—

24 “(AA) set margin re-
25 quirements for security fu-

1 tures products, held in any
2 account, in accordance with
3 subparagraph (C)(v)(I); and
4 “(BB) permit futures
5 commission merchants reg-
6 istered under this Act, and
7 brokers and dealers reg-
8 istered under section 15(b)
9 of the Securities Exchange
10 Act of 1934 (15 U.S.C.
11 78o(b)), to collect initial and
12 maintenance margin for se-
13 curity futures products, held
14 in any account, in accord-
15 ance with the rules.

16 “(ee) EFFECTIVE DATE AND
17 REVIEWABILITY OF FINAL
18 RULES.—Final rules promulgated
19 by any entity under item (dd)
20 shall become effective in accord-
21 ance with section 5c(c), and, not-
22 withstanding any other provision
23 of law, shall not be subject to any
24 other approval or review require-
25 ments.

1 “(ff) REPORT.—Not later
2 than 2 years after the date of en-
3 actment of this item, the Board
4 of Governors of the Federal Re-
5 serve System, after consultation
6 with the Commission and the Se-
7 curities and Exchange Commis-
8 sion, shall submit to the Com-
9 mittee on Agriculture of the
10 House of Representatives and the
11 Committee on Agriculture, Nutri-
12 tion, and Forestry of the Senate
13 a report describing the results of
14 the pilot program for margining
15 security futures products.

16 “(gg) CONTINUATION OF
17 PILOT PROGRAM.—The pilot pro-
18 gram for margining security fu-
19 tures products shall continue to
20 apply unless the report under
21 item (ff) concludes that the pilot
22 program has resulted in undue
23 risks to the financial integrity of
24 the relevant contract markets or
25 derivatives transaction execution

1 facilities, or to their respective
2 clearing systems, or has resulted
3 in systemic risk to financial mar-
4 kets or undue risk to cus-
5 tomers.”.

6 **SEC. 8. BROAD-BASED INDEX DEFINITIONS.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of enactment of this Act, the Commodity Futures
9 Trading Commission and the Securities and Exchange
10 Commission shall exercise the authority described in sec-
11 tion 1a(25)(B)(vi) of the Commodity Exchange Act (7
12 U.S.C. 1a(25)(B)(vi)) and section 3(a)(55)(C)(vi) of the
13 Securities Exchange Act of 1934 (15 U.S.C.
14 78c(a)(55)(C)(vi)) jointly to promulgate a final rule, regu-
15 lation, or order to exclude from the definition of the term
16 “narrow-based security index” indexes based on—

- 17 (1) United States debt instruments;
- 18 (2) other United States securities;
- 19 (3) foreign equities; and
- 20 (4) foreign debt instruments.

21 (b) REQUIREMENTS.—The final rule, regulation, or
22 order established under subsection (a) shall—

- 23 (1) be consistent with the capitalization, trading
24 patterns, and trade reporting conditions in the mar-
25 ket for securities described in subsection (a); and

1 (2) exclude from the definition of the term
2 “narrow-based security index” indexes that include a
3 representative sample of a class of securities in the
4 relevant market if the index is not readily suscep-
5 tible to manipulation.

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