

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4541

---

## AN ACT

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.

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

**TITLE I—COMMODITY FUTURES MODERNIZATION**

Sec. 101. Definitions.

Sec. 102. Agreements, contracts, and transactions in foreign currency, govern-  
ment securities, and certain other commodities.

Sec. 103. Legal certainty for excluded derivative transactions.

Sec. 104. Excluded electronic trading facilities.

Sec. 105. Hybrid instruments.

Sec. 106. Transactions in exempt commodities.

Sec. 107. Swap transactions.

Sec. 108. Application of commodity futures laws.

Sec. 109. Protection of the public interest.

Sec. 110. Prohibited transactions.

Sec. 111. Designation of boards of trade as contract markets.

Sec. 112. Derivatives transaction execution facilities.

Sec. 113. Derivatives clearing.

Sec. 114. Common provisions applicable to registered entities.

Sec. 115. Exempt boards of trade.

Sec. 116. Suspension or revocation of designation as contract market.

Sec. 117. Authorization of appropriations.

Sec. 118. Preemption.

Sec. 119. Predispute resolution agreements for institutional customers.

Sec. 120. Consideration of costs and benefits and antitrust laws.

Sec. 121. Contract enforcement between eligible counterparties.

Sec. 122. Special procedures to encourage and facilitate bona fide hedging by  
agricultural producers.

Sec. 123. Rule of construction.

Sec. 124. Technical and conforming amendments.

Sec. 125. Privacy.

Sec. 126. Report to Congress.

Sec. 127. International activities of the Commodity Futures Trading Commis-  
sion.

Sec. 128. Rules of construction.

**TITLE II—COORDINATED REGULATION OF SECURITY FUTURES  
PRODUCTS**

**Subtitle A—Securities Law Amendments**

Sec. 201. Definitions under the Securities Exchange Act of 1934.

Sec. 202. Regulatory relief for markets trading security futures products.

Sec. 203. Regulatory relief for intermediaries trading security futures products.

Sec. 204. Special provisions for interagency cooperation.

- Sec. 205. Maintenance of market integrity for security futures products.  
 Sec. 206. Special provisions for the trading of security futures products.  
 Sec. 207. Clearance and settlement.  
 Sec. 208. Amendments relating to registration and disclosure issues under the Securities Act of 1933 and the Securities Exchange Act of 1934.  
 Sec. 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940.  
 Sec. 210. Preemption of State laws.

Subtitle B—Amendments to the Commodity Exchange Act

- Sec. 221. Jurisdiction of Securities and Exchange Commission; other provisions.  
 Sec. 222. Application of the Commodity Exchange Act to national securities exchanges and national securities associations that trade security futures.  
 Sec. 223. Notification of investigations and enforcement actions.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to reauthorize the appropriation for the  
 4 Commodity Futures Trading Commission;

5 (2) to streamline and eliminate unnecessary  
 6 regulation for the commodity futures exchanges and  
 7 other entities regulated under the Commodity Ex-  
 8 change Act;

9 (3) to transform the role of the Commodity Fu-  
 10 tures Trading Commission to oversight of the fu-  
 11 tures markets;

12 (4) to provide a statutory and regulatory frame-  
 13 work for allowing the trading of futures on securi-  
 14 ties;

15 (5) to clarify the jurisdiction of the Commodity  
 16 Futures Trading Commission over certain retail for-

1       eign exchange transactions and bucket shops that  
2       may not be otherwise regulated;

3               (6) to promote innovation for futures and de-  
4       rivatives and to reduce systemic risk by enhancing  
5       legal certainty in the markets for certain futures and  
6       derivatives transactions;

7               (7) to reduce systemic risk and provide greater  
8       stability to markets during times of market disorder  
9       by allowing the clearing of transactions in over-the-  
10      counter derivatives through appropriately regulated  
11      clearing organizations; and

12              (8) to enhance the competitive position of  
13      United States financial institutions and financial  
14      markets.

## 15       **TITLE I—COMMODITY FUTURES** 16                               **MODERNIZATION**

### 17       **SEC. 101. DEFINITIONS.**

18       Section 1a of the Commodity Exchange Act (7 U.S.C.  
19      1a) is amended—

20              (1) by redesignating paragraphs (1) through  
21              (7), (8) through (12), (13), (14), (15), and (16) as  
22              paragraphs (2) through (8), (16) through (20), (22),  
23              (23), (24), and (28), respectively;

24              (2) by inserting before paragraph (2) (as redес-  
25              ignated by paragraph (1)) the following:

1           “(1) ALTERNATIVE TRADING SYSTEM.—The  
2 term ‘alternative trading system’ means an organiza-  
3 tion, association, or group of persons that—

4           “(A) is registered as a broker or dealer  
5 pursuant to section 15(b) of the Securities Ex-  
6 change Act of 1934 (except paragraph (11)  
7 thereof);

8           “(B) performs the functions commonly  
9 performed by an exchange (as defined in section  
10 3(a)(1) of the Securities Exchange Act of  
11 1934);

12           “(C) does not—

13           “(i) set rules governing the conduct of  
14 subscribers other than the conduct of such  
15 subscribers’ trading on the alternative  
16 trading system; or

17           “(ii) discipline subscribers other than  
18 by exclusion from trading; and

19           “(D) is exempt from the definition of the  
20 term ‘exchange’ under such section 3(a)(1) by  
21 rule or regulation of the Securities and Ex-  
22 change Commission on terms that require com-  
23 pliance with regulations of its trading func-  
24 tions.”;

1           (3) by striking paragraph (2) (as redesignated  
2 by paragraph (1)) and inserting the following:

3           “(2) BOARD OF TRADE.—The term ‘board of  
4 trade’ means any organized exchange or other trad-  
5 ing facility.”;

6           (4) by inserting after paragraph (8) the fol-  
7 lowing:

8           “(9) DERIVATIVES CLEARING ORGANIZATION.—

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

15           “(i) enables each party to the agree-  
16 ment, contract, or transaction to sub-  
17 stitute, through novation or otherwise, the  
18 credit of the derivatives clearing organiza-  
19 tion for the credit of the parties;

20           “(ii) arranges or provides, on a multi-  
21 lateral basis, for the settlement or netting  
22 of obligations resulting from such agree-  
23 ments, contracts, or transactions executed  
24 by participants in the derivatives clearing  
25 organization; or

1           “(iii) otherwise provides clearing serv-  
2           ices or arrangements that mutualize or  
3           transfer among participants in the deriva-  
4           tives clearing organization the credit risk  
5           arising from such agreements, contracts,  
6           or transactions executed by the partici-  
7           pants.

8           “(B) EXCLUSIONS.—The term ‘derivatives  
9           clearing organization’ does not include an enti-  
10          ty, facility, system, or organization solely be-  
11          cause it arranges or provides for—

12                 “(i) settlement, netting, or novation of  
13                 obligations resulting from agreements, con-  
14                 tracts, or transactions, on a bilateral basis  
15                 and without a central counterparty;

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

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

23           “(10) ELECTRONIC TRADING FACILITY.—The  
24           term ‘electronic trading facility’ means a trading fa-  
25           cility that—

1           “(A) operates by means of an electronic or  
2 telecommunications network; and

3           “(B) maintains an automated audit trail of  
4 bids, offers, and the matching of orders or the  
5 execution of transactions on the facility.

6           “(11) ELIGIBLE COMMERCIAL ENTITY.—The  
7 term ‘eligible commercial entity’ means, with respect  
8 to an agreement, contract or transaction in a  
9 commodity—

10           “(A) an eligible contract participant de-  
11 scribed in clause (i), (ii), (v), (vii), (viii), or (ix)  
12 of paragraph (12)(A) that, in connection with  
13 its business—

14           “(i) has a demonstrable ability, di-  
15 rectly or through separate contractual ar-  
16 rangements, to make or take delivery of  
17 the underlying commodity;

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

20           “(iii) is a dealer that regularly pro-  
21 vides risk management or hedging services  
22 to, or engages in market-making activities  
23 with, the foregoing entities involving trans-  
24 actions to purchase or sell the commodity

1 or derivative agreements, contracts, or  
2 transactions in the commodity;

3 “(B) an eligible contract participant, other  
4 than a natural person or an instrumentality, de-  
5 partment, or agency of a State or local govern-  
6 mental entity, that—

7 “(i) regularly enters into transactions  
8 to purchase or sell the commodity or deriv-  
9 ative agreements, contracts, or trans-  
10 actions in the commodity; and

11 “(ii) either—

12 “(I) in the case of a collective in-  
13 vestment vehicle whose participants  
14 include persons other than—

15 “(aa) qualified eligible per-  
16 sons, as defined in Commission  
17 rule 4.7(a) (17 C.F.R. 4.7(a));

18 “(bb) accredited investors,  
19 as defined in Regulation D of Se-  
20 curities and Exchange Commis-  
21 sion under the Securities Act of  
22 1933 (17 C.F.R. 230.501(a)),  
23 with total assets of \$2,000,000;  
24 or

1                   “(cc) qualified purchasers,  
2                   as defined in section 2(a)(51)(A)  
3                   of the Investment Company Act  
4                   of 1940;

5                   in each case as in effect on the date  
6                   of the enactment of the Commodity  
7                   Futures Modernization Act of 2000,  
8                   has, or is one of a group of vehicles  
9                   under common control or management  
10                  having in the aggregate,  
11                  \$1,000,000,000 in total assets; or

12                  “(II) in the case of other per-  
13                  sons, has, or is one of a group of per-  
14                  sons under common control or man-  
15                  agement having in the aggregate,  
16                  \$100,000,000 in total assets; or

17                  “(C) such other persons as the Commis-  
18                  sion shall determine appropriate and shall des-  
19                  ignate by rule, regulation, or order.

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

22                          “(A) acting for its own account—

23                                  “(i) a financial institution;

24                                  “(ii) an insurance company that is  
25                                  regulated by a State, or that is regulated

1 by a foreign government and is subject to  
2 comparable regulation as determined by  
3 the Commission, including a regulated sub-  
4 sidiary or affiliate of such an insurance  
5 company;

6 “(iii) an investment company subject  
7 to regulation under the Investment Com-  
8 pany Act of 1940 (15 U.S.C. 80a–1 et  
9 seq.) or a foreign person performing a  
10 similar role or function subject as such to  
11 foreign regulation (regardless of whether  
12 each investor in the investment company or  
13 the foreign person is itself an eligible con-  
14 tract participant);

15 “(iv) a commodity pool that—

16 “(I) has total assets exceeding  
17 \$5,000,000; and

18 “(II) is formed and operated by a  
19 person subject to regulation under  
20 this Act or a foreign person per-  
21 forming a similar role or function sub-  
22 ject as such to foreign regulation (re-  
23 gardless of whether each investor in  
24 the commodity pool or the foreign per-

1 son is itself an eligible contract partic-  
2 ipant);

3 “(v) a corporation, partnership, pro-  
4 prietorship, organization, trust, or other  
5 entity—

6 “(I) that has total assets exceed-  
7 ing \$10,000,000;

8 “(II) the obligations of which  
9 under an agreement, contract, or  
10 transaction are guaranteed or other-  
11 wise supported by a letter of credit or  
12 keepwell, support, or other agreement  
13 by an entity described in subclause  
14 (I), in clause (i), (ii), (iii), (iv), or  
15 (vii), or in subparagraph (C); or

16 “(III) that—

17 “(aa) has a net worth ex-  
18 ceeding \$1,000,000; and

19 “(bb) enters into an agree-  
20 ment, contract, or transaction in  
21 connection with the conduct of  
22 the entity’s business or to man-  
23 age the risk associated with an  
24 asset or liability owned or in-  
25 curred or reasonably likely to be

1 owned or incurred by the entity  
2 in the conduct of the entity's  
3 business;

4 “(vi) an employee benefit plan subject  
5 to the Employee Retirement Income Secu-  
6 rity Act of 1974 (29 U.S.C. 1001 et seq.),  
7 a governmental employee benefit plan, or a  
8 foreign person performing a similar role or  
9 function subject as such to foreign  
10 regulation—

11 “(I) that has total assets exceed-  
12 ing \$5,000,000; or

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

15 “(aa) an investment adviser  
16 or commodity trading advisor  
17 subject to regulation under the  
18 Investment Advisers Act of 1940  
19 (15 U.S.C. 80b–1 et seq.) or this  
20 Act;

21 “(bb) a foreign person per-  
22 forming a similar role or function  
23 subject as such to foreign regula-  
24 tion;

1 “(cc) a financial institution;

2 or

3 “(dd) an insurance company  
4 described in clause (ii), or a reg-  
5 ulated subsidiary or affiliate of  
6 such an insurance company;

7 “(vii)(I) a governmental entity (in-  
8 cluding the United States, a State, or a  
9 foreign government) or political subdivision  
10 of a governmental entity;

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

13 “(III) an instrumentality, agency, or  
14 department of an entity described in sub-  
15 clause (I) or (II),

16 except that such term does not include an  
17 entity, instrumentality, agency, or depart-  
18 ment referred to in subclause (I) or (III)  
19 of this clause unless (aa) the entity, instru-  
20 mentality, agency, or department is a per-  
21 son described in clause (i), (ii), or (iii) of  
22 section 1a(11)(A); (bb) the entity, instru-  
23 mentality, agency, or department owns and  
24 invests on a discretionary basis  
25 \$25,000,000 or more in investments; or

1 (cc) the agreement, contract, or trans-  
2 action is offered by, and entered into with,  
3 an entity that is listed in any of subclauses  
4 (I) through (VI) of section 2(c)(2)(B)(ii);

5 “(viii)(I) a broker or dealer subject to  
6 regulation under the Securities Exchange  
7 Act of 1934 (15 U.S.C. 78a et seq.) or a  
8 foreign person performing a similar role or  
9 function subject as such to foreign regula-  
10 tion, except that, if the broker or dealer or  
11 foreign person is a natural person or pro-  
12 prietorship, the broker or dealer or foreign  
13 person shall not be considered to be an eli-  
14 gible contract participant unless the broker  
15 or dealer or foreign person also meets the  
16 requirements of clause (v) or (xi);

17 “(II) an associated person of a reg-  
18 istered broker or dealer concerning the fi-  
19 nancial or securities activities of which the  
20 registered person makes and keeps records  
21 under section 15C(b) or 17(h) of the Secu-  
22 rities Exchange Act of 1934 (15 U.S.C.  
23 78o–5(b), 78q(h));

24 “(III) an investment bank holding  
25 company (as defined in section 17(i) of the

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

3 “(ix) a futures commission merchant  
4 subject to regulation under this Act or a  
5 foreign person performing a similar role or  
6 function subject as such to foreign regula-  
7 tion, except that, if the futures commission  
8 merchant or foreign person is a natural  
9 person or proprietorship, the futures com-  
10 mission merchant or foreign person shall  
11 not be considered to be an eligible contract  
12 participant unless the futures commission  
13 merchant or foreign person also meets the  
14 requirements of clause (v) or (xi);

15 “(x) a floor broker or floor trader sub-  
16 ject to regulation under this Act in connec-  
17 tion with any transaction that takes place  
18 on or through the facilities of a registered  
19 entity or an exempt board of trade, or any  
20 affiliate thereof, on which such person reg-  
21 ularly trades; or

22 “(xi) an individual who has total as-  
23 sets in an amount in excess of—

24 “(I) \$10,000,000; or

1                   “(II) \$5,000,000 and who enters  
2                   into the agreement, contract, or trans-  
3                   action in order to manage the risk as-  
4                   sociated with an asset owned or liabil-  
5                   ity incurred, or reasonably likely to be  
6                   owned or incurred, by the individual;

7                   “(B)(i) a person described in clause (i),  
8                   (ii), (iv), (v), (viii), (ix), or (x) of subparagraph  
9                   (A) or in subparagraph (C), acting as broker or  
10                  performing an equivalent agency function on  
11                  behalf of another person described in subpara-  
12                  graph (A) or (C); or

13                  “(ii) an investment adviser subject to regu-  
14                  lation under the Investment Advisers Act of  
15                  1940, a commodity trading advisor subject to  
16                  regulation under this Act, a foreign person per-  
17                  forming a similar role or function subject as  
18                  such to foreign regulation, or a person de-  
19                  scribed in clause (i), (ii), (iv), (v), (viii), (ix), or  
20                  (x) of subparagraph (A) or in subparagraph  
21                  (C), in any such case acting as investment man-  
22                  ager or fiduciary (but excluding a person acting  
23                  as broker or performing an equivalent agency  
24                  function) for another person described in sub-  
25                  paragraph (A) or (C) and who is authorized by

1           such person to commit such person to the  
2           transaction; or

3           “(C) any other person that the Commis-  
4           sion determines to be eligible in light of the fi-  
5           nancial or other qualifications of the person.

6           “(13) EXCLUDED COMMODITY.—The term ‘ex-  
7           cluded commodity’ means—

8                   “(i) an interest rate, exchange rate,  
9                   currency, security, security index, credit  
10                  risk or measure, debt or equity instrument,  
11                  index or measure of inflation, or other  
12                  macroeconomic index or measure;

13                  “(ii) any other rate, differential,  
14                  index, or measure of economic or commer-  
15                  cial risk, return, or value that is—

16                   “(I) not based in substantial part  
17                   on the value of a narrow group of  
18                   commodities not described in clause  
19                   (i); or

20                   “(II) based solely on 1 or more  
21                   commodities that have no cash mar-  
22                   ket;

23                  “(iii) any economic or commercial  
24                  index based on prices, rates, values, or lev-  
25                  els that are not within the control of any

1 party to the relevant contract, agreement,  
2 or transaction; or

3 “(iv) an occurrence, extent of an oc-  
4 currence, or contingency (other than a  
5 change in the price, rate, value, or level of  
6 a commodity not described in clause (i))  
7 that is—

8 “(I) beyond the control of the  
9 parties to the relevant contract, agree-  
10 ment, or transaction; and

11 “(II) associated with a financial,  
12 commercial, or economic consequence.

13 “(14) EXEMPT COMMODITY.—The term ‘exempt  
14 commodity’ means a commodity that is not an ex-  
15 cluded commodity or an agricultural commodity.

16 “(15) FINANCIAL INSTITUTION.—The term ‘fi-  
17 nancial institution’ means—

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

22 “(B) a corporation organized under section  
23 25A of the Federal Reserve Act (12 U.S.C. 611  
24 et seq.), commonly known as an ‘Edge Act cor-  
25 poration’;

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

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

6           “(E) a depository institution (as defined in  
7 section 3 of the Federal Deposit Insurance Act  
8 (12 U.S.C. 1813));

9           “(F) a foreign bank or a branch or agency  
10 of a foreign bank (each as defined in section  
11 1(b) of the International Banking Act of 1978  
12 (12 U.S.C. 3101(b)));

13           “(G) any financial holding company (as de-  
14 fined in section 2 of the Bank Holding Com-  
15 pany Act of 1956);

16           “(H) a trust company; or

17           “(I) a similarly regulated subsidiary or af-  
18 filiate of an entity described in any of subpara-  
19 graphs (A) through (H).”;

20           (5) by inserting after paragraph (20) (as redес-  
21 ignated by paragraph (1)) the following:

22           “(21) HYBRID INSTRUMENT.—

23           “(A) IN GENERAL.—The term ‘hybrid in-  
24 strument’ means a deposit instrument offered  
25 by a financial institution, or a security, having

1           1 or more payments indexed to the value, level,  
2           or rate of 1 or more commodities.

3           “(B) DEPOSIT INSTRUMENT DEFINED.—

4           The term ‘deposit instrument’ means an instru-  
5           ment representing an interest described in para-  
6           graph (1), (2), (3), (4), or (5) of section 3(l) of  
7           the Federal Deposit Insurance Act, other than  
8           in subparagraph (A), (B), or (C) at the end of  
9           such paragraph (5).”;

10          (6) by striking paragraph (24) (as redesignated  
11          by paragraph (1)) and inserting the following:

12          “(24) MEMBER OF A CONTRACT MARKET; MEM-  
13          BER OF A DERIVATIVES TRANSACTION EXECUTION  
14          FACILITY.—The term ‘member’ means, with respect  
15          to a contract market or derivatives transaction exe-  
16          cution facility, an individual, association, partner-  
17          ship, corporation, or trust—

18                 “(A) owning or holding membership in, or  
19                 admitted to membership representation on, the  
20                 contract market or derivatives transaction exe-  
21                 cution facility; or

22                 “(B) having trading privileges on the con-  
23                 tract market or derivatives transaction execu-  
24                 tion facility.

25          “(25) NARROW-BASED SECURITY INDEX.—

1           “(A) The term ‘narrow-based security  
2 index’ means an index—

3                   “(i) that has 9 or fewer component se-  
4 curities;

5                   “(ii) in which a component security  
6 comprises more than 30 percent of the  
7 index’s weighting;

8                   “(iii) in which the 5 highest weighted  
9 component securities in the aggregate com-  
10 prise more than 60 percent of the index’s  
11 weighting; or

12                   “(iv) in which the lowest weighted  
13 component securities comprising, in the ag-  
14 gregate, 25 percent of the index’s  
15 weighting have an aggregate dollar value  
16 of average daily trading volume of less  
17 than \$50,000,000 (or in the case of an  
18 index with 15 or more component securi-  
19 ties, \$30,000,000), except that if there are  
20 two or more securities with equal  
21 weighting that could be included in the cal-  
22 culation of the lowest weighted component  
23 securities comprising, in the aggregate, 25  
24 percent of the index’s weighting, such se-  
25 curities shall be ranked from lowest to

1 highest dollar value of average daily trad-  
2 ing volume and shall be included in the  
3 calculation based on their ranking starting  
4 with the lowest ranked security.

5 “(B) Notwithstanding subparagraph (A),  
6 an index is not a narrow-based security index  
7 if—

8 “(i)(I) it has at least 9 component se-  
9 curities;

10 “(II) no component security comprises  
11 more than 30 percent of the index’s  
12 weighting; and

13 “(III) each component security is—

14 “(aa) registered pursuant to sec-  
15 tion 12 of the Securities Exchange  
16 Act of 1934;

17 “(bb) 1 of 750 securities with the  
18 largest market capitalization; and

19 “(cc) 1 of 675 securities with the  
20 largest dollar value of average daily  
21 trading volume;

22 “(ii) it is a contract of sale for future  
23 delivery with respect to which a board of  
24 trade was designated as a contract market  
25 by the Commodity Futures Trading Com-

1 mission prior to the date of enactment of  
2 the Commodity Futures Modernization Act  
3 of 2000;

4 “(iii)(I) it traded on a designated con-  
5 tract market or registered derivatives  
6 transaction execution facility for at least  
7 30 days as a contract of sale for future de-  
8 livery that was not a narrow-based security  
9 index; and

10 “(II) it has been a narrow-based secu-  
11 rity index for no more than 45 business  
12 days over 3 consecutive calendar months;

13 “(iv) it is traded on or subject to the  
14 rules of a foreign board of trade and meets  
15 such requirements as are jointly estab-  
16 lished by rule or regulation by the Com-  
17 mission and the Securities and Exchange  
18 Commission;

19 “(v) no more than 18 months have  
20 passed since enactment of the Commodity  
21 Futures Modernization Act of 2000 and it  
22 is—

23 “(I) traded on or subject to the  
24 rules of a foreign board of trade;

1                   “(II) the offer and sale in the  
2                   United States of a contract of sale for  
3                   future delivery on the index was au-  
4                   thorized before the date of the enact-  
5                   ment of the Commodity Futures Mod-  
6                   ernization Act of 2000; and

7                   “(III) the conditions of such au-  
8                   thorization continue to be met; or

9                   “(vi) it is traded on or subject to the  
10                  rules of a board of trade and meets such  
11                  requirements as are jointly established by  
12                  rule, regulation, or order by the Commis-  
13                  sion and the Securities and Exchange  
14                  Commission.

15                  “(C) Within 1 year after the date of the  
16                  enactment of the Commodity Futures Mod-  
17                  ernization Act of 2000, the Commission and the  
18                  Securities and Exchange Commission jointly  
19                  shall adopt rules or regulations that set forth  
20                  the requirements under subparagraph (B)(iv).

21                  “(D) An index that is a narrow-based se-  
22                  curity index solely because it was a narrow-  
23                  based security index for more than 45 business  
24                  days over 3 consecutive calendar months pursu-  
25                  ant to clause (iii) of subparagraph (B) shall not

1 be a narrow-based security index for the 3 fol-  
2 lowing calendar months.

3 “(E) For purposes of subparagraphs (A)  
4 and (B)—

5 “(i) the dollar value of average daily  
6 trading volume and the market capitaliza-  
7 tion shall be calculated as of the preceding  
8 6 full calendar months; and

9 “(ii) the Commission and the Securi-  
10 ties and Exchange Commission shall, by  
11 rule or regulation, jointly specify the meth-  
12 od to be used to determine market capital-  
13 ization and dollar value of average daily  
14 trading volume.

15 “(26) OPTION.—The term ‘option’ means an  
16 agreement, contract, or transaction that is of the  
17 character of, or is commonly known to the trade as,  
18 an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’,  
19 ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guar-  
20 anty’.

21 “(27) ORGANIZED EXCHANGE.—The term ‘or-  
22 ganized exchange’ means a trading facility that—

23 “(A) permits trading—

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

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

3 “(B) has adopted (directly or through an-  
4 other nongovernmental entity) rules that—

5 “(i) govern the conduct of partici-  
6 pants, other than rules that govern the  
7 submission of orders or execution of trans-  
8 actions on the trading facility; and

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

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

13 “(29) REGISTERED ENTITY.—The term ‘reg-  
14 istered entity’ means—

15 “(A) a board of trade designated as a con-  
16 tract market under section 5;

17 “(B) a derivatives transaction execution fa-  
18 cility registered under section 5a;

19 “(C) a derivatives clearing organization  
20 registered under section 5b; and

21 “(D) a board of trade designated as a con-  
22 tract market under section 5f.

23 “(30) SECURITY.—The term ‘security’ means a  
24 security as defined in section 2(a)(1) of the Securi-  
25 ties Act of 1933 (15 U.S.C. 77b(a)(1)) or section

1 3(a)(10) of the Securities Exchange Act of 1934 (15  
2 U.S.C. 78c(a)(10)).

3 “(31) SECURITY FUTURE.—The term ‘security  
4 future’ means a contract of sale for future delivery  
5 of a single security or of a narrow-based security  
6 index, including any interest therein or based on the  
7 value thereof, except an exempted security under  
8 section 3(a)(12) of the Securities Exchange Act of  
9 1934 as in effect on the date of enactment of the  
10 Futures Trading Act of 1982 (other than any mu-  
11 nicipal security as defined in section 3(a)(29) of the  
12 Securities Exchange Act of 1934 as in effect on the  
13 date of enactment of the Futures Trading Act of  
14 1982). The term ‘security future’ does not include  
15 any agreement, contract, or transaction excluded  
16 from this Act under subsection (c), (d), (f), or (h)  
17 of section 2 of this Act, as in effect on the date of  
18 the enactment of the Commodity Futures Mod-  
19 ernization Act of 2000.

20 “(32) SECURITY FUTURES PRODUCT.—The  
21 term ‘security futures product’ means a security fu-  
22 ture or any put, call, straddle, option, or privilege on  
23 any security future.

24 “(33) TRADING FACILITY.—

1           “(A) IN GENERAL.—The term ‘trading fa-  
2           cility’ means a person or group of persons that  
3           constitutes, maintains, or provides a physical or  
4           electronic facility or system in which multiple  
5           participants have the ability to execute or trade  
6           agreements, contracts, or transactions by ac-  
7           cepting bids and offers made by other partici-  
8           pants that are open to multiple participants in  
9           the facility or system.

10           “(B) EXCLUSIONS.—The term ‘trading fa-  
11           cility’ does not include—

12                   “(i) a person or group of persons sole-  
13                   ly because the person or group of persons  
14                   constitutes, maintains, or provides an elec-  
15                   tronic facility or system that enables par-  
16                   ticipants to negotiate the terms of and  
17                   enter into bilateral transactions as a result  
18                   of communications exchanged by the par-  
19                   ties and not from interaction of multiple  
20                   bids and multiple offers within a predeter-  
21                   mined, nondiscretionary automated trade  
22                   matching and execution algorithm;

23                   “(ii) a government securities dealer or  
24                   government securities broker, to the extent  
25                   that the dealer or broker executes or

1 trades agreements, contracts, or trans-  
2 actions in government securities, or assists  
3 persons in communicating about, negoti-  
4 ating, entering into, executing, or trading  
5 an agreement, contract, or transaction in  
6 government securities (as the terms ‘gov-  
7 ernment securities dealer’, ‘government se-  
8 curities broker’, and ‘government securi-  
9 ties’ are defined in section 3(a) of the Se-  
10 curities Exchange Act of 1934 (15 U.S.C.  
11 78c(a))); or

12 “(iii) facilities on which bids and of-  
13 fers, and acceptances of bids and offers ef-  
14 fected on the facility, are not binding.

15 “(C) SPECIAL RULE.—A person or group  
16 of persons that would not otherwise constitute  
17 a trading facility shall not be considered to be  
18 a trading facility solely as a result of the sub-  
19 mission to a derivatives clearing organization of  
20 transactions executed on or through the person  
21 or group of persons.”.

1 **SEC. 102. AGREEMENTS, CONTRACTS, AND TRANSACTIONS**  
2 **IN FOREIGN CURRENCY, GOVERNMENT SECURITIES,**  
3 **AND CERTAIN OTHER COMMODITIES.**

4 Section 2 of the Commodity Exchange Act (7 U.S.C.  
5 2, 2a, 3, 4, 4a) is amended by adding at the end the fol-  
6 lowing:

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

10 “(1) IN GENERAL.—Except as provided in para-  
11 graph (2), nothing in this Act (other than section 5a  
12 (to the extent provided in section 5a(g)), 5b, 5d, or  
13 12(e)(2)(B)) governs or applies to an agreement,  
14 contract, or transaction in—

15 “(A) foreign currency;

16 “(B) government securities;

17 “(C) security warrants;

18 “(D) security rights;

19 “(E) resales of installment loan contracts;

20 “(F) repurchase transactions in an ex-  
21 cluded commodity; or

22 “(G) mortgages or mortgage purchase  
23 commitments.

24 “(2) COMMISSION JURISDICTION.—

25 “(A) AGREEMENTS, CONTRACTS, AND  
26 TRANSACTIONS TRADED ON AN ORGANIZED EX-

1 CHANGE.—This Act applies to, and the Com-  
2 mission shall have jurisdiction over, an agree-  
3 ment, contract, or transaction described in  
4 paragraph (1) that is—

5 “(i) a contract of sale of a commodity  
6 for future delivery (or an option thereon),  
7 or an option on a commodity (other than  
8 foreign currency or a security or a group  
9 or index of securities), that is executed or  
10 traded on an organized exchange; or

11 “(ii) an option on foreign currency ex-  
12 ecuted or traded on an organized exchange  
13 that is not a national securities exchange  
14 registered pursuant to section 6(a) of the  
15 Securities Exchange Act of 1934.

16 “(B) AGREEMENTS, CONTRACTS, AND  
17 TRANSACTIONS IN RETAIL FOREIGN CUR-  
18 RENCY.—This Act applies to, and the Commis-  
19 sion shall have jurisdiction over, an agreement,  
20 contract, or transaction in foreign currency  
21 that—

22 “(i) is a contract of sale for future de-  
23 livery (or an option on such a contract) or  
24 an option (other than an option executed  
25 or traded on a national securities exchange

1 registered pursuant to section 6(a) of the  
2 Securities Exchange Act of 1934); and

3 “(ii) is offered to, or entered into  
4 with, a person that is not an eligible con-  
5 tract participant, unless the counterparty,  
6 or the person offering to be the  
7 counterparty, of the person is—

8 “(I) a financial institution;

9 “(II) a broker or dealer reg-  
10 istered under section 15(b) or 15C of  
11 the Securities Exchange Act of 1934  
12 (15 U.S.C. 78o(b), 78o-5) or a fu-  
13 tures commission merchant registered  
14 under this Act;

15 “(III) an associated person of a  
16 broker or dealer registered under sec-  
17 tion 15(b) or 15C of the Securities  
18 Exchange Act of 1934 (15 U.S.C.  
19 78o(b), 78o-5), or an affiliated person  
20 of a futures commission merchant  
21 registered under this Act, concerning  
22 the financial or securities activities of  
23 which the registered person makes  
24 and keeps records under section  
25 15C(b) or 17(h) of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78o–  
2 5(b), 78q(h)) or section 4f(e)(2)(B) of  
3 this Act;

4 “(IV) an insurance company de-  
5 scribed in section 1a(12)(A)(ii) of this  
6 Act, or a regulated subsidiary or affil-  
7 iate of such an insurance company;

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

11 “(VI) an investment bank hold-  
12 ing company (as defined in section  
13 17(i) of the Securities Exchange Act  
14 of 1934).

15 “(C) Notwithstanding subclauses (II) and  
16 (III) of subparagraph (B)(ii), agreements, con-  
17 tracts, or transactions described in subpara-  
18 graph (B) shall be subject to sections 4b, 4e,  
19 6c, 6d, and 8(a) if they are entered into by a  
20 futures commission merchant or an affiliate of  
21 a futures commission merchant that is not also  
22 an entity described in subparagraph (B)(ii) of  
23 this paragraph.”.

1 **SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**  
2 **TRANSACTIONS.**

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

6 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

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

11 “(A) the agreement, contract, or trans-  
12 action is entered into only between persons that  
13 are eligible contract participants at the time at  
14 which the persons enter into the agreement,  
15 contract, or transaction; and

16 “(B) the agreement, contract, or trans-  
17 action is not executed or traded on a trading fa-  
18 cility.

19 “(2) ELECTRONIC TRADING FACILITY EXCLU-  
20 SION.—Nothing in this Act (other than section 5a  
21 (to the extent provided in section 5a(g)), 5b, 5d, or  
22 12(e)(2)(B)) governs or applies to an agreement,  
23 contract, or transaction in an excluded commodity  
24 if—

25 “(A) the agreement, contract, or trans-  
26 action is entered into on a principal-to-principal

1 basis between parties trading for their own ac-  
2 counts or as described in section 1a(12)(B)(ii);

3 “(B) the agreement, contract, or trans-  
4 action is entered into only between persons that  
5 are eligible contract participants described in  
6 subparagraph (A), (B)(ii), or (C) of section  
7 1a(12)) at the time at which the persons enter  
8 into the agreement, contract, or transaction;  
9 and

10 “(C) the agreement, contract, or trans-  
11 action is executed or traded on an electronic  
12 trading facility.”.

13 **SEC. 104. EXCLUDED ELECTRONIC TRADING FACILITIES.**

14 Section 2 of the Commodity Exchange Act (7 U.S.C.  
15 2, 2a, 3, 4, 4a) is further amended by adding at the end  
16 the following:

17 “(e) EXCLUDED ELECTRONIC TRADING FACILI-  
18 TIES.—

19 “(1) IN GENERAL.—Nothing in this Act (other  
20 than section 12(e)(2)(B)) governs or is applicable to  
21 an electronic trading facility that limits transactions  
22 authorized to be conducted on its facilities to those  
23 satisfying the requirements of sections 2(d)(2),  
24 2(g)(3), and 2(h).

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

8           “(3) EFFECT ON TRANSACTIONS.—No failure  
9           by an electronic trading facility to limit transactions  
10          as required by paragraph (1) of this subsection or  
11          to comply with section 2(g)(5) shall in itself affect  
12          the legality, validity, or enforceability of an agree-  
13          ment, contract, or transaction entered into or traded  
14          on the electronic trading facility or cause a partici-  
15          pant on the system to be in violation of this Act.

16 **SEC. 105. HYBRID INSTRUMENTS.**

17          Section 2 of the Commodity Exchange Act (7 U.S.C.  
18          2, 2a, 3, 4, 4a) is further amended by adding at the end  
19          the following:

20          “(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-  
21          MENTS.—

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

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

4           “(A) the issuer of the hybrid instrument  
5 receives payment in full of the purchase price of  
6 the hybrid instrument, substantially contem-  
7 poraneously with delivery of the hybrid instru-  
8 ment;

9           “(B) the purchaser or holder of the hybrid  
10 instrument is not required to make any pay-  
11 ment to the issuer in addition to the purchase  
12 price paid under subparagraph (A), whether as  
13 margin, settlement payment, or otherwise, dur-  
14 ing the life of the hybrid instrument or at ma-  
15 turity;

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

19           “(D) the hybrid instrument is not mar-  
20 keted as a contract of sale for future delivery  
21 of a commodity (or option on such a contract)  
22 subject to this Act.

23           “(3) MARK-TO-MARKET MARGINING REQUIRE-  
24 MENTS.—For the purposes of paragraph (2)(C),  
25 mark-to-market margining requirements do not in-

1       clude the obligation of an issuer of a secured debt  
2       instrument to increase the amount of collateral held  
3       in pledge for the benefit of the purchaser of the se-  
4       cured debt instrument to secure the repayment obli-  
5       gations of the issuer under the secured debt instru-  
6       ment.”.

7       **SEC. 106. TRANSACTIONS IN EXEMPT COMMODITIES.**

8       Section 2 of the Commodity Exchange Act (7 U.S.C.  
9       2, 2a, 3, 4, 4a) is further amended by adding at the end  
10      the following.

11      “(g) **LEGAL CERTAINTY FOR CERTAIN TRANS-**  
12      **ACTIONS IN EXEMPT COMMODITIES.—**

13           “(1) Except as provided in paragraph (2), noth-  
14      ing in this Act shall apply to a contract, agreement  
15      or transaction in an exempt commodity which—

16           “(A) is entered into solely between persons  
17           that are eligible contract participants at the  
18           time the persons enter into the agreement, con-  
19           tract, or transaction; and

20           “(B) is not entered into on a trading facil-  
21           ity.

22           “(2) An agreement, contract, or transaction de-  
23      scribed in paragraph (1) of this subsection shall be  
24      subject to—

25           “(A) sections 5b and 12(e)(2)(B);

1           “(B) sections 4b, 4o, 6(c), 6(d), 6e, 6d,  
2           and 8a, and the regulations of the Commission  
3           pursuant to section 4c(b) proscribing fraud in  
4           connection with commodity option transactions,  
5           to the extent the agreement, contract, or trans-  
6           action is not between eligible commercial enti-  
7           ties (unless 1 of the entities is an instrumen-  
8           tality, department, or agency of a State or local  
9           governmental entity) and would otherwise be  
10          subject to such sections and regulations; and

11           “(C) sections 6(c), 6(d), 6e, 6d, 8a, and  
12          9(a)(2), to the extent such sections prohibit ma-  
13          nipulation of the market price of any com-  
14          modity in interstate commerce and the agree-  
15          ment, contract, or transaction would otherwise  
16          be subject to such sections.

17          “(3) Except as provided in paragraph (4), noth-  
18          ing in this Act shall apply to an agreement, contract,  
19          or transaction in an exempt commodity which is—

20               “(A) entered into on a principal-to-prin-  
21               cipal basis solely between persons that are eligi-  
22               ble commercial entities at the time the persons  
23               enter into the agreement, contract, or trans-  
24               action; and

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

3           “(4) An agreement, contract, or transaction de-  
4 scribed in paragraph (3) of this subsection shall be  
5 subject to—

6           “(A) sections 5a (to the extent provided in  
7 section 5a(g)), 5b, 5d, and 12(e)(2)(B);

8           “(B) sections 4b and 4o and the regula-  
9 tions of the Commission pursuant to section  
10 4c(b) proscribing fraud in connection with com-  
11 modity option transactions to the extent the  
12 agreement, contract, or transaction would oth-  
13 erwise be subject to such sections and regula-  
14 tions;

15           “(C) sections 6(c) and 9(a)(2), to the ex-  
16 tent such sections prohibit manipulation of the  
17 market price of any commodity in interstate  
18 commerce and to the extent the agreement, con-  
19 tract, or transaction would otherwise be subject  
20 to such sections; and

21           “(D) such rules and regulations as the  
22 Commission may prescribe if necessary to en-  
23 sure timely dissemination by the electronic trad-  
24 ing facility of price, trading volume, and other  
25 trading data to the extent appropriate, if the

1 Commission determines that the electronic trad-  
2 ing facility performs a significant price dis-  
3 covery function for transactions in the cash  
4 market for the commodity underlying any  
5 agreement, contract, or transaction executed or  
6 traded on the electronic trading facility.

7 “(5) An electronic trading facility relying on the  
8 exemption provided in paragraph (3) shall—

9 “(A) notify the Commission of its intention  
10 to operate an electronic trading facility in reli-  
11 ance on the exemption set forth in paragraph  
12 (3), which notice shall include the following:

13 “(i) the name and address of the facil-  
14 ity and a person designated to receive com-  
15 munications from the Commission;

16 “(ii) the commodity categories that  
17 the facility intends to list or otherwise  
18 make available for trading on the facility  
19 in reliance on the exemption set forth in  
20 paragraph (3);

21 “(iii) certifications that—

22 “(I) no executive officer or mem-  
23 ber of the governing board of, or any  
24 holder of a 10 percent or greater eq-  
25 uity interest in, the facility is a person

1 described in any of subparagraphs (A)  
2 through (H) of section 8a(2);

3 “(II) the facility will comply with  
4 the conditions for exemption under  
5 this paragraph; and

6 “(III) the facility will notify the  
7 Commission of any material change in  
8 the information previously provided by  
9 the facility to the Commission pursu-  
10 ant to this paragraph; and

11 “(iv) the identity of any derivatives  
12 clearing organization to which the facility  
13 transmits or intends to transmit trans-  
14 action data for the purpose of facilitating  
15 the clearance and settlement of trans-  
16 actions conducted on the facility in reliance  
17 on the exemption set forth in paragraph  
18 (3);

19 “(B)(i)(I) provide the Commission with ac-  
20 cess to the facility’s trading protocols and elec-  
21 tronic access to the facility with respect to  
22 transactions conducted in reliance on the ex-  
23 emption set forth in paragraph (3); or

24 “(II) provide such reports to the Commis-  
25 sion regarding transactions executed on the fa-

1           cility in reliance on the exemption set forth in  
2           paragraph (3) as the Commission may from  
3           time to time request to enable the Commission  
4           to satisfy its obligations under this Act; and

5           “(ii) maintain for 5 years, and make avail-  
6           able for inspection by the Commission upon re-  
7           quest, records of all activities related to its  
8           business as an electronic trading facility exempt  
9           under paragraph (3), including—

10           “(I) information relating to data entry  
11           and transaction details sufficient to enable  
12           the Commission to reconstruct trading ac-  
13           tivity on the facility conducted in reliance  
14           on the exemption set forth in paragraph  
15           (3); and

16           “(II) the name and address of each  
17           participant on the facility authorized to  
18           enter into transactions in reliance on the  
19           exemption set forth in paragraph (3); and

20           “(iii) upon special call by the Commission,  
21           provide to the Commission, in a form and man-  
22           ner and within the period specified in the spe-  
23           cial call, such information related to its busi-  
24           ness as an electronic trading facility exempt  
25           under paragraph (3), including information re-

1           lating to data entry and transaction details in  
2           respect of transactions entered into in reliance  
3           on the exemption set forth in paragraph (3), as  
4           the Commission may determine appropriate—

5                   “(I) to enforce the provisions specified  
6                   in subparagraphs (B) and (C) of para-  
7                   graph (4);

8                   “(II) to evaluate a systemic market  
9                   event; or

10                   “(III) to obtain information requested  
11                   by a Federal financial regulatory authority  
12                   in order to enable the regulator to fulfill  
13                   its regulatory or supervisory responsibil-  
14                   ities; and

15                   “(C)(i) upon receipt of any subpoena  
16                   issued by or on behalf of the Commission to any  
17                   foreign person who the Commission believes is  
18                   conducting or has conducted transactions in re-  
19                   liance on the exemption set forth in paragraph  
20                   (3) on or through the electronic trading facility  
21                   relating to the transactions, promptly notify the  
22                   foreign person of, and transmit to the foreign  
23                   person, the subpoena in a manner reasonable  
24                   under the circumstances, or as specified by the  
25                   Commission; and

1           “(ii) if the Commission has reason to be-  
2           lieve that a person has not timely complied with  
3           a subpoena issued by or on behalf of the Com-  
4           mission pursuant to clause (i), and the Commis-  
5           sion in writing has directed that a facility rely-  
6           ing on the exemption set forth in paragraph (3)  
7           deny or limit further transactions by the per-  
8           son, the facility shall deny that person further  
9           trading access to the facility or, as applicable,  
10          limit that person’s access to the facility for liq-  
11          uidation trading only;

12           “(D) comply with the requirements of this  
13          paragraph applicable to the facility and require  
14          that each participant, as a condition of trading  
15          on the facility in reliance on the exemption set  
16          forth in paragraph (3), agree to comply with all  
17          applicable law;

18           “(E) have a reasonable basis for believing  
19          that participants authorized to conduct trans-  
20          actions on the facility in reliance on the exemp-  
21          tion set forth in paragraph (3) are eligible com-  
22          mercial entities; and

23           “(F) not represent to any person that the  
24          facility is registered with, or designated, recog-  
25          nized, licensed or approved by the Commission.

1           “(6) A person named in a subpoena referred to  
2           in paragraph (5)(C) that believes the person is or  
3           may be adversely affected or aggrieved by action  
4           taken by the Commission under this section, shall  
5           have the opportunity for a prompt hearing after the  
6           Commission acts under procedures that the Commis-  
7           sion shall establish by rule, regulation, or order.”.

8   **SEC. 107. SWAP TRANSACTIONS.**

9           Section 2 of the Commodity Exchange Act (7 U.S.C.  
10          2, 2a, 3, 4, 4a) is further amended by adding at the end  
11          the following:

12          “(h) **EXCLUDED SWAP TRANSACTIONS.**—No provi-  
13          sion of this Act (other than section 5a (to the extent pro-  
14          vided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply  
15          to or govern any agreement, contract, or transaction in  
16          a commodity other than an agricultural commodity if—

17                  “(1) the agreement, contract, or transaction is  
18                  entered into only between persons that are eligible  
19                  contract participants at the time they enter into the  
20                  agreement, contract, or transaction; and

21                  “(2) each of the material economic terms of the  
22                  agreement, contract, or transaction is individually  
23                  negotiated by the parties.”.

1 **SEC. 108. APPLICATION OF COMMODITY FUTURES LAWS.**

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

5 “(i) APPLICATION OF COMMODITY FUTURES  
6 LAWS.—

7 “(1) No provision of this Act shall be construed  
8 as implying or creating any presumption that—

9 “(A) any agreement, contract, or trans-  
10 action that is excluded or exempted under sub-  
11 section (c), (d), (e), (f), (g), or (h) of section 2  
12 or section 4(c); or

13 “(B) any agreement, contract, or trans-  
14 action, not otherwise subject to this Act, that is  
15 not so excluded or exempted,

16 is or would otherwise be subject to this Act.

17 “(2) No provision of, or amendment made by,  
18 the Commodity Futures Modernization Act of 2000  
19 shall be construed as conferring jurisdiction on the  
20 Commission with respect to any such agreement,  
21 contract, or transaction, except as expressly provided  
22 in section 5a of this Act (to the extent provided in  
23 section 5a(g) of this Act), 5b of this Act, or 5d of  
24 this Act.”.

1 **SEC. 109. PROTECTION OF THE PUBLIC INTEREST.**

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

4 **“SEC. 3. FINDINGS AND PURPOSE.**

5 “(a) FINDINGS.—The transactions subject to this Act  
6 are entered into regularly in interstate and international  
7 commerce and are affected with a national public interest  
8 by providing a means for managing and assuming price  
9 risks, discovering prices, or disseminating pricing informa-  
10 tion through trading in liquid, fair and financially secure  
11 trading facilities.

12 “(b) PURPOSE.—It is the purpose of this Act to serve  
13 the public interests described in subsection (a) through a  
14 system of effective self-regulation of trading facilities,  
15 clearing systems, market participants and market profes-  
16 sionals under the oversight of the Commission. To foster  
17 these public interests, it is further the purpose of this Act  
18 to deter and prevent price manipulation or any other dis-  
19 ruptions to market integrity; to ensure the financial integ-  
20 rity of all transactions subject to this Act and the avoid-  
21 ance of systemic risk; to protect all market participants  
22 from fraudulent or other abusive sales practices and mis-  
23 uses of customer assets; and to promote responsible inno-  
24 vation and fair competition among boards of trade, other  
25 markets and market participants.”.

1 **SEC. 110. PROHIBITED TRANSACTIONS.**

2 Section 4c of the Commodity Exchange Act (7 U.S.C.  
3 6c) is amended by striking “SEC. 4c.” and all that follows  
4 through subsection (a) and inserting the following:

5 **“SEC. 4c. PROHIBITED TRANSACTIONS.**

6 “(a) IN GENERAL.—

7 “(1) PROHIBITION.—It shall be unlawful for  
8 any person to offer to enter into, enter into, or con-  
9 firm the execution of a transaction described in  
10 paragraph (2) involving the purchase or sale of any  
11 commodity for future delivery (or any option on such  
12 a transaction or option on a commodity) if the  
13 transaction is used or may be used to—

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

17 “(B) determine the price basis of any such  
18 transaction in interstate commerce in the com-  
19 modity; or

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

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

1           “(A)(i) is, is of the character of, or is com-  
2           monly known to the trade as, a ‘wash sale’ or  
3           ‘accommodation trade’; or

4           “(ii) is a fictitious sale; or

5           “(B) is used to cause any price to be re-  
6           ported, registered, or recorded that is not a  
7           true and bona fide price.”.

8 **SEC. 111. DESIGNATION OF BOARDS OF TRADE AS CON-**  
9 **TRACT MARKETS.**

10       The Commodity Exchange Act is amended—

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

13           (2) by striking sections 5 and 5a (7 U.S.C. 7,  
14       7a) and inserting the following:

15 **“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-**  
16 **TRACT MARKETS.**

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

22       “(b) CRITERIA FOR DESIGNATION.—

23           “(1) IN GENERAL.—To be designated as a con-  
24       tract market, the board of trade shall demonstrate

1 to the Commission that the board of trade meets the  
2 criteria specified in this subsection.

3 “(2) PREVENTION OF MARKET MANIPULA-  
4 TION.—The board of trade shall have the capacity to  
5 prevent market manipulation through market sur-  
6 veillance, compliance, and enforcement practices and  
7 procedures, including methods for conducting real-  
8 time monitoring of trading and comprehensive and  
9 accurate trade reconstructions.

10 “(3) FAIR AND EQUITABLE TRADING.—The  
11 board of trade shall establish and enforce trading  
12 rules to ensure fair and equitable trading through  
13 the facilities of the contract market, and the capac-  
14 ity to detect, investigate, and discipline any person  
15 that violates the rules. The rules may authorize—

16 “(A) transfer trades or office trades;

17 “(B) an exchange of—

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

20 “(ii) futures for cash commodities; or

21 “(iii) futures for swaps; or

22 “(C) a futures commission merchant, act-  
23 ing as principal or agent, to enter into or con-  
24 firm the execution of a contract for the pur-  
25 chase or sale of a commodity for future delivery

1 if the contract is reported, recorded, or cleared  
2 in accordance with the rules of the contract  
3 market or a derivatives clearing organization.

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

6 “(A) establish and enforce rules defining,  
7 or specifications detailing, the manner of oper-  
8 ation of the trade execution facility maintained  
9 by the board of trade, including rules or speci-  
10 fications describing the operation of any elec-  
11 tronic matching platform; and

12 “(B) demonstrate that the trade execution  
13 facility operates in accordance with the rules or  
14 specifications.

15 “(5) FINANCIAL INTEGRITY OF TRANS-  
16 ACTIONS.—The board of trade shall establish and  
17 enforce rules and procedures for ensuring the finan-  
18 cial integrity of transactions entered into by or  
19 through the facilities of the contract market, includ-  
20 ing the clearance and settlement of the transactions  
21 with a derivatives clearing organization.

22 “(6) DISCIPLINARY PROCEDURES.—The board  
23 of trade shall establish and enforce disciplinary pro-  
24 cedures that authorize the board of trade to dis-  
25 cipline, suspend, or expel members or market par-

1 participants that violate the rules of the board of trade,  
2 or similar methods for performing the same func-  
3 tions, including delegation of the functions to third  
4 parties.

5 “(7) PUBLIC ACCESS.—The board of trade shall  
6 provide the public with access to the rules, regula-  
7 tions, and contract specifications of the board of  
8 trade.

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

16 “(c) EXISTING CONTRACT MARKETS.—A board of  
17 trade that is designated as a contract market on the date  
18 of the enactment of the Commodity Futures Moderniza-  
19 tion Act of 2000 shall be considered to be a designated  
20 contract market under this section.

21 “(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

22 “(1) IN GENERAL.—To maintain the designa-  
23 tion of a board of trade as a contract market, the  
24 board of trade shall comply with the core principles  
25 specified in this subsection. The board of trade shall

1 have reasonable discretion in establishing the man-  
2 ner in which it complies with the core principles.

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

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

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

16 “(5) POSITION LIMITATIONS OR ACCOUNT-  
17 ABILITY.—To reduce the potential threat of market  
18 manipulation or congestion, especially during trading  
19 in the delivery month, the board of trade shall adopt  
20 position limitations or position accountability for  
21 speculators, where necessary and appropriate.

22 “(6) EMERGENCY AUTHORITY.—The board of  
23 trade shall adopt rules to provide for the exercise of  
24 emergency authority, in consultation or cooperation

1 with the Commission, where necessary and appro-  
2 priate, including the authority to—

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

5 “(B) suspend or curtail trading in any con-  
6 tract; and

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

9 “(7) AVAILABILITY OF GENERAL INFORMA-  
10 TION.—The board of trade shall make available to  
11 market authorities, market participants, and the  
12 public information concerning—

13 “(A) the terms and conditions of the con-  
14 tracts of the contract market; and

15 “(B) the mechanisms for executing trans-  
16 actions on or through the facilities of the con-  
17 tract market.

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

23 “(9) EXECUTION OF TRANSACTIONS.—The  
24 board of trade shall provide a competitive, open, and

1 efficient market and mechanism for executing trans-  
2 actions.

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

11 “(11) FINANCIAL INTEGRITY OF CONTRACTS.—  
12 The board of trade shall establish and enforce rules  
13 providing for the financial integrity of any contracts  
14 traded on the contract market (including the clear-  
15 ance and settlement of the transactions with a de-  
16 rivatives clearing organization), and rules to ensure  
17 the financial integrity of any futures commission  
18 merchants and introducing brokers and the protec-  
19 tion of customer funds.

20 “(12) PROTECTION OF MARKET PARTICI-  
21 PANTS.—The board of trade shall establish and en-  
22 force rules to protect market participants from abu-  
23 sive practices committed by any party acting as an  
24 agent for the participants.

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

6           “(14) GOVERNANCE FITNESS STANDARDS.—  
7 The board of trade shall establish and enforce ap-  
8 propriate fitness standards for directors, members of  
9 any disciplinary committee, members of the contract  
10 market, and any other persons with direct access to  
11 the facility (including any parties affiliated with any  
12 of the persons described in this paragraph).

13           “(15) CONFLICTS OF INTEREST.—The board of  
14 trade shall establish and enforce rules to minimize  
15 conflicts of interest in the decisionmaking process of  
16 the contract market and establish a process for re-  
17 solving such conflicts of interest.

18           “(16) COMPOSITION OF BOARDS OF MUTUALLY  
19 OWNED CONTRACT MARKETS.—In the case of a mu-  
20 tually owned contract market, the board of trade  
21 shall ensure that the composition of the governing  
22 board reflects market participants.

23           “(17) RECORDKEEPING.—The board of trade  
24 shall maintain records of all activities related to the  
25 business of the contract market in a form and man-

1 ner acceptable to the Commission for a period of 5  
2 years.

3 “(18) ANTITRUST CONSIDERATIONS.—Unless  
4 necessary or appropriate to achieve the purposes of  
5 this Act, the board of trade shall endeavor to  
6 avoid—

7 “(A) adopting any rules or taking any ac-  
8 tions that result in any unreasonable restraints  
9 of trade; or

10 “(B) imposing any material anticompeti-  
11 tive burden on trading on the contract market.

12 “(e) CURRENT AGRICULTURAL COMMODITIES.—

13 “(1) Subject to paragraph (2) of this sub-  
14 section, a contract for purchase or sale for future  
15 delivery of an agricultural commodity enumerated in  
16 section 1a(4) that is available for trade on a con-  
17 tract market, as of the date of the enactment of this  
18 subsection, may be traded only on a contract market  
19 designated under this section.

20 “(2) In order to promote responsible economic  
21 or financial innovation and fair competition, the  
22 Commission, on application by any person, after no-  
23 tice and public comment and opportunity for hear-  
24 ing, may prescribe rules and regulations to provide  
25 for the offer and sale of contracts for future delivery

1 or options thereon to be conducted on a derivatives  
2 transaction execution facility.”.

3 **SEC. 112. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
4 **TIES.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
6 is amended by inserting after section 5 (as amended by  
7 section 111(2)) the following:

8 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
9 **TIES.**

10 “(a) IN GENERAL.—In lieu of compliance with the  
11 contract market designation requirements of sections 4(a)  
12 and 5, a board of trade may elect to operate as a reg-  
13 istered derivatives transaction execution facility if the fa-  
14 cility is—

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

17 “(2) registered as a derivatives transaction exe-  
18 cution facility under subsection (c) of this section.

19 “(b) REQUIREMENTS FOR TRADING.—

20 “(1) IN GENERAL.—A registered derivatives  
21 transaction execution facility under subsection (a)  
22 may trade any contract for sale of a commodity for  
23 future delivery (or option on such a contract) on or  
24 through the facility only by satisfying the require-  
25 ments of this section.

1           “(2) REQUIREMENTS FOR UNDERLYING COM-  
2           MODITIES.—A registered derivatives transaction exe-  
3           cution facility may trade any contract for sale of a  
4           commodity for future delivery (or option on such a  
5           contract) only if—

6                   “(A) the underlying commodity has a near-  
7                   ly inexhaustible deliverable supply;

8                   “(B) the underlying commodity has a de-  
9                   liverable supply that is sufficiently large that  
10                  the contract is highly unlikely to be susceptible  
11                  to the threat of manipulation;

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

14                  “(D)(i) the contract is a security futures  
15                  product, and (ii) the registered derivatives  
16                  transaction execution facility is a national secu-  
17                  rities exchange registered under the Securities  
18                  Exchange Act of 1934 or an alternative trading  
19                  system;

20                  “(E) the Commission determines, based on  
21                  the market characteristics, surveillance history,  
22                  self-regulatory record, and capacity of the facil-  
23                  ity that trading in the contract (or option) is  
24                  highly unlikely to be susceptible to the threat of  
25                  manipulation; or

1           “(F) except as provided in section 5(e)(2),  
2           the underlying commodity is a commodity other  
3           than an agricultural commodity enumerated in  
4           section 1a(4), and trading access to the facility  
5           is limited to eligible commercial entities trading  
6           for their own account.

7           “(3) ELIGIBLE TRADERS.—To trade on a reg-  
8           istered derivatives transaction execution facility, a  
9           person shall—

10                   “(A) be an eligible contract participant; or

11                   “(B) be a person trading through a futures  
12           commission merchant that—

13                           “(i) is registered with the Commis-  
14                           sion;

15                           “(ii) is a member of a futures self-reg-  
16                           ulatory organization or, if the person  
17                           trades only security futures products on  
18                           the facility, a national securities associa-  
19                           tion registered under section 15A(a) of the  
20                           Securities Exchange Act of 1934;

21                           “(iii) is a clearing member of a de-  
22                           rivatives clearing organization; and

23                           “(iv) has net capital of at least  
24                           \$20,000,000.

1           “(4) TRADING BY CONTRACT MARKETS.—A  
2 board of trade that is designated as a contract mar-  
3 ket shall, to the extent that the contract market also  
4 operates a registered derivatives transaction execu-  
5 tion facility—

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

11           “(B) if the board of trade uses the same  
12 electronic trading system for trading on the  
13 contract market and derivatives transaction  
14 execution facility of the board of trade, identify  
15 whether the electronic trading is taking place  
16 on the contract market or the derivatives trans-  
17 action execution facility.

18           “(c) CRITERIA FOR REGISTRATION.—

19           “(1) IN GENERAL.—To be registered as a reg-  
20 istered derivatives transaction execution facility, the  
21 board of trade shall be required to demonstrate to  
22 the Commission only that the board of trade meets  
23 the criteria specified in subsection (b) and this sub-  
24 section.

1           “(2) DETERRENCE OF ABUSES.—The board of  
2 trade shall establish and enforce trading and partici-  
3 pation rules that will deter abuses and has the ca-  
4 pacity to detect, investigate, and enforce those rules,  
5 including means to—

6           “(A) obtain information necessary to per-  
7 form the functions required under this section;

8           or

9           “(B) use technological means to—

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

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

15           “(3) TRADING PROCEDURES.—The board of  
16 trade shall establish and enforce rules or terms and  
17 conditions defining, or specifications detailing, trad-  
18 ing procedures to be used in entering and executing  
19 orders traded on the facilities of the board of trade.  
20 The rules may authorize—

21           “(A) transfer trades or office trades;

22           “(B) an exchange of—

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

25           “(ii) futures for cash commodities;

1 “(iii) futures for swaps; or

2 “(C) a futures commission merchant, act-  
3 ing as principal or agent, to enter into or con-  
4 firm the execution of a contract for the pur-  
5 chase or sale of a commodity for future delivery  
6 if the contract is reported, recorded, or cleared  
7 in accordance with the rules of the registered  
8 derivatives transaction execution facility or a  
9 derivatives clearing organization.

10 “(4) FINANCIAL INTEGRITY OF TRANS-  
11 ACTIONS.—The board of trade shall establish and  
12 enforce rules or terms and conditions providing for  
13 the financial integrity of transactions entered on or  
14 through the facilities of the board of trade (including  
15 the clearance and settlement of the transactions with  
16 a derivatives clearing organization), and rules or  
17 terms and conditions to ensure the financial integ-  
18 rity of any futures commission merchants and intro-  
19 ducing brokers and the protection of customer  
20 funds.

21 “(d) CORE PRINCIPLES FOR REGISTERED DERIVA-  
22 TIVES TRANSACTION EXECUTION FACILITIES.—

23 “(1) IN GENERAL.—To maintain the registra-  
24 tion of a board of trade as a derivatives transaction  
25 execution facility, a board of trade shall comply with

1 the core principles specified in this subsection. The  
2 board of trade shall have reasonable discretion in es-  
3 tablishing the manner in which the board of trade  
4 complies with the core principles.

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

10 “(3) MONITORING OF TRADING.—The board of  
11 trade shall monitor trading in the contracts of the  
12 facility to ensure orderly trading in the contract and  
13 to maintain an orderly market while providing any  
14 necessary trading information to the Commission to  
15 allow the Commission to discharge the responsibil-  
16 ities of the Commission under the Act.

17 “(4) DISCLOSURE OF GENERAL INFORMA-  
18 TION.—The board of trade shall disclose publicly  
19 and to the Commission information concerning—

20 “(A) contract terms and conditions;

21 “(B) trading conventions, mechanisms, and  
22 practices;

23 “(C) financial integrity protections; and

24 “(D) other information relevant to partici-  
25 pation in trading on the facility.

1           “(5) DAILY PUBLICATION OF TRADING INFOR-  
2           MATION.—The board of trade shall make public  
3           daily information on settlement prices, volume, open  
4           interest, and opening and closing ranges for con-  
5           tracts traded on the facility if the Commission deter-  
6           mines that the contracts perform a significant price  
7           discovery function for transactions in the cash mar-  
8           ket for the commodity underlying the contracts.

9           “(6) FITNESS STANDARDS.—The board of trade  
10          shall establish and enforce appropriate fitness stand-  
11          ards for directors, members of any disciplinary com-  
12          mittee, members, and any other persons with direct  
13          access to the facility, including any parties affiliated  
14          with any of the persons described in this paragraph.

15          “(7) CONFLICTS OF INTEREST.—The board of  
16          trade shall establish and enforce rules to minimize  
17          conflicts of interest in the decision making process  
18          of the derivatives transaction execution facility and  
19          establish a process for resolving such conflicts of in-  
20          terest.

21          “(8) RECORDKEEPING.—The board of trade  
22          shall maintain records of all activities related to the  
23          business of the derivatives transaction execution fa-  
24          cility in a form and manner acceptable to the Com-  
25          mission for a period of 5 years.

1           “(9) ANTITRUST CONSIDERATIONS.—Unless  
2           necessary or appropriate to achieve the purposes of  
3           this Act, the board of trade shall endeavor to  
4           avoid—

5                   “(A) adopting any rules or taking any ac-  
6                   tions that result in any unreasonable restraint  
7                   of trade; or

8                   “(B) imposing any material anticompeti-  
9                   tive burden on trading on the derivatives trans-  
10                  action execution facility.

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

14                  “(1) IN GENERAL.—With respect to trans-  
15                  actions other than transactions in security futures  
16                  products, a registered derivatives transaction execu-  
17                  tion facility may by rule allow a broker-dealer, de-  
18                  pository institution, or institution of the Farm Cred-  
19                  it System that meets the requirements of paragraph  
20                  (2) to—

21                          “(A) act as an intermediary in trans-  
22                          actions executed on the facility on behalf of cus-  
23                          tomers of the broker-dealer, depository institu-  
24                          tion, or institution of the Farm Credit System;  
25                          and

1           “(B) receive funds of customers to serve as  
2           margin or security for the transactions.

3           “(2) REQUIREMENTS.—The requirements re-  
4           ferred to in paragraph (1) are that—

5           “(A) the broker-dealer be in good standing  
6           with the Securities and Exchange Commission,  
7           or the depository institution or institution of  
8           the Farm Credit System be in good standing  
9           with Federal bank regulatory agencies (includ-  
10          ing the Farm Credit Administration), as appli-  
11          cable; and

12          “(B) if the broker-dealer, depository insti-  
13          tution, or institution of the Farm Credit Sys-  
14          tem carries or holds customer accounts or funds  
15          for transactions on the derivatives transaction  
16          execution facility for more than 1 business day,  
17          the broker-dealer, depository institution, or in-  
18          stitution of the Farm Credit System is reg-  
19          istered as a futures commission merchant and  
20          is a member of a registered futures association.

21          “(3) IMPLEMENTATION.—The Commission shall  
22          cooperate and coordinate with the Securities and Ex-  
23          change Commission, the Secretary of the Treasury,  
24          and Federal banking regulatory agencies (including  
25          the Farm Credit Administration) in adopting rules

1           and taking any other appropriate action to facilitate  
2           the implementation of this subsection.

3           “(f) SEGREGATION OF CUSTOMER FUNDS.—Not  
4 later than 180 days after the date of the enactment of  
5 the Commodity Futures Modernization Act of 2000, con-  
6 sistent with regulations adopted by the Commission, a reg-  
7 istered derivatives transaction execution facility may au-  
8 thorize a futures commission merchant to offer any cus-  
9 tomer of the futures commission merchant that is an eligi-  
10 ble contract participant the right to not segregate the cus-  
11 tomer funds of the customer that are carried with the fu-  
12 tures commission merchant for purposes of trading on or  
13 through the facilities of the registered derivatives trans-  
14 action execution facility.

15           “(g) ELECTION TO TRADE EXCLUDED AND EXEMPT  
16 COMMODITIES.—

17           “(1) IN GENERAL.—Notwithstanding subsection  
18 (b)(2) of this section, a board of trade that is or  
19 elects to become a registered derivatives transaction  
20 execution facility may trade on the facility any  
21 agreements, contracts, or transactions involving ex-  
22 cluded or exempt commodities other than securities,  
23 except contracts of sale for future delivery of exempt  
24 securities under section 3(a)(12) of the Securities  
25 Exchange Act of 1934 as in effect on the date of en-

1 actment of the Futures Trading Act of 1982, that  
2 are otherwise excluded or exempt from this Act  
3 under section 2(c), 2(d), 2(g), or 2(h) of this Act.

4 “(2) EXCLUSIVE JURISDICTION OF THE COM-  
5 MISSION.—The Commission shall have exclusive ju-  
6 risdiction over agreements, contracts, or transactions  
7 described in paragraph (1) to the extent that the  
8 agreements, contracts, or transactions are traded on  
9 a derivatives transaction execution facility.”.

10 **SEC. 113. DERIVATIVES CLEARING.**

11 (a) IN GENERAL.—Subtitle A of title IV of the Fed-  
12 eral Deposit Insurance Corporation Improvement Act of  
13 1991 is amended—

14 (1) by inserting before the section heading for  
15 section 401, the following new heading:

16 **“CHAPTER 1—BILATERAL AND CLEARING**  
17 **ORGANIZATION NETTING”;**

18 (2) in section 402, by striking “this subtitle”  
19 and inserting “this chapter”; and

20 (3) by inserting after section 407, the following  
21 new chapter:

1 **“CHAPTER 2—MULTILATERAL CLEARING**  
2 **ORGANIZATIONS**

3 **“SEC. 408. DEFINITIONS.**

4 For purposes of this chapter, the following definitions  
5 shall apply:

6 “(1) MULTILATERAL CLEARING ORGANIZA-  
7 TION.—The term ‘multilateral clearing organization’  
8 means a system utilized by more than 2 participants  
9 in which the bilateral credit exposures of partici-  
10 pants arising from the transactions cleared are effec-  
11 tively eliminated and replaced by a system of guar-  
12 antees, insurance, or mutualized risk of loss.

13 “(2) OVER-THE-COUNTER DERIVATIVE INSTRU-  
14 MENT.—The term ‘over-the-counter derivative in-  
15 strument’ includes—

16 “(A) any agreement, contract, or trans-  
17 action, including the terms and conditions in-  
18 corporated by reference in any such agreement,  
19 contract, or transaction, which is an interest  
20 rate swap, option, or forward agreement, in-  
21 cluding a rate floor, rate cap, rate collar, cross-  
22 currency rate swap, basis swap, and forward  
23 rate agreement; a same day-tomorrow, tomor-  
24 row-next, forward, or other foreign exchange or  
25 precious metals agreement; a currency swap,

1 option, or forward agreement; an equity index  
2 or equity swap, option, or forward agreement; a  
3 debt index or debt swap, option, or forward  
4 agreement; a credit spread or credit swap, op-  
5 tion, or forward agreement; a commodity index  
6 or commodity swap, option, or forward agree-  
7 ment; and a weather swap, weather derivative,  
8 or weather option;

9 “(B) any agreement, contract or trans-  
10 action similar to any other agreement, contract,  
11 or transaction referred to in this clause that is  
12 presently, or in the future becomes, regularly  
13 entered into by parties that participate in swap  
14 transactions (including terms and conditions in-  
15 corporated by reference in the agreement) and  
16 that is a forward, swap, or option on 1 or more  
17 occurrences of any event, rates, currencies,  
18 commodities, equity securities or other equity  
19 instruments, debt securities or other debt in-  
20 struments, economic or other indices or meas-  
21 ures of economic or other risk or value;

22 “(C) any agreement, contract, or trans-  
23 action described in subsection (e), (d), (f), or  
24 (h) of section 2 of the Commodity Exchange

1 Act or exempted under section 2(g) or 4(e) of  
2 such Act; and

3 “(D) any option to enter into any, or any  
4 combination of, agreements, contracts or trans-  
5 actions referred to in this subparagraph.

6 “(3) OTHER DEFINITIONS.—The terms ‘insured  
7 State nonmember bank’, ‘State member bank’, and  
8 ‘affiliate’ have the same meanings as in section 3 of  
9 the Federal Deposit Insurance Act.

10 **“SEC. 409. MULTILATERAL CLEARING ORGANIZATIONS.**

11 “(a) IN GENERAL.—Except with respect to clearing  
12 organizations described in subsection (b), no person may  
13 operate a multilateral clearing organization for over-the-  
14 counter derivative instruments, or otherwise engage in ac-  
15 tivities that constitute such a multilateral clearing organi-  
16 zation unless the person is a national bank, a State mem-  
17 ber bank, an insured State nonmember bank, an affiliate  
18 of a national bank, a State member bank, or an insured  
19 State nonmember bank, or a corporation chartered under  
20 section 25A of the Federal Reserve Act.

21 “(b) CLEARING ORGANIZATIONS.—Subsection (a)  
22 shall not apply to any clearing organization that—

23 “(1) is registered as a clearing agency under  
24 the Securities Exchange Act of 1934;

1           “(2) is registered as a derivatives clearing orga-  
2           nization under the Commodity Exchange Act; or

3           “(3) is supervised by a foreign financial regu-  
4           lator that the Comptroller of the Currency, the  
5           Board of Governors of the Federal Reserve System,  
6           the Federal Deposit Insurance Corporation, the Se-  
7           curities and Exchange Commission, or the Com-  
8           modity Futures Trading Commission, as applicable,  
9           has determined satisfies appropriate standards.”.

10          (b) ENFORCEMENT POWERS OF THE BOARD OF GOV-  
11          ERNORS OF THE FEDERAL RESERVE SYSTEM.—Section  
12          9 of the Federal Reserve Act (12 U.S.C. 221) is amended  
13          by adding at the end the following new paragraph:

14                 “(24) ENFORCEMENT AUTHORITY.—Section  
15                 3(u), subsections (j) and (k) of section 7, sub-  
16                 sections (b) through (n), (s), (u), and (v) of section  
17                 8, and section 19 of the Federal Deposit Insurance  
18                 Act shall apply to a State member bank which is not  
19                 an insured depository institution (as defined in sec-  
20                 tion 3 of the Federal Deposit Insurance Act) in the  
21                 same manner and to the same extent as such provi-  
22                 sions apply to State member insured banks, and any  
23                 reference in such sections to an insured depository  
24                 institution shall be deemed to include a reference to  
25                 any such noninsured State member bank.”.

1 (c) RESOLUTION OF CLEARING BANKS.—The Fed-  
2 eral Reserve Act (12 U.S.C. 221 et seq.) is amended by  
3 inserting after section 9A the following new section:

4 **“SEC. 9B. RESOLUTION OF CLEARING BANKS.**

5 “(a) CONSERVATORSHIP OR RECEIVERSHIP.—

6 “(1) APPOINTMENT.—The Board may appoint  
7 a conservator or receiver to take possession and con-  
8 trol of any uninsured State member bank which op-  
9 erates, or operates as, a multilateral clearing organi-  
10 zation pursuant to section 409 of the Federal De-  
11 posit Insurance Corporation Improvement Act of  
12 1991 to the same extent and in the same manner as  
13 the Comptroller of the Currency may appoint a con-  
14 servator or receiver for a national bank.

15 “(2) POWERS.—The conservator or receiver for  
16 an uninsured State member bank referred to in  
17 paragraph (1) shall exercise the same powers, func-  
18 tions, and duties, subject to the same limitations, as  
19 a conservator or receiver for a national bank.

20 “(b) BOARD AUTHORITY.—The Board shall have the  
21 same authority with respect to any conservator or receiver  
22 appointed under subsection (a), and the uninsured State  
23 member bank for which the conservator or receiver has  
24 been appointed, as the Comptroller of the Currency has  
25 with respect to a conservator or receiver for a national

1 bank and the national bank for which the conservator or  
2 receiver has been appointed.

3 “(c) BANKRUPTCY PROCEEDINGS.—The Board (in  
4 the case of an uninsured State member bank which oper-  
5 ates, or operates as, such a multilateral clearing organiza-  
6 tion) may direct a conservator or receiver appointed for  
7 the bank to file a petition pursuant to title 11, United  
8 States Code, in which case, title 11, United States Code,  
9 shall apply to the bank in lieu of otherwise applicable Fed-  
10 eral or State insolvency law.”.

11 (d) TECHNICAL AND CONFORMING AMENDMENTS TO  
12 TITLE 11, UNITED STATES CODE.—

13 (1) BANKRUPTCY CODE DEBTORS.—Section  
14 109(b)(2) of title 11, United States Code, is amend-  
15 ed by striking “; or” and inserting the following: “,  
16 except that an uninsured State member bank, or a  
17 corporation organized under section 25A of the Fed-  
18 eral Reserve Act, which operates, or operates as, a  
19 multilateral clearing organization pursuant to sec-  
20 tion 409 of the Federal Deposit Insurance Corpora-  
21 tion Improvement Act of 1991 may be a debtor if  
22 a petition is filed at the direction of the Board of  
23 Governors of the Federal Reserve System; or”.

1           (2) CHAPTER 7 DEBTORS.—Section 109(d) of  
2           title 11, United States Code, is amended to read as  
3           follows:

4           “(d) Only a railroad, a person that may be a debtor  
5           under chapter 7 of this title (except a stockbroker or a  
6           commodity broker), and an uninsured State member bank,  
7           or a corporation organized under section 25A of the Fed-  
8           eral Reserve Act, which operates, or operates as, a multi-  
9           lateral clearing organization pursuant to section 409 of  
10          the Federal Deposit Insurance Corporation Improvement  
11          Act of 1991 may be a debtor under chapter 11 of this  
12          title.”.

13           (3) DEFINITION OF FINANCIAL INSTITUTION.—  
14          Section 101(22) of title 11, United States Code, is  
15          amended to read as follows:

16           “(22) the term ‘financial institution’—

17           “(A) means a Federal reserve bank or an  
18           entity (domestic or foreign) that is a commer-  
19           cial or savings bank, industrial savings bank,  
20           savings and loan association, trust company, a  
21           bank or a corporation organized under section  
22           25A of the Federal Reserve Act and, when any  
23           such bank or entity is acting as agent or custo-  
24           dian for a customer in connection with a securi-

1           ties contract, as defined in section 741, the cus-  
2           tomer; and

3                   “(B) includes any person described in sub-  
4           paragraph (A) which operates, or operates as, a  
5           multilateral clearing organization pursuant to  
6           section 409 of the Federal Deposit Insurance  
7           Corporation Improvement Act of 1991;”.

8           (4) DEFINITION OF UNINSURED STATE MEM-  
9           BER BANK.—Section 101 of title 11, United States  
10          Code, is amended by inserting after paragraph (54)  
11          the following new paragraph—

12          “(54A) the term ‘uninsured State member bank’  
13          means a State member bank (as defined in section 3 of  
14          the Federal Deposit Insurance Act) the deposits of which  
15          are not insured by the Federal Deposit Insurance Cor-  
16          poration; and”.

17          (5) SUBCHAPTER V OF CHAPTER 7.—

18                   (A) IN GENERAL.—Section 103 of title 11,  
19          United States Code, is amended—

20                           (i) by redesignating subsections (e)  
21                           through (i) as subsections (f) through (j),  
22                           respectively; and

23                           (ii) by inserting after subsection (d)  
24                           the following new subsection:



1       eral Reserve Act, which operates, or operates as, a  
2       multilateral clearing organization pursuant to sec-  
3       tion 409 of the Federal Deposit Insurance Corpora-  
4       tion Improvement Act of 1991.

5       **“§ 782. Selection of trustee**

6       “(a) IN GENERAL.—

7               “(1) APPOINTMENT.—Notwithstanding any  
8       other provision of this title, the conservator or re-  
9       ceiver who files the petition shall be the trustee  
10      under this chapter, unless the Board designates an  
11      alternative trustee.

12              “(2) SUCCESSOR.—The Board may designate a  
13      successor trustee if required.

14      “(b) AUTHORITY OF TRUSTEE.—Whenever the  
15      Board appoints or designates a trustee, chapter 3 and sec-  
16      tions 704 and 705 of this title shall apply to the Board  
17      in the same way and to the same extent that they apply  
18      to a United States trustee.

19      **“§ 783. Additional powers of trustee**

20      “(a) DISTRIBUTION OF PROPERTY NOT OF THE ES-  
21      TATE.—The trustee under this subchapter has power to  
22      distribute property not of the estate, including distribu-  
23      tions to customers that are mandated by subchapters III  
24      and IV of this chapter.

1       “(b) DISPOSITION OF INSTITUTION.—The trustee  
2 under this subchapter may, after notice and a hearing—

3           “(1) sell the clearing bank to a depository insti-  
4 tution or consortium of depository institutions  
5 (which consortium may agree on the allocation of  
6 the clearing bank among the consortium);

7           “(2) merge the clearing bank with a depository  
8 institution;

9           “(3) transfer contracts to the same extent as  
10 could a receiver for a depository institution under  
11 paragraphs (9) and (10) of section 11(e) of the Fed-  
12 eral Deposit Insurance Act;

13           “(4) transfer assets or liabilities to a depository  
14 institution;

15           “(5) transfer assets and liabilities to a bridge  
16 bank as provided in paragraphs (1), (3)(A), (5), (6),  
17 of section 11(n) of the Federal Deposit Insurance  
18 Act, paragraphs (9) through (13) of such section,  
19 and subparagraphs (A) through (H) and subpara-  
20 graph (K) of paragraph (4) of such section 11(n),  
21 except that—

22           “(A) the bridge bank to which such assets  
23 or liabilities are transferred shall be treated as  
24 a clearing bank for the purpose of this sub-  
25 section; and

1           “(B) any references in any such provision  
2           of law to the Federal Deposit Insurance Cor-  
3           poration shall be construed to be references to  
4           the appointing agency and that references to  
5           deposit insurance shall be omitted.

6           “(c) CERTAIN TRANSFERS INCLUDED.—Any ref-  
7           erence in this section to transfers of liabilities includes a  
8           ratable transfer of liabilities within a priority class.

9           **“§ 784. Right to be heard**

10          “The Board or a Federal reserve bank (in the case  
11          of a clearing bank that is a member of that bank) may  
12          raise and may appear and be heard on any issue in a case  
13          under this subchapter.”.

14                 (6) DEFINITIONS OF CLEARING ORGANIZATION,  
15          CONTRACT MARKET, AND RELATED DEFINITIONS.—

16                 (A) Section 761(2) of title 11, United  
17                 States Code, is amended to read as follows:

18                 “(2) ‘clearing organization’ means a derivatives  
19                 clearing organization registered under the Act;”.

20                 (B) Section 761(7) of title 11, United  
21                 States Code, is amended to read as follows:

22                 “(7) ‘contract market’ means a registered enti-  
23                 ty;”.

24                 (C) Section 761(8) of title 11, United  
25                 States Code, is amended to read as follows:



1 shall exercise the same powers, functions, and  
2 duties, subject to the same limitations, as a  
3 conservator or receiver for a national bank.

4 “(B) EQUIVALENT AUTHORITY.—The  
5 Board shall have the same authority with re-  
6 spect to any conservator or receiver appointed  
7 for a corporation organized under the provisions  
8 of this section under this paragraph and any  
9 such corporation as the Comptroller of the Cur-  
10 rency has with respect to a conservator or re-  
11 ceiver of a national bank and the national bank  
12 for which a conservator or receiver has been ap-  
13 pointed.

14 “(C) TITLE 11 PETITIONS.—The Board  
15 may direct the conservator or receiver of a cor-  
16 poration organized under the provisions of this  
17 section to file a petition pursuant to title 11,  
18 United States Code, in which case, title 11,  
19 United States Code, shall apply to the corpora-  
20 tion in lieu of otherwise applicable Federal or  
21 State insolvency law.”.

22 (g) DERIVATIVES CLEARING ORGANIZATIONS.—The  
23 Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended  
24 by inserting after section 5a (as added by section 112)  
25 the following new section:

1 **“SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.**

2       “(a) REGISTRATION REQUIREMENT.—It shall be un-  
3 lawful for a derivatives clearing organization, unless reg-  
4 istered with the Commission, directly or indirectly to make  
5 use of the mails or any means or instrumentality of inter-  
6 state commerce to perform the functions of a derivatives  
7 clearing organization described in section 1a(9) with re-  
8 spect to a contract of sale of a commodity for future deliv-  
9 ery, or option on such a contract or on a commodity, in  
10 each case unless the contract or option—

11               “(1) is excluded from this Act by subsection  
12 (a)(1)(C)(i), (c), (d), (f), or (h) of section 2, or ex-  
13 empted under section 2(g) or 4(c); or

14               “(2) is a security futures product cleared by a  
15 clearing agency registered under the Securities Ex-  
16 change Act of 1934.

17       “(b) VOLUNTARY REGISTRATION.—A derivatives  
18 clearing organization that clears agreements, contracts, or  
19 transactions excluded from this Act by subsection (c), (d),  
20 (f), or (h) of section 2 of this Act, or exempted under sec-  
21 tion 2(g) or 4(c) or other over-the-counter derivative in-  
22 struments (as defined in the Federal Deposit Insurance  
23 Corporation Improvement Act of 1991) may register with  
24 the Commission as a derivatives clearing organization.

25       “(c) REGISTRATION OF DERIVATIVES CLEARING OR-  
26 GANIZATIONS.—

1           “(1) APPLICATION.—A person desiring to reg-  
2           ister as a derivatives clearing organization shall sub-  
3           mit to the Commission an application in such form  
4           and containing such information as the Commission  
5           may require for the purpose of making the deter-  
6           minations required for approval under paragraph  
7           (2).

8           “(2) CORE PRINCIPLES.—

9                   “(A) IN GENERAL.—To be registered and  
10           to maintain registration as a derivatives clear-  
11           ing organization, an applicant shall demonstrate  
12           to the Commission that the applicant complies  
13           with the core principles specified in this para-  
14           graph. The applicant shall have reasonable dis-  
15           cretion in establishing the manner in which it  
16           complies with the core principles.

17                   “(B) FINANCIAL RESOURCES.—The appli-  
18           cant shall demonstrate that the applicant has  
19           adequate financial, operational, and managerial  
20           resources to discharge the responsibilities of a  
21           derivatives clearing organization.

22                   “(C) PARTICIPANT AND PRODUCT ELIGI-  
23           BILITY.—The applicant shall establish—

24                           “(i) appropriate admission and con-  
25                           tinuing eligibility standards (including ap-

1           appropriate minimum financial requirements)  
2           for members of and participants in the or-  
3           ganization; and

4           “(ii) appropriate standards for deter-  
5           mining eligibility of agreements, contracts,  
6           or transactions submitted to the applicant.

7           “(D) RISK MANAGEMENT.—The applicant  
8           shall have the ability to manage the risks asso-  
9           ciated with discharging the responsibilities of a  
10          derivatives clearing organization through the  
11          use of appropriate tools and procedures.

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

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

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

19               “(iii) comply with the terms and con-  
20               ditions of any permitted netting or offset  
21               arrangements with other clearing organiza-  
22               tions.

23          “(F) TREATMENT OF FUNDS.—The appli-  
24          cant shall have standards and procedures de-

1 signed to protect and ensure the safety of mem-  
2 ber and participant funds.

3 “(G) DEFAULT RULES AND PROCE-  
4 DURES.—The applicant shall have rules and  
5 procedures designed to allow for efficient, fair,  
6 and safe management of events when members  
7 or participants become insolvent or otherwise  
8 default on their obligations to the derivatives  
9 clearing organization.

10 “(H) RULE ENFORCEMENT.—The appli-  
11 cant shall—

12 “(i) maintain adequate arrangements  
13 and resources for the effective monitoring  
14 and enforcement of compliance with rules  
15 of the applicant and for resolution of dis-  
16 putes; and

17 “(ii) have the authority and ability to  
18 discipline, limit, suspend, or terminate a  
19 member’s or participant’s activities for vio-  
20 lations of rules of the applicant.

21 “(I) SYSTEM SAFEGUARDS.—The applicant  
22 shall demonstrate that the applicant—

23 “(i) has established and will maintain  
24 a program of oversight and risk analysis to  
25 ensure that the automated systems of the

1 applicant function properly and have ade-  
2 quate capacity and security; and

3 “(ii) has established and will maintain  
4 emergency procedures and a plan for dis-  
5 aster recovery, and will periodically test  
6 backup facilities sufficient to ensure daily  
7 processing, clearing, and settlement of  
8 transactions.

9 “(J) REPORTING.—The applicant shall  
10 provide to the Commission all information nec-  
11 essary for the Commission to conduct the over-  
12 sight function of the applicant with respect to  
13 the activities of the derivatives clearing organi-  
14 zation.

15 “(K) RECORDKEEPING.—The applicant  
16 shall maintain records of all activities related to  
17 the business of the applicant as a derivatives  
18 clearing organization in a form and manner ac-  
19 ceptable to the Commission for a period of 5  
20 years.

21 “(L) PUBLIC INFORMATION.—The appli-  
22 cant shall make information concerning the  
23 rules and operating procedures governing the  
24 clearing and settlement systems (including de-

1 fault procedures) available to market partici-  
2 pants.

3 “(M) INFORMATION SHARING.—The appli-  
4 cant shall—

5 “(i) enter into and abide by the terms  
6 of all appropriate and applicable domestic  
7 and international information-sharing  
8 agreements; and

9 “(ii) use relevant information obtained  
10 from the agreements in carrying out the  
11 clearing organization’s risk management  
12 program.

13 “(N) ANTITRUST CONSIDERATIONS.—Un-  
14 less appropriate to achieve the purposes of this  
15 Act, the derivatives clearing organization shall  
16 avoid—

17 “(i) adopting any rule or taking any  
18 action that results in any unreasonable re-  
19 straint of trade; or

20 “(ii) imposing any material anti-  
21 competitive burden on trading on the con-  
22 tract market.

23 “(3) ORDERS CONCERNING COMPETITION.—A  
24 derivatives clearing organization may request the  
25 Commission to issue an order concerning whether a

1 rule or practice of the applicant is the least anti-  
2 competitive means of achieving the objectives, pur-  
3 poses, and policies of this Act.

4 “(d) EXISTING DERIVATIVES CLEARING ORGANIZA-  
5 TIONS.—A derivatives clearing organization shall be  
6 deemed to be registered under this section to the extent  
7 that the derivatives clearing organization clears agree-  
8 ments, contracts, or transactions for a board of trade that  
9 has been designated by the Commission as a contract mar-  
10 ket for such agreements, contracts, or transactions before  
11 the date of enactment of this section.

12 “(e) APPOINTMENT OF TRUSTEE.—

13 “(1) IN GENERAL.—If a proceeding under sec-  
14 tion 5e results in the suspension or revocation of the  
15 registration of a derivatives clearing organization, or  
16 if a derivatives clearing organization withdraws from  
17 registration, the Commission, on notice to the de-  
18 rivatives clearing organization, may apply to the ap-  
19 propriate United States district court where the de-  
20 rivatives clearing organization is located for the ap-  
21 pointment of a trustee.

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

1           “(A) the court may take exclusive jurisdic-  
2           tion over the derivatives clearing organization  
3           and the records and assets of the derivatives  
4           clearing organization, wherever located; and

5           “(B) if the court takes jurisdiction under  
6           subparagraph (A), the court shall appoint the  
7           Commission, or a person designated by the  
8           Commission, as trustee with power to take pos-  
9           session and continue to operate or terminate  
10          the operations of the derivatives clearing orga-  
11          nization in an orderly manner for the protection  
12          of participants, subject to such terms and con-  
13          ditions as the court may prescribe.

14          “(f) LINKING OF REGULATED CLEARING FACILI-  
15          TIES.—

16                 “(1) IN GENERAL.—The Commission shall fa-  
17                 cilitate the linking or coordination of derivatives  
18                 clearing organizations registered under this Act with  
19                 other regulated clearance facilities for the coordi-  
20                 nated settlement of cleared transactions.

21                 “(2) COORDINATION.—In carrying out para-  
22                 graph (1), the Commission shall coordinate with the  
23                 Federal banking agencies and the Securities and Ex-  
24                 change Commission.”.

1 **SEC. 114. COMMON PROVISIONS APPLICABLE TO REG-**  
2 **ISTERED ENTITIES.**

3 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
4 is amended by inserting after section 5b (as added by sec-  
5 tion 113(g)) the following:

6 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**  
7 **ISTERED ENTITIES.**

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

10 “(1) IN GENERAL.—Consistent with the pur-  
11 poses of this Act, the Commission may issue inter-  
12 pretations, or approve interpretations submitted to  
13 the Commission, of sections 5(d), 5a(d), and  
14 5b(d)(2) to describe what would constitute an ac-  
15 ceptable business practice under such sections.

16 “(2) EFFECT OF INTERPRETATION.—An inter-  
17 pretation issued under paragraph (1) shall not pro-  
18 vide the exclusive means for complying with such  
19 sections.

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

22 “(1) IN GENERAL.—A contract market or de-  
23 rivatives transaction execution facility may comply  
24 with any applicable core principle through delegation  
25 of any relevant function to a registered futures asso-  
26 ciation or another registered entity.

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

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

7           “(1) IN GENERAL.—Subject to paragraph (2), a  
8 registered entity may elect to list for trading or ac-  
9 cept for clearing any new contract or other instru-  
10 ment, or may elect to approve and implement any  
11 new rule or rule amendment, by providing to the  
12 Commission (and the Secretary of the Treasury, in  
13 the case of a contract of sale for future delivery of  
14 a government security (or option thereon) or a rule  
15 or rule amendment specifically related to such a con-  
16 tract) a written certification that the new contract  
17 or instrument or clearing of the new contract or in-  
18 strument, new rule, or rule amendment complies  
19 with this Act (including regulations under this Act).

20           “(2) PRIOR APPROVAL.—

21           “(A) IN GENERAL.—A registered entity  
22 may request that the Commission grant prior  
23 approval to any new contract or other instru-  
24 ment, new rule, or rule amendment.

1           “(B) PRIOR APPROVAL REQUIRED.—Not-  
2           withstanding any other provision of this section,  
3           a designated contract market shall submit to  
4           the Commission for prior approval each rule  
5           amendment that materially changes the terms  
6           and conditions, as determined by the Commis-  
7           sion, in any contract of sale for future delivery  
8           of a commodity specifically enumerated in sec-  
9           tion 1a(4) (or any option thereon) traded  
10          through its facilities if the rule amendment ap-  
11          plies to contracts and delivery months which  
12          have already been listed for trading and have  
13          open interest.

14          “(C) DEADLINE.—If prior approval is re-  
15          quested under subparagraph (A), the Commis-  
16          sion shall take final action on the request not  
17          later than 90 days after submission of the re-  
18          quest, unless the person submitting the request  
19          agrees to an extension of the time limitation es-  
20          tablished under this subparagraph.

21          “(3) APPROVAL.—The Commission shall ap-  
22          prove any such new contract or instrument, new  
23          rule, or rule amendment unless the Commission  
24          finds that the new contract or instrument, new rule,  
25          or rule amendment would violate this Act.

1 “(d) VIOLATION OF CORE PRINCIPLES.—

2 “(1) IN GENERAL.—If the Commission deter-  
3 mines, on the basis of substantial evidence, that a  
4 registered entity is violating any applicable core  
5 principle specified in section 5(d), 5a(d), or  
6 5b(d)(2), the Commission shall—

7 “(A) notify the registered entity in writing  
8 of the determination; and

9 “(B) afford the registered entity an oppor-  
10 tunity to make appropriate changes to bring the  
11 registered entity into compliance with the core  
12 principles.

13 “(2) FAILURE TO MAKE CHANGES.—If, not  
14 later than 30 days after receiving a notification  
15 under paragraph (1), a registered entity fails to  
16 make changes that, in the opinion of the Commis-  
17 sion, are necessary to comply with the core prin-  
18 ciples, the Commission may take further action in  
19 accordance with this Act.

20 “(e) RESERVATION OF EMERGENCY AUTHORITY.—  
21 Nothing in this section shall limit or in any way affect  
22 the emergency powers of the Commission provided in sec-  
23 tion 8a(9).”.

1 **SEC. 115. EXEMPT BOARDS OF TRADE.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
3 is amended by inserting after section 5c (as added by sec-  
4 tion 114) the following:

5 **“SEC. 5d. EXEMPT BOARDS OF TRADE.**

6 “(a) ELECTION TO REGISTER WITH THE COMMIS-  
7 SION.—A board of trade that meets the requirements of  
8 subsection (b) of this section may operate as an exempt  
9 board of trade on receipt from the board of trade of a  
10 notice, provided in such manner as the Commission may  
11 by rule or regulation prescribe, that the board of trade  
12 elects to operate as an exempt board of trade. Except as  
13 otherwise provided in this section, no provision of this Act  
14 (other than subparagraphs (C) and (D) of section 2(a)(1)  
15 and section 12(e)(2)(B)) shall apply with respect to a con-  
16 tract of sale (or option on such a contract) of a commodity  
17 for future delivery traded on or through the facilities of  
18 an exempt board of trade.

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

24 “(1) for which the underlying commodity has—

25 “(A) a nearly inexhaustible deliverable sup-  
26 ply;

1           “(B) a deliverable supply that is suffi-  
2           ciently large, and a cash market sufficiently liq-  
3           uid, to render any contract traded on the com-  
4           modity highly unlikely to be susceptible to the  
5           threat of manipulation; or

6           “(C) no cash market;

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

10          “(3) that are not contracts of sale (or options  
11          on such a contract) for future delivery of any secu-  
12          rity, including any group or index of securities or  
13          any interest in, or based on the value of, any secu-  
14          rity or any group or index of securities.

15          “(c) **ANTIMANIPULATION REQUIREMENTS.**—A party  
16          to a contract for sale of a commodity for future delivery  
17          (or option on such a contract) that is traded on an exempt  
18          board of trade shall be subject to sections 4b, 4c(b), 4o,  
19          6(c), and 9(a)(2), and the Commission shall enforce those  
20          provisions with respect to any such trading.

21          “(d) **PRICE DISCOVERY.**—If the Commission finds  
22          that an exempt board of trade is a significant source of  
23          price discovery for transactions in the cash market for the  
24          commodity underlying any contract, agreement, or trans-  
25          action traded on or through the facilities of the board of

1 trade, the board of trade shall disseminate publicly on a  
2 daily basis trading volume, opening and closing price  
3 ranges, open interest, and other trading data as appro-  
4 priate to the market.

5       “(e) JURISDICTION.—The Commission shall have ex-  
6 clusive jurisdiction over any account, agreement, or trans-  
7 action involving a contract of sale of a commodity for fu-  
8 ture delivery, or option on such a contract or on a com-  
9 modity, to the extent that the account, agreement, or  
10 transaction is traded on an exempt board of trade.

11       “(f) SUBSIDIARIES.—A board of trade that is des-  
12 igned as a contract market or registered as a derivatives  
13 transaction execution facility may operate an exempt  
14 board of trade by establishing a separate subsidiary or  
15 other legal entity and otherwise satisfying the require-  
16 ments of this section.

17       “(g) An exempt board of trade that meets the re-  
18 quirements of subsection (b) shall not represent to any  
19 person that the board of trade is registered with, or des-  
20 igned, recognized, licensed, or approved by the Commis-  
21 sion.”.

1 **SEC. 116. SUSPENSION OR REVOCATION OF DESIGNATION**  
2 **AS CONTRACT MARKET.**

3 Section 5e of the Commodity Exchange Act (7 U.S.C.  
4 7b) (as redesignated by section 111(1)) is amended to  
5 read as follows:

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

8 “The failure of a registered entity to comply with any  
9 provision of this Act, or any regulation or order of the  
10 Commission under this Act, shall be cause for the suspen-  
11 sion of the registered entity for a period not to exceed 180  
12 days, or revocation of designation as a registered entity  
13 in accordance with the procedures and subject to the judi-  
14 cial review provided in section 6(b).”.

15 **SEC. 117. AUTHORIZATION OF APPROPRIATIONS.**

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

19 **SEC. 118. PREEMPTION.**

20 Section 12 of the Commodity Exchange Act (7 U.S.C.  
21 16(e)) is amended by striking subsection (e) and inserting  
22 the following:

23 “(e) **RELATION TO OTHER LAW, DEPARTMENTS, OR**  
24 **AGENCIES.—**

25 “(1) Nothing in this Act shall supersede or  
26 preempt—

1           “(A) criminal prosecution under any Fed-  
2 eral criminal statute;

3           “(B) the application of any Federal or  
4 State statute (except as provided in paragraph  
5 (2)), including any rule or regulation there-  
6 under, to any transaction in or involving any  
7 commodity, product, right, service, or interest—

8                   “(i) that is not conducted on or sub-  
9 ject to the rules of a registered entity or  
10 exempt board of trade;

11                   “(ii) (except as otherwise specified by  
12 the Commission by rule or regulation) that  
13 is not conducted on or subject to the rules  
14 of any board of trade, exchange, or market  
15 located outside the United States, its terri-  
16 tories or possessions; or

17                   “(iii) that is not subject to regulation  
18 by the Commission under section 4c or 19;  
19 or

20           “(C) the application of any Federal or  
21 State statute, including any rule or regulation  
22 thereunder, to any person required to be reg-  
23 istered or designated under this Act who shall  
24 fail or refuse to obtain such registration or des-  
25 ignation.

1           “(2) This Act shall supersede and preempt the  
2 application of any State or local law that prohibits  
3 or regulates gaming or the operation of bucket shops  
4 (other than antifraud provisions of general applica-  
5 bility) in the case of—

6                   “(A) an electronic trading facility under  
7 section 2(e);

8                   “(B) an agreement, contract, or trans-  
9 action that is excluded or exempt under section  
10 2(e), 2(d), 2(f), 2(g), or 2(h) or is covered by  
11 the terms of an exemption granted by the Com-  
12 mission under section 4(c) (regardless of wheth-  
13 er any such agreement, contract, or transaction  
14 is otherwise subject to this Act).”.

15 **SEC. 119. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**  
16 **STITUTIONAL CUSTOMERS.**

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

20           “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR  
21 INSTITUTIONAL CUSTOMERS.—Nothing in this section  
22 prohibits a registered futures commission merchant from  
23 requiring a customer that is an eligible contract partici-  
24 pant, as a condition to the commission merchant’s con-  
25 ducting a transaction for the customer, to enter into an

1 agreement waiving the right to file a claim under this sec-  
2 tion.”.

3 **SEC. 120. CONSIDERATION OF COSTS AND BENEFITS AND**  
4 **ANTITRUST LAWS.**

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

8 **“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND**  
9 **ANTITRUST LAWS.**

10 “(a) COSTS AND BENEFITS.—

11 “(1) IN GENERAL.—Before promulgating a reg-  
12 ulation under this Act or issuing an order (except as  
13 provided in paragraph (3)), the Commission shall  
14 consider the costs and benefits of the action of the  
15 Commission.

16 “(2) CONSIDERATIONS.—The costs and benefits  
17 of the proposed Commission action shall be evalu-  
18 ated in light of—

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

21 “(B) considerations of the efficiency, com-  
22 petitiveness, and financial integrity of futures  
23 markets;

24 “(C) considerations of price discovery;

1           “(D) considerations of sound risk manage-  
2           ment practices; and

3           “(E) other public interest considerations.

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

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

9           “(B) An emergency action.

10           “(C) A finding of fact regarding compli-  
11           ance with a requirement of the Commission.

12           “(b) ANTITRUST LAWS.—The Commission”.

13 **SEC. 121. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**  
14 **COUNTERPARTIES.**

15           Section 22(a) of the Commodity Exchange Act (7  
16 U.S.C. 25(a)) is amended by adding at the end the fol-  
17           lowing:

18           “(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE  
19           COUNTERPARTIES.—No agreement, contract, or trans-  
20           action between eligible contract participants or persons  
21           reasonably believed to be eligible contract participants  
22           shall be void, voidable, or unenforceable, and no such  
23           party shall be entitled to rescind, or recover any payment  
24           made with respect to, such an agreement, contract, or  
25           transaction, under this section or any other provision of

1 Federal or State law, based solely on the failure of the  
2 agreement, contract, or transaction to comply with the  
3 terms or conditions of an exemption or exclusion from any  
4 provision of this Act or regulations of the Commission.”.

5 **SEC. 122. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**  
6 **CILITATE BONA FIDE HEDGING BY AGRICUL-**  
7 **TURAL PRODUCERS.**

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

11 **“SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**  
12 **CILITATE BONA FIDE HEDGING BY AGRICUL-**  
13 **TURAL PRODUCERS.**

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

16 “(1) prescribe procedures under which each  
17 contract market is to provide for orderly delivery, in-  
18 cluding temporary storage costs, of any agricultural  
19 commodity enumerated in section 1a(4) which is the  
20 subject of a contract for purchase or sale for future  
21 delivery;

22 “(2) increase the ease with which domestic agri-  
23 cultural producers may participate in contract mar-  
24 kets, including by addressing cost and margin re-

1        requirements, so as to better enable the producers to  
2        hedge price risk associated with their production;

3            “(3) provide flexibility in the minimum quan-  
4        tities of such agricultural commodities that may be  
5        the subject of a contract for purchase or sale for fu-  
6        ture delivery that is traded on a contract market, to  
7        better allow domestic agricultural producers to hedge  
8        such price risk; and

9            “(4) encourage contract markets to provide in-  
10       information and otherwise facilitate the participation  
11       of domestic agricultural producers in contract mar-  
12       kets.

13        “(b) REPORT.—Within 1 year after the date of enact-  
14       ment of this section, the Commission shall submit to the  
15       Committee on Agriculture of the House of Representatives  
16       and the Committee on Agriculture, Nutrition, and For-  
17       estry of the Senate a report on the steps it has taken to  
18       implement this section and on the activities of contract  
19       markets pursuant to this section.”.

20        **SEC. 123. RULE OF CONSTRUCTION.**

21        Except as expressly provided in this Act or an amend-  
22       ment made by this Act, nothing in this Act or an amend-  
23       ment made by the Act supersedes, affects, or otherwise  
24       limits or expands the scope and applicability of laws gov-  
25       erning the Securities and Exchange Commission.

1 **SEC. 124. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) COMMODITY EXCHANGE ACT.—

3 (1) Section 1a of the Commodity Exchange Act  
4 (7 U.S.C. 1a), as amended by section 101, is  
5 amended—

6 (A) in paragraphs (5), (6), (16), (17),  
7 (20), and (23), by inserting “or derivatives  
8 transaction execution facility” after “contract  
9 market” each place it appears; and

10 (B) in paragraph (24)—

11 (i) in the paragraph heading, by strik-  
12 ing “CONTRACT MARKET” and inserting  
13 “REGISTERED ENTITY”;

14 (ii) by striking “contract market”  
15 each place it appears and inserting “reg-  
16 istered entity”; and

17 (iii) by adding at the end the fol-  
18 lowing:

19 “A participant in an alternative trading system that  
20 is designated as a contract market pursuant to sec-  
21 tion 5f is deemed a member of the contract market  
22 for purposes of transactions in security futures prod-  
23 ucts through the contract market.”.

24 (2) Section 2 of the Commodity Exchange Act  
25 (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

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

3 **“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF**  
4 **PRINCIPAL FOR ACT OF AGENT; COMMODITY**  
5 **FUTURES TRADING COMMISSION; TRANS-**  
6 **ACTION IN INTERSTATE COMMERCE.**

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

9 “(1) JURISDICTION OF COMMISSION.—

10 “(A) IN GENERAL.—The”; and

11 (B) in subsection (a)(1)—

12 (i) in subparagraph (A) (as amended  
13 by subparagraph (A) of this paragraph)—

14 (II) by striking “subparagraph  
15 (B) of this subparagraph” and insert-  
16 ing “subparagraphs (C) and (D) of  
17 this paragraph and subsections (e)  
18 through (i) of this section”;

19 (III) by striking “contract mar-  
20 ket designated pursuant to section 5  
21 of this Act” and inserting “contract  
22 market designated or derivatives  
23 transaction execution facility reg-  
24 istered pursuant to section 5 or 5a”;

25 (IV) by striking clause (ii); and

1 (V) in clause (iii), by striking  
2 “(iii) The” and inserting the fol-  
3 lowing:

4 “(B) LIABILITY OF PRINCIPAL FOR ACT OF  
5 AGENT.—The”; and

6 (ii) in subparagraph (B)—

7 (I) by striking “(B)” and insert-  
8 ing “(C)”;

9 (II) in clause (v)—

10 (aa) by striking “section 3  
11 of the Securities Act of 1933”;  
12 and

13 (bb) by inserting “or sub-  
14 paragraph (D)” after “subpara-  
15 graph”; and

16 (III) by moving clauses (i)  
17 through (v) 4 ems to the right;

18 (C) in subsection (a)(7), by striking “con-  
19 tract market” and inserting “registered entity”;

20 (D) in subsection (a)(8)(B)(ii)—

21 (i) in the first sentence, by striking  
22 “designation as a contract market” and in-  
23 serting “designation or registration as a  
24 contract market or derivatives transaction  
25 execution facility”;

1 (ii) in the second sentence, by striking  
2 “designate a board of trade as a contract  
3 market” and inserting “designate or reg-  
4 ister a board of trade as a contract market  
5 or derivatives transaction execution facil-  
6 ity”; and

7 (iii) in the fourth sentence, by striking  
8 “designating, or refusing, suspending, or  
9 revoking the designation of, a board of  
10 trade as a contract market involving trans-  
11 actions for future delivery referred to in  
12 this clause or in considering possible emer-  
13 gency action under section 8a(9) of this  
14 Act” and inserting “designating, reg-  
15 istering, or refusing, suspending, or revok-  
16 ing the designation or registration of, a  
17 board of trade as a contract market or de-  
18 rivatives transaction execution facility in-  
19 volving transactions for future delivery re-  
20 ferred to in this clause or in considering  
21 any possible action under this Act (includ-  
22 ing without limitation emergency action  
23 under section 8a(9))”, and by striking  
24 “designation, suspension, revocation, or  
25 emergency action” and inserting “designa-

1           tion, registration, suspension, revocation,  
2           or action”; and

3           (E) in subsection (a), by moving para-  
4           graphs (2) through (9) 2 ems to the right.

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

7           (A) in subsection (a)—

8                 (i) in paragraph (1), by striking “des-  
9                 ignated by the Commission as a ‘contract  
10                market’ for” and inserting “designated or  
11                registered by the Commission as a contract  
12                market or derivatives transaction execution  
13                facility for”;

14               (ii) in paragraph (2), by striking  
15                “member of such”; and

16               (iii) in paragraph (3), by inserting “or  
17                derivatives transaction execution facility”  
18                after “contract market”; and

19           (B) in subsection (c)—

20               (i) in paragraph (1)—

21                   (I) by striking “designated as a  
22                   contract market” and inserting “des-  
23                   ignated or registered as a contract  
24                   market or derivatives transaction exe-  
25                   cution facility”; and

1                   (II) by striking “section  
2                   2(a)(1)(B)” and inserting “subpara-  
3                   graphs (C)(ii) and (D) of section  
4                   2(a)(1), except that the Commission  
5                   and the Securities and Exchange  
6                   Commission may by rule, regulation,  
7                   or order jointly exclude any agree-  
8                   ment, contract, or transaction from  
9                   section 2(a)(1)(D)”; and  
10                  (ii) in paragraph (2)(B)(ii), by insert-  
11                  ing “or derivatives transaction execution  
12                  facility” after “contract market”.

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

15                  (A) in subsection (a)—

16                          (i) in the first sentence, by inserting  
17                          “or derivatives transaction execution facili-  
18                          ties” after “contract markets”; and

19                          (ii) in the second sentence, by insert-  
20                          ing “or derivatives transaction execution  
21                          facility” after “contract market”;

22                  (B) in subsection (b)—

23                          (i) in paragraph (1), by inserting “, or  
24                          derivatives transaction execution facility or  
25                          facilities,” after “markets”; and

1 (ii) in paragraph (2), by inserting “or  
2 derivatives transaction execution facility”  
3 after “contract market”; and

4 (C) in subsection (e)—

5 (i) by striking “contract market or”  
6 each place it appears and inserting “con-  
7 tract market, derivatives transaction execu-  
8 tion facility, or”;

9 (ii) by striking “licensed or des-  
10 ignated” each place it appears and insert-  
11 ing “licensed, designated, or registered”;  
12 and

13 (iii) by striking “contract market, or”  
14 and inserting “contract market or deriva-  
15 tives transaction execution facility, or”.

16 (5) Section 4b(a) of the Commodity Exchange  
17 Act (7 U.S.C. 6b(a)) is amended by striking “con-  
18 tract market” each place it appears and inserting  
19 “registered entity”.

20 (6) Sections 4c(g), 4d, 4e, and 4f of the Com-  
21modity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f)  
22 are amended by inserting “or derivatives transaction  
23 execution facility” after “contract market” each  
24 place it appears.

1           (7) Section 4g of the Commodity Exchange Act  
2           (7 U.S.C. 6g) is amended—

3                   (A) in subsection (b), by striking “clear-  
4                   inghouse and contract market” and inserting  
5                   “registered entity”; and

6                   (B) in subsection (f), by striking “clearing-  
7                   houses, contract markets, and exchanges” and  
8                   inserting “registered entities”.

9           (8) Section 4h of the Commodity Exchange Act  
10           (7 U.S.C. 6h) is amended by striking “contract mar-  
11           ket” each place it appears and inserting “registered  
12           entity”.

13           (9) Section 4i of the Commodity Exchange Act  
14           (7 U.S.C. 6i) is amended in the first sentence by in-  
15           serting “or derivatives transaction execution facility”  
16           after “contract market”.

17           (10) Section 4l of the Commodity Exchange Act  
18           (7 U.S.C. 6l) is amended by inserting “or derivatives  
19           transaction execution facilities” after “contract mar-  
20           kets” each place it appears.

21           (11) Section 4p of the Commodity Exchange  
22           Act (7 U.S.C. 6p) is amended—

23                   (A) in the third sentence of subsection (a),  
24                   by striking “Act or contract markets” and in-

1           serting “Act, contract markets, or derivatives  
2           transaction execution facilities”; and

3                   (B) in subsection (b), by inserting “deriva-  
4           tives transaction execution facility,” after “con-  
5           tract market,”.

6           (12) Section 6 of the Commodity Exchange Act  
7           (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

8                   (A) in subsection (a)—

9                           (i) in the first sentence—

10                                   (I) by striking “board of trade  
11                                   desiring to be designated a ‘contract  
12                                   market’ shall make application to the  
13                                   Commission for such designation” and  
14                                   inserting “person desiring to be des-  
15                                   ignated or registered as a contract  
16                                   market or derivatives transaction exe-  
17                                   cution facility shall make application  
18                                   to the Commission for the designation  
19                                   or registration”;

20                                   (II) by striking “above condi-  
21                                   tions” and inserting “conditions set  
22                                   forth in this Act”; and

23                                   (III) by striking “above require-  
24                                   ments” and inserting “the require-  
25                                   ments of this Act”;

1 (ii) in the second sentence, by striking  
2 “designation as a contract market within  
3 one year” and inserting “designation or  
4 registration as a contract market or de-  
5 rivatives transaction execution facility  
6 within 180 days”;

7 (iii) in the third sentence—

8 (I) by striking “board of trade”  
9 and inserting “person”; and

10 (II) by striking “one-year period”  
11 and inserting “180-day period”; and

12 (iv) in the last sentence, by striking  
13 “designate as a ‘contract market’ any  
14 board of trade that has made application  
15 therefor, such board of trade” and insert-  
16 ing “designate or register as a contract  
17 market or derivatives transaction execution  
18 facility any person that has made applica-  
19 tion therefor, the person”;

20 (B) in subsection (b)—

21 (i) in the first sentence—

22 (I) by striking “designation of  
23 any board of trade as a ‘contract mar-  
24 ket’ upon” and inserting “designation  
25 or registration of any contract market

1 or derivatives transaction execution  
2 facility on”;

3 (II) by striking “board of trade”  
4 each place it appears and inserting  
5 “contract market or derivatives trans-  
6 action execution facility”; and

7 (III) by striking “designation as  
8 set forth in section 5 of this Act” and  
9 inserting “designation or registration  
10 as set forth in sections 5 through 5b  
11 or section 5f”;

12 (ii) in the second sentence—

13 (I) by striking “board of trade”  
14 the first place it appears and inserting  
15 “contract market or derivatives trans-  
16 action execution facility”; and

17 (II) by striking “board of trade”  
18 the second and third places it appears  
19 and inserting “person”; and

20 (iii) in the last sentence, by striking  
21 “board of trade” each place it appears and  
22 inserting “person”;

23 (C) in subsection (c)—

1 (i) by striking “contract market” each  
2 place it appears and inserting “registered  
3 entity”;

4 (ii) by striking “contract markets”  
5 each place it appears and inserting “reg-  
6 istered entities”; and

7 (iii) by striking “trading privileges”  
8 each place it appears and inserting “privi-  
9 leges”;

10 (D) in subsection (d), by striking “contract  
11 market” each place it appears and inserting  
12 “registered entity”; and

13 (E) in subsection (e), by striking “trading  
14 on all contract markets” each place it appears  
15 and inserting “the privileges of all registered  
16 entities”.

17 (13) Section 6a of the Commodity Exchange  
18 Act (7 U.S.C. 10a) is amended—

19 (A) in the first sentence of subsection (a),  
20 by striking “designated as a ‘contract market’  
21 shall” and inserting “designated or registered  
22 as a contract market or a derivatives trans-  
23 action execution facility”; and

24 (B) in subsection (b), by striking “des-  
25 igned as a contract market” and inserting

1 “designated or registered as a contract market  
2 or a derivatives transaction execution facility”.

3 (14) Section 6b of the Commodity Exchange  
4 Act (7 U.S.C. 13a) is amended—

5 (A) by striking “contract market” each  
6 place it appears and inserting “registered enti-  
7 ty”;

8 (B) in the first sentence, by striking “des-  
9 ignation as set forth in section 5 of this Act”  
10 and inserting “designation or registration as set  
11 forth in sections 5 through 5c”; and

12 (C) in the last sentence, by striking “the  
13 contract market’s ability” and inserting “the  
14 ability of the registered entity”.

15 (15) Section 6c(a) of the Commodity Exchange  
16 Act (7 U.S.C. 13a–1(a)) by striking “contract mar-  
17 ket” and inserting “registered entity”.

18 (16) Section 6d(1) of the Commodity Exchange  
19 Act (7 U.S.C. 13a–2(1)) is amended by inserting  
20 “derivatives transaction execution facility,” after  
21 “contract market,”.

22 (17) Section 7 of the Commodity Exchange Act  
23 (7 U.S.C. 11) is amended—

24 (A) in the first sentence—

1 (i) by striking “board of trade” and  
2 inserting “person”;

3 (ii) by inserting “or registered” after  
4 “designated”;

5 (iii) by inserting “or registration”  
6 after “designation” each place it appears;  
7 and

8 (iv) by striking “contract market”  
9 each place it appears and inserting “reg-  
10 istered entity”;

11 (B) in the second sentence—

12 (i) by striking “designation of such  
13 board of trade as a contract market” and  
14 inserting “designation or registration of  
15 the registered entity”; and

16 (ii) by striking “contract markets”  
17 and inserting “registered entities”; and

18 (C) in the last sentence—

19 (i) by striking “board of trade” and  
20 inserting “person”; and

21 (ii) by striking “designated again a  
22 contract market” and inserting “des-  
23 igned or registered again a registered en-  
24 tity”.

1           (18) Section 8(c) of the Commodity Exchange  
2 Act (7 U.S.C. 12(c)) is amended in the first sen-  
3 tence by striking “board of trade” and inserting  
4 “registered entity”.

5           (19) Section 8a of the Commodity Exchange  
6 Act (7 U.S.C. 12a) is amended—

7           (A) by striking “contract market” each  
8 place it appears and inserting “registered enti-  
9 ty”; and

10           (B) in paragraph (2)(F), by striking “trad-  
11 ing privileges” and inserting “privileges”.

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

16           (21) Section 8e of the Commodity Exchange  
17 Act (7 U.S.C. 12e) is repealed.

18           (22) Section 9 of the Commodity Exchange Act  
19 (7 U.S.C. 13) is amended by striking “contract mar-  
20 ket” each place it appears and inserting “registered  
21 entity”.

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

1 (A) in subsection (a)(1)(B), by striking  
2 “contract market” and inserting “registered en-  
3 tity”; and

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

6 (24) Section 17 of the Commodity Exchange  
7 Act (7 U.S.C. 21) is amended by striking “contract  
8 market” each place it appears and inserting “reg-  
9 istered entity”.

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

12 (A) in subsection (a)—

13 (i) in paragraph (1)—

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

18 (II) in subparagraph (C)(i), by  
19 striking “contract market” and insert-  
20 ing “registered entity”;

21 (ii) in paragraph (2), by striking “sec-  
22 tions 5a(11),” and inserting “sections  
23 5(d)(13), 5b(b)(1)(E),”; and

1 (iii) in paragraph (3), by striking  
2 “contract market” and inserting “reg-  
3 istered entity”; and

4 (B) in subsection (b)—

5 (i) in paragraph (1)—

6 (I) by striking “contract market  
7 or clearing organization of a contract  
8 market” and inserting “registered en-  
9 tity”;

10 (II) by striking “section 5a(8)  
11 and section 5a(9) of this Act” and in-  
12 serting “sections 5 through 5c”;

13 (III) by striking “contract mar-  
14 ket, clearing organization of a con-  
15 tract market, or licensed board of  
16 trade” and inserting “registered enti-  
17 ty”; and

18 (IV) by striking “contract market  
19 or licensed board of trade” and insert-  
20 ing “registered entity”;

21 (ii) in paragraph (3)—

22 (I) by striking “a contract mar-  
23 ket, clearing organization, licensed  
24 board of trade,” and inserting “reg-  
25 istered entity”; and

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

4 (iii) in paragraph (4), by striking  
5 “contract market, licensed board of trade,  
6 clearing organization,” and inserting “reg-  
7 istered entity”; and

8 (iv) in paragraph (5), by striking  
9 “contract market, licensed board of trade,  
10 clearing organization,” and inserting “reg-  
11 istered entity”.

12 (b) FEDERAL DEPOSIT INSURANCE CORPORATION  
13 IMPROVEMENT ACT OF 1991.—Section 402(2) of the Fed-  
14 eral Deposit Insurance Corporation Improvement Act of  
15 1991 (12 U.S.C. 4402(2)) is amended by striking sub-  
16 paragraph (B) and inserting the following:

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

20 (c) TAX TREATMENT OF SECURITIES FUTURES CON-  
21 TRACTS.—

22 (1) IN GENERAL.—Subpart IV of subchapter P  
23 of chapter 1 of the Internal Revenue Code of 1986  
24 (relating to special rules for determining gains and

1 losses) is amended by inserting after section 1234A  
2 the following new section:

3 **“SEC. 1234B. GAINS OR LOSSES FROM SECURITIES FU-**  
4 **TURES CONTRACTS.**

5 “(a) TREATMENT OF GAIN OR LOSS.—

6 “(1) IN GENERAL.—Gain or loss attributable to  
7 the sale or exchange of a securities futures contract  
8 shall be considered gain or loss from the sale or ex-  
9 change of property which has the same character as  
10 the property to which the contract relates has in the  
11 hands of the taxpayer (or would have in the hands  
12 of the taxpayer if acquired by the taxpayer).

13 “(2) NONAPPLICATION OF SUBSECTION.—This  
14 subsection shall not apply to—

15 “(A) a contract which constitutes property  
16 described in paragraph (1) or (7) of section  
17 1221(a), and

18 “(B) any income derived in connection  
19 with a contract which, without regard to this  
20 subsection, is treated as other than gain from  
21 the sale or exchange of a capital asset.

22 “(b) SHORT-TERM GAINS AND LOSSES.—Except as  
23 provided in the regulations under section 1092(b) or this  
24 section, if gain or loss on the sale or exchange of a securi-  
25 ties futures contract to sell property is considered as gain

1 or loss from the sale or exchange of a capital asset, such  
2 gain or loss shall be treated as short-term capital gain or  
3 loss.

4 “(c) SECURITIES FUTURES CONTRACT.—For pur-  
5 poses of this section, the term ‘securities futures contract’  
6 means any security future (as defined in section  
7 3(a)(55)(A) of the Securities Exchange Act of 1934, as  
8 in effect on the date of the enactment of this section).

9 “(d) CONTRACTS NOT TREATED AS COMMODITY FU-  
10 TURES CONTRACTS.—For purposes of this title, a securi-  
11 ties futures contract shall not be treated as a commodity  
12 futures contract.

13 “(e) REGULATIONS.—The Secretary shall prescribe  
14 such regulations as may be appropriate to provide for the  
15 proper treatment of securities futures contracts under this  
16 title.”

17 (2) TERMINATIONS, ETC.—Section 1234A of  
18 such Code is amended—

19 (A) by inserting “(other than a securities  
20 futures contract, as defined in section 1234B)”  
21 after “right or obligation” in paragraph (1),

22 (B) by striking “or” at the end of para-  
23 graph (1),

24 (C) by adding “or” at the end of para-  
25 graph (2), and

1 (D) by inserting after paragraph (2) the  
2 following new paragraph:

3 “(3) a securities futures contract (as so de-  
4 fined) which is a capital asset in the hands of the  
5 taxpayer,”.

6 (3) NONRECOGNITION UNDER SECTION 1032.—  
7 The second sentence of section 1032(a) of such Code  
8 is amended by inserting “, or with respect to a secu-  
9 rities futures contract (as defined in section  
10 1234B),” after “an option”.

11 (4) TREATMENT UNDER WASH SALES RULES.—  
12 Section 1091 of such Code is amended by adding at  
13 the end the following new subsection:

14 “(f) CASH SETTLEMENT.—This section shall not fail  
15 to apply to a contract or option to acquire or sell stock  
16 or securities solely by reason of the fact that the contract  
17 or option settles in (or could be settled in) cash or property  
18 other than such stock or securities.”

19 (5) TREATMENT UNDER STRADDLE RULES.—  
20 Clause (i) of section 1092(d)(3)(B) of such Code is  
21 amended by striking “or” at the end of subclause  
22 (I), by redesignating subclause (II) as subclause  
23 (III), and by inserting after subclause (I) the fol-  
24 lowing new subclause:

1                   “(II) a securities futures contract  
2                   (as defined in section 1234B) with re-  
3                   spect to such stock or substantially  
4                   identical stock or securities, or”.

5                   (6) TREATMENT UNDER SHORT SALES  
6                   RULES.—Paragraph (2) of section 1233(e) of such  
7                   Code is amended by striking “and” at the end of  
8                   subparagraph (B), by striking the period at the end  
9                   of subparagraph (C) and inserting “; and”, and by  
10                  adding at the end the following:

11                  “(D) a securities futures contract (as de-  
12                  fined in section 1234B) to acquire substantially  
13                  identical property shall be treated as substan-  
14                  tially identical property.”

15                  (7) TREATMENT UNDER SECTION 1256.—

16                  (A)(i) Subsection (b) of section 1256 of  
17                  such Code is amended by striking “and” at the  
18                  end of paragraph (3), by striking the period at  
19                  the end of paragraph (4) and inserting “, and”,  
20                  and by adding at the end the following:

21                  “(5) any dealer securities futures contract.

22                  The term ‘section 1256 contract’ shall not include any se-  
23                  curities futures contract or option to enter into such a con-  
24                  tract unless such contract or option is a dealer securities  
25                  futures contract.”

1           (ii) Subsection (g) of section 1256 of such  
2 Code is amended by adding at the end the fol-  
3 lowing new paragraph:

4           “(9) DEALER SECURITIES FUTURES CON-  
5 TRACT.—

6           “(A) IN GENERAL.—The term ‘dealer secu-  
7 rities futures contract’ means, with respect to  
8 any dealer, any securities futures contract, and  
9 any option to enter into such a contract,  
10 which—

11           “(i) is entered into by such dealer (or,  
12 in the case of an option, is purchased or  
13 granted by such dealer) in the normal  
14 course of his activity of dealing in such  
15 contracts or options, as the case may be,  
16 and

17           “(ii) is traded on a qualified board or  
18 exchange.

19           “(B) DEALER.—For purposes of subpara-  
20 graph (A), a person shall be treated as a dealer  
21 in securities futures contracts or options on  
22 such contracts if the Secretary determines that  
23 such person performs, with respect to such con-  
24 tracts or options, as the case may be, functions  
25 similar to the persons described in paragraph

1 (8)(A). Such determination shall be made to the  
2 extent appropriate to carry out the purposes of  
3 this section.

4 “(C) SECURITIES FUTURES CONTRACT.—  
5 The term ‘securities futures contract’ has the  
6 meaning given to such term by section 1234B.”

7 (B) Paragraph (4) of section 1256(f) of  
8 such Code is amended—

9 (i) by inserting “, or dealer securities  
10 futures contracts,” after “dealer equity op-  
11 tions” in the text, and

12 (ii) by inserting “AND DEALER SECU-  
13 RITIES FUTURES CONTRACTS” after  
14 “DEALER EQUITY OPTIONS” in the head-  
15 ing.

16 (C) Paragraph (6) of section 1256(g) of  
17 such Code is amended to read as follows:

18 “(6) EQUITY OPTION.—The term ‘equity op-  
19 tion’ means any option—

20 “(A) to buy or sell stock, or

21 “(B) the value of which is determined di-  
22 rectly or indirectly by reference to any stock or  
23 any narrow-based security index (as defined in  
24 section 3(a)(55) of the Securities Exchange Act

1           of 1934, as in effect on the date of the enact-  
2           ment of this paragraph).

3           The term ‘equity option’ includes such an option  
4           with respect to a group of stocks only if such group  
5           meets the requirements for a narrow-based security  
6           index (as so defined).”

7           (D) The Secretary of the Treasury or his  
8           delegate shall make the determinations under  
9           section 1256(g)(9)(B) of the Internal Revenue  
10          Code of 1986, as added by this Act, not later  
11          than July 1, 2001.

12          (8) CONFORMING AMENDMENTS.—

13          (A) Section 1223 of such Code is amended  
14          by redesignating paragraph (16) as paragraph  
15          (17) and by inserting after paragraph (15) the  
16          following new paragraph:

17          “(16) If the security to which a securities fu-  
18          tures contract (as defined in section 1234B) relates  
19          (other than a contract to which section 1256 ap-  
20          plies) is acquired in satisfaction of such contract, in  
21          determining the period for which the taxpayer has  
22          held such security, there shall be included the period  
23          for which the taxpayer held such contract if such  
24          contract was a capital asset in the hands of the tax-  
25          payer.”.

1 (B) The table of sections for subpart IV of  
2 subchapter P of chapter 1 of such Code is  
3 amended by inserting after the item relating to  
4 section 1234A the following new item:

“Sec. 1234B. Securities futures contracts.”

5 (9) EFFECTIVE DATE.—The amendments made  
6 by this subsection shall take effect on the date of the  
7 enactment of this Act.

8 (d) DESIGNATION OF CONTRACT MARKETS.—Section  
9 7701 of the Internal Revenue Code of 1986 is amended  
10 by redesignating subsection (m) as subsection (n) and by  
11 inserting after subsection (l) the following new subsection:

12 “(m) DESIGNATION OF CONTRACT MARKETS.—Any  
13 designation by the Commodity Futures Trading Commis-  
14 sion of a contract market which could not have been made  
15 under the law in effect on the day before the date of the  
16 enactment of the Commodity Futures Modernization Act  
17 of 2000 shall apply for purposes of this title except to the  
18 extent provided in regulations prescribed by the Sec-  
19 retary.”

20 **SEC. 125. PRIVACY.**

21 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
22 is amended by inserting after section 5f (as added by sec-  
23 tion 222) the following:

1 **“SEC. 5g. PRIVACY.**

2       “(a) TREATMENT AS FINANCIAL INSTITUTIONS.—  
3 Notwithstanding section 509(3)(B) of the Gramm-Leach-  
4 Bliley Act, any futures commission merchant, commodity  
5 trading advisor, commodity pool operator, or introducing  
6 broker that is subject to the jurisdiction of the Commis-  
7 sion under this Act with respect to any financial activity  
8 shall be treated as a financial institution for purposes of  
9 title V of such Act with respect to such financial activity.

10       “(b) TREATMENT OF CFTC AS FEDERAL FUNC-  
11 TIONAL REGULATOR.—For purposes of title V of such  
12 Act, the Commission shall be treated as a Federal func-  
13 tional regulator within the meaning of section 509(2) of  
14 such Act and shall prescribe regulations under such title  
15 within 6 months after the date of enactment of this sec-  
16 tion.”.

17 **SEC. 126. REPORT TO CONGRESS.**

18       (a) The Commodity Futures Trading Commission (in  
19 this section referred to as the “Commission”) shall under-  
20 take and complete a study of the Commodity Exchange  
21 Act (in this section referred to as “the Act”) and the Com-  
22 mission’s rules, regulations and orders governing the con-  
23 duct of persons required to be registered under the Act,  
24 not later than 1 year after the date of the enactment of  
25 this Act. The study shall identify—

1           (1) the core principles and interpretations of ac-  
2           ceptable business practices that the Commission has  
3           adopted or intends to adopt to replace the provisions  
4           of the Act and the Commission's rules and regula-  
5           tions thereunder;

6           (2) the rules and regulations that the Commis-  
7           sion has determined must be retained and the rea-  
8           sons therefor;

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

13          (4) the regulatory functions the Commission  
14          currently performs that can be delegated to a reg-  
15          istered futures association (within the meaning of  
16          the Act) and the regulatory functions that the Com-  
17          mission has determined must be retained and the  
18          reasons therefor.

19          (b) In conducting the study, the Commission shall so-  
20          licit the views of the public as well as Commission reg-  
21          istrants, registered entities, and registered futures asso-  
22          ciations (all within the meaning of the Act).

23          (c) The Commission shall transmit to the Committee  
24          on Agriculture of the House of Representatives and the  
25          Committee on Agriculture, Nutrition, and Forestry of the

1 Senate a report of the results of its study, which shall  
2 include an analysis of comments received.

3 **SEC. 127. INTERNATIONAL ACTIVITIES OF THE COMMODITY**  
4 **FUTURES TRADING COMMISSION.**

5 (a) FINDINGS.—The Congress finds that—

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

8 (2) developments in data processing and com-  
9 munications technologies enable users of risk man-  
10 agement services to analyze and compare those serv-  
11 ices on a worldwide basis;

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

15 (4) regulatory impediments to the operation of  
16 global business interests can compromise the com-  
17 petitiveness of United States businesses;

18 (5) events that disrupt financial markets and  
19 economies are often global in scope, require rapid  
20 regulatory response, and coordinated regulatory ef-  
21 fort across international jurisdictions;

22 (6) through its membership in the International  
23 Organisation of Securities Commissions, the Com-  
24modity Futures Trading Commission has promoted

1 beneficial communication among market regulators  
2 and international regulatory cooperation; and

3 (7) the Commodity Futures Trading Commis-  
4 sion and other United States financial regulators  
5 and self-regulatory organizations should continue to  
6 foster productive and cooperative working relation-  
7 ships with their counterparts in foreign jurisdictions.

8 (b) SENSE OF THE CONGRESS.—It is the sense of  
9 the Congress that, consistent with its responsibilities  
10 under the Commodity Exchange Act, the Commodity Fu-  
11 tures Trading Commission should, as part of its inter-  
12 national activities, continue to coordinate with foreign reg-  
13 ulatory authorities, to participate in international regu-  
14 latory organizations and forums, and to provide technical  
15 assistance to foreign government authorities, in order to  
16 encourage—

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

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

22 (3) the enhancement of international super-  
23 visory cooperation and emergency procedures;

24 (4) the strengthening of international coopera-  
25 tion for customer and market protection; and

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

3 **SEC. 128. RULES OF CONSTRUCTION.**

4           (a) FINANCIAL INSTITUTION ACTIVITIES.—No provi-  
5 sion of this Act, or any amendment made by this Act to  
6 any other provision of law, shall be construed as author-  
7 izing, supporting the authorization for, or implying any  
8 prior authorization for, any financial institution (as de-  
9 fined in section 1a(15) of the Commodity Exchange Act),  
10 or any subsidiary of such financial institution, to engage  
11 in any activity or transaction or to hold any security or  
12 other asset.

13           (b) DEPOSITORY INSTITUTIONS.—Section 18 of the  
14 Federal Deposit Insurance Act (12 U.S.C. 1828) is  
15 amended by adding at the end the following new sub-  
16 section:

17           “(v) RULES OF CONSTRUCTION.—

18           “(1) IN GENERAL.—No depository institution  
19 may take delivery of an equity security under a secu-  
20 rity futures product (as defined in section 3(a)(56)  
21 of the Securities Exchange Act of 1934).

22           “(2) ADDITIONAL RULE.—Paragraph (1) shall  
23 not be construed as creating any inference that a de-  
24 pository institution may take delivery of, or make

1 any investment in, an equity security under any  
2 other circumstance.”.

3 **TITLE II—COORDINATED REGU-**  
4 **LATION OF SECURITY FU-**  
5 **TURES PRODUCTS**

6 **Subtitle A—Securities Law**  
7 **Amendments**

8 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**  
9 **CHANGE ACT OF 1934.**

10 Section 3(a) of the Securities Exchange Act of 1934  
11 (15 U.S.C. 78c(a)) is amended—

12 (1) in paragraph (10), by inserting “security  
13 future,” after “treasury stock,”;

14 (2) by striking paragraph (11) and inserting  
15 the following:

16 “(11) The term ‘equity security’ means any  
17 stock or similar security; or any security future on  
18 any such security; or any security convertible, with  
19 or without consideration, into such a security, or  
20 carrying any warrant or right to subscribe to or pur-  
21 chase such a security; or any such warrant or right;  
22 or any put, call, straddle, option, or privilege on any  
23 such security; or any other security which the Com-  
24 mission shall deem to be of similar nature and con-  
25 sider necessary or appropriate, by such rules and

1 regulations as it may prescribe in the public interest  
2 or for the protection of investors, to treat as an equity security.”;

3  
4 (3) in paragraph (13), by adding at the end the  
5 following: “For security futures products, such term  
6 includes any contract, agreement, or transaction for  
7 future delivery.”;

8 (4) in paragraph (14), by adding at the end the  
9 following: “For security futures products, such term  
10 includes any contract, agreement, or transaction for  
11 future delivery.”; and

12 (5) by adding at the end the following:

13 “(55)(A) The term ‘security future’ means a  
14 contract of sale for future delivery of a single security  
15 or of a narrow-based security index, including  
16 any interest therein or based on the value thereof,  
17 except an exempted security under section 3(a)(12)  
18 of the Securities Exchange Act of 1934 as in effect  
19 on the date of enactment of the Futures Trading  
20 Act of 1982 (other than any municipal security as  
21 defined in section 3(a)(29) as in effect on the date  
22 of enactment of the Futures Trading Act of 1982).  
23 The term ‘security future’ does not include any  
24 agreement, contract, or transaction excluded under  
25 subsection (c), (d), (f), or (h) of section 2 of the

1 Commodity Exchange Act as in effect on the date of  
2 enactment of the Commodity Futures Modernization  
3 Act of 2000.

4 “(B) The term ‘narrow-based security index’  
5 means an index—

6 “(i) that has 9 or fewer component securi-  
7 ties;

8 “(ii) in which a component security com-  
9 prises more than 30 percent of the index’s  
10 weighting;

11 “(iii) in which the 5 highest weighted com-  
12 ponent securities in the aggregate comprise  
13 more than 60 percent of the index’s weighting;  
14 or

15 “(iv) in which the lowest weighted compo-  
16 nent securities comprising, in the aggregate, 25  
17 percent of the index’s weighting have an aggre-  
18 gate dollar value of average daily trading vol-  
19 ume of less than \$50,000,000 (or in the case of  
20 an index with 15 or more component securities,  
21 \$30,000,000), except that if there are two or  
22 more securities with equal weighting that could  
23 be included in the calculation of the lowest  
24 weighted component securities comprising, in  
25 the aggregate, 25 percent of the index’s

1           weighting, such securities shall be ranked from  
2           lowest to highest dollar value of average daily  
3           trading volume and shall be included in the cal-  
4           culation based on their ranking starting with  
5           the lowest ranked security.

6           “(C) Notwithstanding subparagraph (B), an  
7           index is not a narrow-based security index if—

8                   “(i)(I) it has at least 9 component securi-  
9                   ties;

10                   “(II) no component security comprises  
11                   more than 30 percent of the index’s weighting;  
12                   and

13                   “(III) each component security is—

14                           “(aa) registered pursuant to section  
15                           12 of this title;

16                           “(bb) 1 of 750 securities with the  
17                           largest market capitalization; and

18                           “(cc) 1 of 675 securities with the  
19                           largest dollar value of average daily trad-  
20                           ing volume;

21                   “(ii) it is a contract of sale for future de-  
22                   livery with respect to which a board of trade  
23                   was designated as a contract market by the  
24                   Commodity Futures Trading Commission prior

1 to the date of enactment of the Commodity Fu-  
2 tures Modernization Act of 2000;

3 “(iii)(I) it traded on a designated contract  
4 market or registered derivatives transaction  
5 execution facility for at least 30 days as a con-  
6 tract of sale for future delivery that was not a  
7 narrow-based security index; and

8 “(II) it has been a narrow-based security  
9 index for no more than 45 business days over  
10 3 consecutive calendar months;

11 “(iv) it is traded on or subject to the rules  
12 of a foreign board of trade and meets such re-  
13 quirements as are jointly established by rule or  
14 regulation by the Commission and the Com-  
15 modity Futures Trading Commission;

16 “(v) no more than 18 months have passed  
17 since enactment of the Commodity Futures  
18 Modernization Act of 2000 and it is (I) traded  
19 on or subject to the rules of a foreign board of  
20 trade; (II) the offer and sale in the United  
21 States of a contract of sale for future delivery  
22 on such index was authorized prior to the effec-  
23 tive date of the Commodity Futures Moderniza-  
24 tion Act of 2000; and (III) the conditions of  
25 such authorization continue to be met; or

1           “(vi) it is traded on or subject to the rules  
2           of a board of trade and meets such require-  
3           ments as are jointly established by rule, regula-  
4           tion, or order by the Commission and the Com-  
5           modity Futures Trading Commission.

6           “(D) Within 1 year after the enactment of the  
7           Commodity Futures Modernization Act of 2000, the  
8           Commission and the Commodity Futures Trading  
9           Commission jointly shall adopt rules or regulations  
10          that set forth the requirements under clause (iv) of  
11          subparagraph (C).

12          “(E) An index that is a narrow-based security  
13          index solely because it was a narrow-based security  
14          index for more than 45 business days over 3 con-  
15          secutive calendar months pursuant to clause (iii) of  
16          subparagraph (C) shall not be a narrow-based secu-  
17          rity index for the 3 following calendar months.

18          “(F) For purposes of subparagraphs (B) and  
19          (C) of this paragraph—

20                 “(i) the dollar value of average daily trad-  
21                 ing volume and the market capitalization shall  
22                 be calculated as of the preceding 6 full calendar  
23                 months; and

24                 “(ii) the Commission and the Commodity  
25                 Futures Trading Commission shall, by rule or

1 regulation, jointly specify the method to be used  
2 to determine market capitalization and dollar  
3 value of average daily trading volume.

4 “(56) The term ‘security futures product’  
5 means a security future or any put, call, straddle,  
6 option, or privilege on any security future.

7 “(57)(A) The term ‘margin’, when used with  
8 respect to a security futures product, means the  
9 amount, type, and form of collateral required to se-  
10 cure any extension or maintenance of credit, or the  
11 amount, type, and form of collateral required as a  
12 performance bond related to the purchase, sale, or  
13 carrying of a security futures product.

14 “(B) The terms ‘margin level’ and ‘level of mar-  
15 gin’, when used with respect to a security futures  
16 product, mean the amount of margin required to se-  
17 cure any extension or maintenance of credit, or the  
18 amount of margin required as a performance bond  
19 related to the purchase, sale, or carrying of a secu-  
20 rity futures product.

21 “(C) The terms ‘higher margin level’ and ‘high-  
22 er level of margin’, when used with respect to a se-  
23 curity futures product, mean a margin level estab-  
24 lished by a national securities exchange registered  
25 pursuant to section 6(g) that is higher than the min-

1       imum amount established and in effect pursuant to  
2       section 7(c)(2)(B).”.

3 **SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING**  
4                   **SECURITY FUTURES PRODUCTS.**

5       (a) EXPEDITED REGISTRATION AND EXEMPTION.—  
6 Section 6 of the Securities Exchange Act of 1934 (15  
7 U.S.C. 78f) is amended by adding at the end the following:

8       “(g) NOTICE REGISTRATION OF SECURITY FUTURES  
9 PRODUCT EXCHANGES.—

10               “(1) REGISTRATION REQUIRED.—An exchange  
11 that lists or trades security futures products may  
12 register as a national securities exchange solely for  
13 the purposes of trading security futures products  
14 if—

15               “(A) the exchange is a board of trade, as  
16 that term is defined by the Commodity Ex-  
17 change Act (7 U.S.C. 1a(2)), that—

18               “(i) has been designated a contract  
19 market by the Commodity Futures Trad-  
20 ing Commission and such designation is  
21 not suspended by order of the Commodity  
22 Futures Trading Commission; or

23               “(ii) is registered as a derivative  
24 transaction execution facility under section  
25 5a of the Commodity Exchange Act and

1           such registration is not suspended by the  
2           Commodity Futures Trading Commission;  
3           and

4           “(B) such exchange does not serve as a  
5           market place for transactions in securities other  
6           than—

7                   “(i) security futures products; or

8                   “(ii) futures on exempted securities or  
9                   groups or indexes of securities or options  
10                  thereon that have been authorized under  
11                  section 2(a)(1)(C) of the Commodity Ex-  
12                  change Act.

13           “(2) REGISTRATION BY NOTICE FILING.—

14                   “(A) FORM AND CONTENT.—An exchange  
15                  required to register only because such exchange  
16                  lists or trades security futures products may  
17                  register for purposes of this section by filing  
18                  with the Commission a written notice in such  
19                  form as the Commission, by rule, may prescribe  
20                  containing the rules of the exchange and such  
21                  other information and documents concerning  
22                  such exchange, comparable to the information  
23                  and documents required for national securities  
24                  exchanges under section 6(a), as the Commis-  
25                  sion, by rule, may prescribe as necessary or ap-

1           appropriate in the public interest or for the pro-  
2           tection of investors. If such exchange has filed  
3           documents with the Commodity Futures Trad-  
4           ing Commission, to the extent that such docu-  
5           ments contain information satisfying the Com-  
6           mission’s informational requirements, copies of  
7           such documents may be filed with the Commis-  
8           sion in lieu of the required written notice.

9           “(B) IMMEDIATE EFFECTIVENESS.—Such  
10          registration shall be effective contempora-  
11          neously with the submission of notice, in writ-  
12          ten or electronic form, to the Commission, ex-  
13          cept that such registration shall not be effective  
14          if such registration would be subject to suspen-  
15          sion or revocation.

16          “(C) TERMINATION.—Such registration  
17          shall be terminated immediately if any of the  
18          conditions for registration set forth in this sub-  
19          section are no longer satisfied.

20          “(3) PUBLIC AVAILABILITY.—The Commission  
21          shall promptly publish in the Federal Register an ac-  
22          knowledgment of receipt of all notices the Commis-  
23          sion receives under this subsection and shall make  
24          all such notices available to the public.

1           “(4) EXEMPTION OF EXCHANGES FROM SPECI-  
2 FIED PROVISIONS.—

3           “(A) TRANSACTION EXEMPTIONS.—An ex-  
4 change that is registered under paragraph (1)  
5 of this subsection shall be exempt from, and  
6 shall not be required to enforce compliance by  
7 its members with, and its members shall not,  
8 solely with respect to those transactions effected  
9 on such exchange in security futures products,  
10 be required to comply with, the following provi-  
11 sions of this title and the rules thereunder:

12           “(i) Subsections (b)(2), (b)(3), (b)(4),  
13 (b)(7), (b)(9), (c), (d), and (e) of this sec-  
14 tion.

15           “(ii) Section 8.

16           “(iii) Section 11.

17           “(iv) Subsections (d), (f), and (k) of  
18 section 17.

19           “(v) Subsections (a), (f), and (h) of  
20 section 19.

21           “(B) RULE CHANGE EXEMPTIONS.—An ex-  
22 change that registered under paragraph (1) of  
23 this subsection shall also be exempt from sub-  
24 mitting proposed rule changes pursuant to sec-  
25 tion 19(b) of this title, except that—

1           “(i) such exchange shall file proposed  
2 rule changes related to higher margin lev-  
3 els, fraud or manipulation, recordkeeping,  
4 reporting, listing standards, or decimal  
5 pricing for security futures products, sales  
6 practices for security futures products for  
7 persons who effect transactions in security  
8 futures products, or rules effectuating such  
9 exchange’s obligation to enforce the securi-  
10 ties laws pursuant to section 19(b)(7);

11           “(ii) such exchange shall file pursuant  
12 to sections 19(b)(1) and 19(b)(2) proposed  
13 rule changes related to margin, except for  
14 changes resulting in higher margin levels;  
15 and

16           “(iii) such exchange shall file pursu-  
17 ant to section 19(b)(1) proposed rule  
18 changes that have been abrogated by the  
19 Commission pursuant to section  
20 19(b)(7)(C).

21           “(5) TRADING IN SECURITY FUTURES PROD-  
22 UCTS.—

23           “(A) IN GENERAL.—Subject to subpara-  
24 graph (B), it shall be unlawful for any person

1 to execute or trade a security futures product  
2 until the later of—

3 “(i) 1 year after the date of enact-  
4 ment of the Commodity Futures Mod-  
5 ernization Act of 2000; or

6 “(ii) such date that a futures associa-  
7 tion registered under section 17 of the  
8 Commodity Exchange Act has met the re-  
9 quirements set forth in section 15A(k)(2)  
10 of this title.

11 “(B) PRINCIPAL-TO-PRINCIPAL TRANS-  
12 ACTIONS.—Notwithstanding subparagraph (A),  
13 a person may execute or trade a security fu-  
14 tures product transaction if—

15 “(i) the transaction is entered into—

16 “(I) on a principal-to-principal  
17 basis between parties trading for their  
18 own accounts or as described in sec-  
19 tion 1a(12)(B)(ii) of the Commodity  
20 Exchange Act; and

21 “(II) only between eligible con-  
22 tract participants (as defined in sub-  
23 paragraphs (A), (B)(ii), and (C) of  
24 such section 1a(12)) at the time at  
25 which the persons enter into the

1 agreement, contract, or transaction;  
2 and

3 “(ii) the transaction is entered into on  
4 or after the later of—

5 “(I) 8 months after the date of  
6 enactment of the Commodity Futures  
7 Modernization Act of 2000; or

8 “(II) such date that a futures as-  
9 sociation registered under section 17  
10 of the Commodity Exchange Act has  
11 met the requirements set forth in sec-  
12 tion 15A(k)(2) of this title.”.

13 (b) COMMISSION REVIEW OF PROPOSED RULE  
14 CHANGES.—

15 (1) EXPEDITED REVIEW.—Section 19(b) of the  
16 Securities Exchange Act of 1934 (15 U.S.C. 78s(b))  
17 is amended by adding at the end the following:

18 “(7) SECURITY FUTURES PRODUCT RULE  
19 CHANGES.—

20 “(A) FILING REQUIRED.—A self-regulatory  
21 organization that is an exchange registered with  
22 the Commission pursuant to section 6(g) of this  
23 title or that is a national securities association  
24 registered pursuant to section 15A(k) of this  
25 title shall file with the Commission, in accord-

1           ance with such rules as the Commission may  
2           prescribe, copies of any proposed rule change or  
3           any proposed change in, addition to, or deletion  
4           from the rules of such self-regulatory organiza-  
5           tion (hereinafter in this paragraph collectively  
6           referred to as a ‘proposed rule change’) that re-  
7           lates to higher margin levels, fraud or manipu-  
8           lation, recordkeeping, reporting, listing stand-  
9           ards, or decimal pricing for security futures  
10          products, sales practices for security futures  
11          products for persons who effect transactions in  
12          security futures products, or rules effectuating  
13          such self-regulatory organization’s obligation to  
14          enforce the securities laws. Such proposed rule  
15          change shall be accompanied by a concise gen-  
16          eral statement of the basis and purpose of such  
17          proposed rule change. The Commission shall,  
18          upon the filing of any proposed rule change,  
19          promptly publish notice thereof together with  
20          the terms of substance of the proposed rule  
21          change or a description of the subjects and  
22          issues involved. The Commission shall give in-  
23          terested persons an opportunity to submit data,  
24          views, and arguments concerning such proposed  
25          rule change.

1           “(B) FILING WITH CFTC.—A proposed rule  
2 change filed with the Commission pursuant to  
3 subparagraph (A) shall be filed concurrently  
4 with the Commodity Futures Trading Commis-  
5 sion. Such proposed rule change may take ef-  
6 fect upon filing of a written certification with  
7 the Commodity Futures Trading Commission  
8 under section 5c(e) of the Commodity Exchange  
9 Act, upon a determination by the Commodity  
10 Futures Trading Commission that review of the  
11 proposed rule change is not necessary, or upon  
12 approval of the proposed rule change by the  
13 Commodity Futures Trading Commission.

14           “(C) ABROGATION OF RULE CHANGES.—  
15 Any proposed rule change of a self-regulatory  
16 organization that has taken effect pursuant to  
17 subparagraph (B) may be enforced by such self-  
18 regulatory organization to the extent such rule  
19 is not inconsistent with the provisions of this  
20 title, the rules and regulations thereunder, and  
21 applicable Federal law. At any time within 60  
22 days of the date of the filing of a written cer-  
23 tification with the Commodity Futures Trading  
24 Commission under section 5c(e) of the Com-  
25 modity Exchange Act, the date the Commodity

1 Futures Trading Commission determines that  
2 review of such proposed rule change is not nec-  
3 essary, or the date the Commodity Futures  
4 Trading Commission approves such proposed  
5 rule change, the Commission, after consultation  
6 with the Commodity Futures Trading Commis-  
7 sion, summarily may abrogate the proposed rule  
8 change and require that the proposed rule  
9 change be refiled in accordance with the provi-  
10 sions of paragraph (1), if it appears to the  
11 Commission that such proposed rule change un-  
12 duly burdens competition or efficiency, conflicts  
13 with the securities laws, or is inconsistent with  
14 the public interest and the protection of inves-  
15 tors. Commission action pursuant to the pre-  
16 ceding sentence shall not affect the validity or  
17 force of the rule change during the period it  
18 was in effect and shall not be reviewable under  
19 section 25 nor deemed to be a final agency ac-  
20 tion for purposes of section 704 of title 5,  
21 United States Code.

22 “(D) REVIEW OF RESUBMITTED ABRO-  
23 GATED RULES.—

24 “(i) PROCEEDINGS.—Within 35 days  
25 of the date of publication of notice of the

1 filing of a proposed rule change that is ab-  
2 rogated in accordance with subparagraph  
3 (C) and refiled in accordance with para-  
4 graph (1), or within such longer period as  
5 the Commission may designate up to 90  
6 days after such date if the Commission  
7 finds such longer period to be appropriate  
8 and publishes its reasons for so finding or  
9 as to which the self-regulatory organization  
10 consents, the Commission shall—

11 “(I) by order approve such pro-  
12 posed rule change; or

13 “(II) after consultation with the  
14 Commodity Futures Trading Commis-  
15 sion, institute proceedings to deter-  
16 mine whether the proposed rule  
17 change should be disapproved. Pro-  
18 ceedings under subclause (II) shall in-  
19 clude notice of the grounds for dis-  
20 approval under consideration and op-  
21 portunity for hearing and be con-  
22 cluded within 180 days after the date  
23 of publication of notice of the filing of  
24 the proposed rule change. At the con-  
25 clusion of such proceedings, the Com-

1 mission, by order, shall approve or  
2 disapprove such proposed rule change.

3 The Commission may extend the time  
4 for conclusion of such proceedings for  
5 up to 60 days if the Commission finds  
6 good cause for such extension and  
7 publishes its reasons for so finding or  
8 for such longer period as to which the  
9 self-regulatory organization consents.

10 “(ii) GROUNDS FOR APPROVAL.—The  
11 Commission shall approve a proposed rule  
12 change of a self-regulatory organization  
13 under this subparagraph if the Commission  
14 finds that such proposed rule change does  
15 not unduly burden competition or effi-  
16 ciency, does not conflict with the securities  
17 laws, and is not inconsistent with the pub-  
18 lic interest or the protection of investors.  
19 The Commission shall disapprove such a  
20 proposed rule change of a self-regulatory  
21 organization if it does not make such find-  
22 ing. The Commission shall not approve any  
23 proposed rule change prior to the 30th day  
24 after the date of publication of notice of  
25 the filing thereof, unless the Commission

1 finds good cause for so doing and pub-  
2 lishes its reasons for so finding.”.

3 (2) DECIMAL PRICING PROVISIONS.—Section  
4 19(b) of the Securities Exchange Act of 1934 (15  
5 U.S.C. 78s(b)) is amended by inserting after para-  
6 graph (7), as added by paragraph (1), the following:

7 “(8) DECIMAL PRICING.—Not later than 9  
8 months after the date on which trading in any secu-  
9 rity futures product commences under this title, all  
10 self-regulatory organizations listing or trading secu-  
11 rity futures products shall file proposed rule changes  
12 necessary to implement decimal pricing of security  
13 futures products. The Commission may not require  
14 such rules to contain equal minimum increments in  
15 such decimal pricing.”.

16 (3) CONSULTATION PROVISIONS.—Section 19(b)  
17 of the Securities Exchange Act of 1934 (15 U.S.C.  
18 78s(b)) is amended by inserting after paragraph (8),  
19 as added by paragraph (2), the following:

20 “(9) CONSULTATION WITH CFTC.—

21 “(A) CONSULTATION REQUIRED.—The  
22 Commission shall consult with and consider the  
23 views of the Commodity Futures Trading Com-  
24 mission prior to approving or disapproving a  
25 proposed rule change filed by a national securi-

1 ties association registered pursuant to section  
2 15A(a) or a national securities exchange subject  
3 to the provisions of subsection (a) that pri-  
4 marily concerns conduct related to transactions  
5 in security futures products, except where the  
6 Commission determines that an emergency ex-  
7 ists requiring expeditious or summary action  
8 and publishes its reasons therefor.

9 “(B) RESPONSES TO CFTC COMMENTS AND  
10 FINDINGS.—If the Commodity Futures Trading  
11 Commission comments in writing to the Com-  
12 mission on a proposed rule that has been pub-  
13 lished for comment, the Commission shall re-  
14 spond in writing to such written comment be-  
15 fore approving or disapproving the proposed  
16 rule. If the Commodity Futures Trading Com-  
17 mission determines, and notifies the Commis-  
18 sion, that such rule, if implemented or as ap-  
19 plied, would—

20 “(i) adversely affect the liquidity or  
21 efficiency of the market for security fu-  
22 tures products; or

23 “(ii) impose any burden on competi-  
24 tion not necessary or appropriate in fur-  
25 therance of the purposes of this section,

1           the Commission shall, prior to approving or dis-  
2           approving the proposed rule, find that such rule  
3           is necessary and appropriate in furtherance of  
4           the purposes of this section notwithstanding the  
5           Commodity Futures Trading Commission’s de-  
6           termination.”.

7           (c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Sec-  
8           tion 19(d) of the Securities Exchange Act of 1934 (15  
9           U.S.C. 78s(d)) is amended by adding at the end the fol-  
10          lowing:

11          “(3) The provisions of this subsection shall apply to  
12          an exchange registered pursuant to section 6(g) of this  
13          title or a national securities association registered pursu-  
14          ant to section 15A(k) of this title only to the extent that  
15          such exchange or association imposes any final discipli-  
16          nary sanction for—

17                  “(A) a violation of the Federal securities laws  
18                  or the rules and regulations thereunder; or

19                  “(B) a violation of a rule of such exchange or  
20                  association, as to which a proposed change would be  
21                  required to be filed under section 19 of this title, ex-  
22                  cept that, to the extent that the exchange or associa-  
23                  tion rule violation relates to any account, agreement,  
24                  or transaction, this subsection shall apply only to the

1 extent such violation involves a security futures  
2 product.”.

3 **SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES**

4 **TRADING SECURITY FUTURES PRODUCTS.**

5 (a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

6 (1) AMENDMENT.—Section 15(b) of the Securi-  
7 ties Exchange Act of 1934 (15 U.S.C. 78o(b)) is  
8 amended by adding at the end the following:

9 “(11) BROKER/DEALER REGISTRATION WITH  
10 RESPECT TO TRANSACTIONS IN SECURITY FUTURES  
11 PRODUCTS.—

12 “(A) NOTICE REGISTRATION.—

13 “(i) CONTENTS OF NOTICE.—Not-  
14 withstanding paragraphs (1) and (2), a  
15 broker or dealer required to register only  
16 because it effects transactions in security  
17 futures products on an exchange registered  
18 pursuant to section 6(g) may register for  
19 purposes of this section by filing with the  
20 Commission a written notice in such form  
21 and containing such information con-  
22 cerning such broker or dealer and any per-  
23 sons associated with such broker or dealer  
24 as the Commission, by rule, may prescribe  
25 as necessary or appropriate in the public

1 interest or for the protection of investors.  
2 A broker or dealer may not register under  
3 this paragraph unless that broker or dealer  
4 is a member of a national securities asso-  
5 ciation registered under section 15A(k).

6 “(ii) IMMEDIATE EFFECTIVENESS.—  
7 Such registration shall be effective contem-  
8 poraneously with the submission of notice,  
9 in written or electronic form, to the Com-  
10 mission, except that such registration shall  
11 not be effective if the registration would be  
12 subject to suspension or revocation under  
13 paragraph (4).

14 “(iii) SUSPENSION.—Such registration  
15 shall be suspended immediately if a na-  
16 tional securities association registered pur-  
17 suant to section 15A(k) of this title sus-  
18 pends the membership of that broker or  
19 dealer.

20 “(iv) TERMINATION.—Such registra-  
21 tion shall be terminated immediately if any  
22 of the above stated conditions for registra-  
23 tion set forth in this paragraph are no  
24 longer satisfied.

1           “(B) EXEMPTIONS FOR REGISTERED BRO-  
2           KERS AND DEALERS.—A broker or dealer reg-  
3           istered pursuant to the requirements of sub-  
4           paragraph (A) shall be exempt from the fol-  
5           lowing provisions of this title and the rules  
6           thereunder with respect to transactions in secu-  
7           rity futures products:

8                   “(i) Section 8.

9                   “(ii) Section 11.

10                   “(iii) Subsections (c)(3) and (c)(5) of  
11           this section.

12                   “(iv) Section 15B.

13                   “(v) Section 15C.

14                   “(vi) Subsections (d), (e), (f), (g), (h),  
15           and (i) of section 17.”.

16           (2) CONFORMING AMENDMENT.—Section 28(e)  
17           of the Securities Exchange Act of 1934 (15 U.S.C.  
18           78bb(e)) is amended by adding at the end the fol-  
19           lowing:

20                   “(4) The provisions of this subsection shall not apply  
21           with regard to securities that are security futures prod-  
22           ucts.”.

23           (b) FLOOR BROKERS AND FLOOR TRADERS.—Sec-  
24           tion 15(b) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78o(b)) is amended by inserting after paragraph  
2 (11), as added by subsection (a), the following:

3 “(12) EXEMPTION FOR SECURITY FUTURES  
4 PRODUCT EXCHANGE MEMBERS.—

5 “(A) REGISTRATION EXEMPTION.—A nat-  
6 ural person shall be exempt from the registra-  
7 tion requirements of this section if such  
8 person—

9 “(i) is a member of a designated con-  
10 tract market registered with the Commis-  
11 sion as an exchange pursuant to section  
12 6(g);

13 “(ii) effects transactions only in secu-  
14 rities on the exchange of which such per-  
15 son is a member; and

16 “(iii) does not directly accept or solicit  
17 orders from public customers or provide  
18 advice to public customers in connection  
19 with the trading of security futures prod-  
20 ucts.

21 “(B) OTHER EXEMPTIONS.—A natural  
22 person exempt from registration pursuant to  
23 subparagraph (A) shall also be exempt from the  
24 following provisions of this title and the rules  
25 thereunder:

1 “(i) Section 8.

2 “(ii) Section 11.

3 “(iii) Subsections (c)(3), (c)(5), and  
4 (e) of this section.

5 “(iv) Section 15B.

6 “(v) Section 15C.

7 “(vi) Subsections (d), (e), (f), (g), (h),  
8 and (i) of section 17.”.

9 (c) LIMITED PURPOSE NATIONAL SECURITIES ASSO-  
10 CIATION.—Section 15A of the Securities Exchange Act of  
11 1934 (15 U.S.C. 78o–3) is amended by adding at the end  
12 the following:

13 “(k) LIMITED PURPOSE NATIONAL SECURITIES AS-  
14 SOCIATION.—

15 “(1) REGULATION OF MEMBERS WITH RESPECT  
16 TO SECURITY FUTURES PRODUCTS.—A futures asso-  
17 ciation registered under section 17 of the Com-  
18 modity Exchange Act shall be a registered national  
19 securities association for the limited purpose of reg-  
20 ulating the activities of members who are registered  
21 as brokers or dealers in security futures products  
22 pursuant to section 15(b)(11).

23 “(2) REQUIREMENTS FOR REGISTRATION.—  
24 Such a securities association shall—

1           “(A) be so organized and have the capacity  
2           to carry out the purposes of the securities laws  
3           applicable to security futures products and to  
4           comply, and (subject to any rule or order of the  
5           Commission pursuant to section 19(g)(2)) to  
6           enforce compliance by its members and persons  
7           associated with its members, with the provisions  
8           of the securities laws applicable to security fu-  
9           tures products, the rules and regulations there-  
10          under, and its rules;

11          “(B) have rules that—

12                 “(i) are designed to prevent fraudu-  
13                 lent and manipulative acts and practices,  
14                 to promote just and equitable principles of  
15                 trade, and, in general, to protect investors  
16                 and the public interest, including rules  
17                 governing sales practices and the adver-  
18                 tising of security futures products reason-  
19                 ably comparable to those of other national  
20                 securities associations registered pursuant  
21                 to subsection (a) that are applicable to se-  
22                 curity futures products; and

23                 “(ii) are not designed to regulate by  
24                 virtue of any authority conferred by this  
25                 title matters not related to the purposes of

1           this title or the administration of the asso-  
2           ciation;

3           “(C) have rules that provide that (subject  
4           to any rule or order of the Commission pursu-  
5           ant to section 19(g)(2)) its members and per-  
6           sons associated with its members shall be ap-  
7           propriately disciplined for violation of any provi-  
8           sion of the securities laws applicable to security  
9           futures products, the rules or regulations there-  
10          under, or the rules of the association, by expul-  
11          sion, suspension, limitation of activities, func-  
12          tions, and operations, fine, censure, being sus-  
13          pended or barred from being associated with a  
14          member, or any other fitting sanction; and

15          “(D) have rules that ensure that members  
16          and natural persons associated with members  
17          meet such standards of training, experience,  
18          and competence necessary to effect transactions  
19          in security futures products and are tested for  
20          their knowledge of securities and security fu-  
21          tures products.

22          “(3) EXEMPTION FROM RULE CHANGE SUBMIS-  
23          SION.—Such a securities association shall be exempt  
24          from submitting proposed rule changes pursuant to  
25          section 19(b) of this title, except that—

1           “(A) the association shall file proposed  
2 rule changes related to higher margin levels,  
3 fraud or manipulation, recordkeeping, report-  
4 ing, listing standards, or decimal pricing for se-  
5 curity futures products, sales practices for, ad-  
6 vertising of, or standards of training, experi-  
7 ence, competence, or other qualifications for se-  
8 curity futures products for persons who effect  
9 transactions in security futures products, or  
10 rules effectuating the association’s obligation to  
11 enforce the securities laws pursuant to section  
12 19(b)(7);

13           “(B) the association shall file pursuant to  
14 sections 19(b)(1) and 19(b)(2) proposed rule  
15 changes related to margin, except for changes  
16 resulting in higher margin levels; and

17           “(C) the association shall file pursuant to  
18 section 19(b)(1) proposed rule changes that  
19 have been abrogated by the Commission pursu-  
20 ant to section 19(b)(7)(C).

21           “(4) OTHER EXEMPTIONS.—Such a securities  
22 association shall be exempt from and shall not be re-  
23 quired to enforce compliance by its members, and its  
24 members shall not, solely with respect to their trans-  
25 actions effected in security futures products, be re-

1       quired to comply, with the following provisions of  
2       this title and the rules thereunder:

3               “(A) Section 8.

4               “(B) Subsections (b)(1), (b)(3), (b)(4),  
5               (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13),  
6               (c), (d), (e), (f), (g), (h), and (i) of this section.

7               “(C) Subsections (d), (f), and (k) of sec-  
8               tion 17.

9               “(D) Subsections (a), (f), and (h) of sec-  
10              tion 19.”.

11       (d) EXEMPTION UNDER THE SECURITIES INVESTOR  
12 PROTECTION ACT OF 1970.—

13               (1) Section 16(14) of the Securities Investor  
14 Protection Act of 1970 (15 U.S.C. 78ll(14)) is  
15 amended by inserting “or any security future as that  
16 term is defined in section 3(a)(55)(A) of the Securi-  
17 ties Exchange Act of 1934,” after “certificate of de-  
18 posit for a security,”.

19               (2) Section 3(a)(2)(A) of the Securities Investor  
20 Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A))  
21 is amended—

22               (A) in clause (i), by striking “and” after  
23 the semicolon;

24               (B) in clause (ii), by striking the period  
25 and inserting “; and”;

1 (C) by adding at the end the following:

2 “(iii) persons who are registered as a  
3 broker or dealer pursuant to section  
4 15(b)(11)(A) of the Securities Exchange  
5 Act of 1934.”.

6 **SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-**  
7 **OPERATION.**

8 Section 17(b) of the Securities Exchange Act of 1934  
9 (15 U.S.C. 78q(b)) is amended—

10 (1) by striking “(b) All” and inserting the fol-  
11 lowing:

12 “(b) RECORDS SUBJECT TO EXAMINATION.—

13 “(1) PROCEDURES FOR COOPERATION WITH  
14 OTHER AGENCIES.—All”;

15 (2) by striking “prior to conducting any such  
16 examination of a registered clearing” and inserting  
17 the following: “prior to conducting any such exam-  
18 ination of a—

19 “(A) registered clearing”;

20 (3) by redesignating the last sentence as para-  
21 graph (4)(C);

22 (4) by striking the period at the end of the first  
23 sentence and inserting the following: “; or

24 “(B) broker or dealer registered pursuant  
25 to section 15(b)(11), exchange registered pursu-

1           ant to section 6(g), or national securities asso-  
2           ciation registered pursuant to section 15A(k)  
3           gives notice to the Commodity Futures Trading  
4           Commission of such proposed examination and  
5           consults with the Commodity Futures Trading  
6           Commission concerning the feasibility and de-  
7           sirability of coordinating such examination with  
8           examinations conducted by the Commodity Fu-  
9           tures Trading Commission in order to avoid un-  
10          necessary regulatory duplication or undue regu-  
11          latory burdens for such broker or dealer or ex-  
12          change.”;

13           (5) by adding at the end the following new  
14          paragraphs:

15           “(2) FURNISHING DATA AND REPORTS TO  
16          CFTC.—The Commission shall notify the Commodity  
17          Futures Trading Commission of any examination  
18          conducted of any broker or dealer registered pursu-  
19          ant to section 15(b)(11), exchange registered pursu-  
20          ant to section 6(g), or national securities association  
21          registered pursuant to section 15A(k) and, upon re-  
22          quest, furnish to the Commodity Futures Trading  
23          Commission any examination report and data sup-  
24          plied to, or prepared by, the Commission in connec-  
25          tion with such examination.

1           “(3) USE OF CFTC REPORTS.—Prior to con-  
2           ducting an examination under paragraph (1), the  
3           Commission shall use the reports of examinations, if  
4           the information available therein is sufficient for the  
5           purposes of the examination, of—

6                   “(A) any broker or dealer registered pursu-  
7                   ant to section 15(b)(11);

8                   “(B) exchange registered pursuant to sec-  
9                   tion 6(g); or

10                   “(C) national securities association reg-  
11                   istered pursuant to section 15A(k);

12           that is made by the Commodity Futures Trading  
13           Commission, a national securities association reg-  
14           istered pursuant to section 15A(k), or an exchange  
15           registered pursuant to section 6(g).

16           “(4) RULES OF CONSTRUCTION.—

17                   “(A) Notwithstanding any other provision  
18                   of this subsection, the records of a broker or  
19                   dealer registered pursuant to section 15(b)(11),  
20                   an exchange registered pursuant to section  
21                   6(g), or a national securities association reg-  
22                   istered pursuant to section 15A(k) described in  
23                   this subparagraph shall not be subject to rou-  
24                   tine periodic examinations by the Commission.

1           “(B) Any recordkeeping rules adopted  
2           under this subsection for a broker or dealer reg-  
3           istered pursuant to section 15(b)(11), an ex-  
4           change registered pursuant to section 6(g), or a  
5           national securities association registered pursu-  
6           ant to section 15A(k) shall be limited to records  
7           with respect to persons, accounts, agreements,  
8           and transactions involving security futures  
9           products.”; and

10           (6) in paragraph (4)(C) (as redesignated by  
11           paragraph (3) of this section), by striking “Nothing  
12           in the proviso to the preceding sentence” and insert-  
13           ing “Nothing in the proviso in paragraph (1)”.

14 **SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SE-**  
15 **CURITY FUTURES PRODUCTS.**

16           (a) **ADDITION OF SECURITY FUTURES PRODUCTS TO**  
17 **OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—**

18           (1) **PROHIBITION AGAINST MANIPULATION.—**

19           Section 9(b) of the Securities Exchange Act of 1934  
20           (15 U.S.C. 78i(b)) is amended—

21           (A) in paragraph (1)—

22           (i) by inserting “(A)” after “ac-  
23           quires”; and

1 (ii) by striking “; or” and inserting “;  
2 or (B) any security futures product on the  
3 security; or”;

4 (B) in paragraph (2)—

5 (i) by inserting “(A)” after “interest  
6 in any”; and

7 (ii) by striking “; or” and inserting “;  
8 or (B) such security futures product; or”;  
9 and

10 (C) in paragraph (3)—

11 (i) by inserting “(A)” after “interest  
12 in any”; and

13 (ii) by inserting “; or (B) such secu-  
14 rity futures product” after “privilege”.

15 (2) MANIPULATION IN OPTIONS AND OTHER  
16 DERIVATIVE PRODUCTS.—Section 9(g) of the Securi-  
17 ties Exchange Act of 1934 (15 U.S.C. 78i(g)) is  
18 amended—

19 (A) by inserting “(1)” after “(g)”;

20 (B) by inserting “other than a security fu-  
21 tures product” after “future delivery”; and

22 (C) by adding at the end following:

23 “(2) Notwithstanding the Commodity Exchange Act,  
24 the Commission shall have the authority to regulate the

1 trading of any security futures product to the extent pro-  
2 vided in the securities laws.”.

3 (3) LIABILITY OF CONTROLLING PERSONS AND  
4 PERSONS WHO AID AND ABET VIOLATIONS.—Section  
5 20(d) of the Securities Exchange Act of 1934 (15  
6 U.S.C. 78t(d)) is amended by striking “or privilege”  
7 and inserting “, privilege, or security futures prod-  
8 uct”.

9 (4) LIABILITY TO CONTEMPORANEOUS TRADERS  
10 FOR INSIDER TRADING.—Section 21A(a)(1) of the  
11 Securities Exchange Act of 1934 (15 U.S.C. 78u-  
12 1(a)(1)) is amended by striking “standardized op-  
13 tions, the Commission—” and inserting “standard-  
14 ized options or security futures products, the Com-  
15 mission—”.

16 (5) ENFORCEMENT CONSULTATION.—Section  
17 21 of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78u) is amended by adding at the end the  
19 following:

20 “(i) INFORMATION TO CFTC.—The Commission  
21 shall provide the Commodity Futures Trading Commission  
22 with notice of the commencement of any proceeding and  
23 a copy of any order entered by the Commission against  
24 any broker or dealer registered pursuant to section  
25 15(b)(11), any exchange registered pursuant to section

1 6(g), or any national securities association registered pur-  
2 suant to section 15A(k).”.

3 **SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SE-**  
4 **CURITY FUTURES PRODUCTS.**

5 (a) LISTING STANDARDS AND CONDITIONS FOR  
6 TRADING.—Section 6 of the Securities Exchange Act of  
7 1934 (15 U.S.C. 78f) is amended by inserting after sub-  
8 section (g), as added by section 202, the following:

9 “(h) TRADING IN SECURITY FUTURES PRODUCTS.—

10 “(1) TRADING ON EXCHANGE OR ASSOCIATION  
11 REQUIRED.—It shall be unlawful for any person to  
12 effect transactions in security futures products that  
13 are not listed on a national securities exchange or a  
14 national securities association registered pursuant to  
15 section 15A(a).

16 “(2) LISTING STANDARDS REQUIRED.—Except  
17 as otherwise provided in paragraph (7), a national  
18 securities exchange or a national securities associa-  
19 tion registered pursuant to section 15A(a) may trade  
20 only security futures products that (A) conform with  
21 listing standards that such exchange or association  
22 files with the Commission under section 19(b) and  
23 (B) meet the criteria specified in section  
24 2(a)(1)(D)(i) of the Commodity Exchange Act.

1           “(3) REQUIREMENTS FOR LISTING STANDARDS  
2           AND CONDITIONS FOR TRADING.—Such listing  
3           standards shall—

4                   “(A) except as otherwise provided in a  
5                   rule, regulation, or order issued pursuant to  
6                   paragraph (4), require that any security under-  
7                   lying the security future, including each compo-  
8                   nent security of a narrow-based security index,  
9                   be registered pursuant to section 12 of this  
10                  title;

11                   “(B) require that if the security futures  
12                   product is not cash settled, the market on  
13                   which the security futures product is traded  
14                   have arrangements in place with a registered  
15                   clearing agency for the payment and delivery of  
16                   the securities underlying the security futures  
17                   product;

18                   “(C) be no less restrictive than comparable  
19                   listing standards for options traded on a na-  
20                   tional securities exchange or national securities  
21                   association registered pursuant to section  
22                   15A(a) of this title;

23                   “(D) except as otherwise provided in a  
24                   rule, regulation, or order issued pursuant to  
25                   paragraph (4), require that the security future

1 be based upon common stock and such other  
2 equity securities as the Commission and the  
3 Commodity Futures Trading Commission joint-  
4 ly determine appropriate;

5 “(E) require that the security futures  
6 product is cleared by a clearing agency that has  
7 in place provisions for linked and coordinated  
8 clearing with other clearing agencies that clear  
9 security futures products, which permits the se-  
10 curity futures product to be purchased on one  
11 market and offset on another market that  
12 trades such product;

13 “(F) require that only a broker or dealer  
14 subject to suitability rules comparable to those  
15 of a national securities association registered  
16 pursuant to section 15A(a) effect transactions  
17 in the security futures product;

18 “(G) require that the security futures  
19 product be subject to the prohibition against  
20 dual trading in section 4j of the Commodity Ex-  
21 change Act (7 U.S.C. 6j) and the rules and reg-  
22 ulations thereunder or the provisions of section  
23 11(a) of this title and the rules and regulations  
24 thereunder, except to the extent otherwise per-

1           mitted under this title and the rules and regula-  
2           tions thereunder;

3           “(H) require that trading in the security  
4           futures product not be readily susceptible to  
5           manipulation of the price of such security fu-  
6           tures product, nor to causing or being used in  
7           the manipulation of the price of any underlying  
8           security, option on such security, or option on  
9           a group or index including such securities;

10          “(I) require that procedures be in place for  
11          coordinated surveillance among the market on  
12          which the security futures product is traded,  
13          any market on which any security underlying  
14          the security futures product is traded, and  
15          other markets on which any related security is  
16          traded to detect manipulation and insider trad-  
17          ing;

18          “(J) require that the market on which the  
19          security futures product is traded has in place  
20          audit trails necessary or appropriate to facili-  
21          tate the coordinated surveillance required in  
22          subparagraph (I);

23          “(K) require that the market on which the  
24          security futures product is traded has in place  
25          procedures to coordinate trading halts between

1 such market and any market on which any se-  
2 curity underlying the security futures product is  
3 traded and other markets on which any related  
4 security is traded; and

5 “(L) require that the margin requirements  
6 for a security futures product comply with the  
7 regulations prescribed pursuant to section  
8 7(e)(2)(B), except that nothing in this subpara-  
9 graph shall be construed to prevent a national  
10 securities exchange or national securities asso-  
11 ciation from requiring higher margin levels for  
12 a security futures product when it deems such  
13 action to be necessary or appropriate.

14 “(4) AUTHORITY TO MODIFY CERTAIN LISTING  
15 STANDARD REQUIREMENTS.—

16 “(A) AUTHORITY TO MODIFY.—The Com-  
17 mission and the Commodity Futures Trading  
18 Commission, by rule, regulation, or order, may  
19 jointly modify the listing standard requirements  
20 specified in subparagraph (A) or (D) of para-  
21 graph (3) to the extent such modification fos-  
22 ters the development of fair and orderly mar-  
23 kets in security futures products, is necessary  
24 or appropriate in the public interest, and is con-  
25 sistent with the protection of investors.

1           “(B) AUTHORITY TO GRANT EXEMP-  
2           TIONS.—The Commission and the Commodity  
3           Futures Trading Commission, by order, may  
4           jointly exempt any person from compliance with  
5           the listing standard requirement specified in  
6           subparagraph (E) of paragraph (3) to the ex-  
7           tent such exemption fosters the development of  
8           fair and orderly markets in security futures  
9           products, is necessary or appropriate in the  
10          public interest, and is consistent with the pro-  
11          tection of investors.

12          “(5) REQUIREMENTS FOR OTHER PERSONS  
13          TRADING SECURITY FUTURE PRODUCTS.—It shall be  
14          unlawful for any person (other than a national secu-  
15          rities exchange or a national securities association  
16          registered pursuant to section 15A(a)) to constitute,  
17          maintain, or provide a marketplace or facilities for  
18          bringing together purchasers and sellers of security  
19          future products or to otherwise perform with respect  
20          to security future products the functions commonly  
21          performed by a stock exchange as that term is gen-  
22          erally understood, unless a national securities asso-  
23          ciation registered pursuant to section 15A(a) or a  
24          national securities exchange of which such person is  
25          a member—

1           “(A) has in place procedures for coordi-  
2 nated surveillance among such person, the mar-  
3 ket trading the securities underlying the secu-  
4 rity future products, and other markets trading  
5 related securities to detect manipulation and in-  
6 sider trading;

7           “(B) has rules to require audit trails nec-  
8 essary or appropriate to facilitate the coordi-  
9 nated surveillance required in subparagraph  
10 (A); and

11           “(C) has rules to require such person to  
12 coordinate trading halts with markets trading  
13 the securities underlying the security future  
14 products and other markets trading related se-  
15 curities.

16           “(6) DEFERRAL OF OPTIONS ON SECURITY FU-  
17 TURES TRADING.—No person shall offer to enter  
18 into, enter into, or confirm the execution of any put,  
19 call, straddle, option, or privilege on a security fu-  
20 ture, except that, after 3 years after the date of en-  
21 actment of this subsection, the Commission and the  
22 Commodity Futures Trading Commission may by  
23 order jointly determine to permit trading of puts,  
24 calls, straddles, options, or privileges on any security

1 future authorized to be traded under the provisions  
2 of this Act and the Commodity Exchange Act.

3 “(7) DEFERRAL OF LINKED AND COORDINATED  
4 CLEARING.—

5 “(A) Notwithstanding paragraph (2), until  
6 the compliance date, a national securities ex-  
7 change or national securities association reg-  
8 istered pursuant to section 15A(a) may trade a  
9 security futures product that does not—

10 “(i) conform with any listing standard  
11 promulgated to meet the requirement spec-  
12 ified in subparagraph (E) of paragraph  
13 (3); or

14 “(ii) meet the criterion specified in  
15 section 2(a)(1)(D)(i)(IV) of the Com-  
16modity Exchange Act.

17 “(B) The Commission and the Commodity  
18 Futures Trading Commission shall jointly pub-  
19 lish in the Federal Register a notice of the com-  
20 pliance date no later than 165 days before the  
21 compliance date.

22 “(C) For purposes of this paragraph, the  
23 term ‘compliance date’ means the later of—

24 “(i) 180 days after the end of the  
25 first full calendar month period in which

1           the average aggregate comparable share  
2           volume for all security futures products  
3           based on single equity securities traded on  
4           all national securities exchanges, any na-  
5           tional securities associations registered  
6           pursuant to section 15A(a), and all other  
7           persons equals or exceeds 10 percent of the  
8           average aggregate comparable share vol-  
9           ume of options on single equity securities  
10          traded on all national securities exchanges  
11          and any national securities associations  
12          registered pursuant to section 15A(a); or

13                   “(ii) 2 years after the date on which  
14                   trading in any security futures product  
15                   commences under this title.”.

16          (b) MARGIN.—Section 7 of the Securities Exchange  
17 Act of 1934 (15 U.S.C. 78g) is amended—

18                   (1) in subsection (a), by inserting “or a security  
19                   futures product” after “exempted security”;

20                   (2) in subsection (c)(1)(A), by inserting “except  
21                   as provided in paragraph (2),” after “security,”;

22                   (3) by redesignating paragraph (2) of sub-  
23                   section (c) as paragraph (3) of such subsection; and

24                   (4) by inserting after paragraph (1) of such  
25                   subsection the following:

1 “(2) MARGIN REGULATIONS.—

2 “(A) COMPLIANCE WITH MARGIN RULES  
3 REQUIRED.—It shall be unlawful for any  
4 broker, dealer, or member of a national securi-  
5 ties exchange to, directly or indirectly, extend  
6 or maintain credit to or for, or collect margin  
7 from any customer on, any security futures  
8 product unless such activities comply with the  
9 regulations—

10 “(i) which the Board shall prescribe  
11 pursuant to subparagraph (B); or

12 “(ii) if the Board determines to dele-  
13 gate the authority to prescribe such regula-  
14 tions, which the Commission and the Com-  
15 modity Futures Trading Commission shall  
16 jointly prescribe pursuant to subparagraph  
17 (B).

18 If the Board delegates the authority to pre-  
19 scribe such regulations under clause (ii) and the  
20 Commission and the Commodity Futures Trad-  
21 ing Commission have not jointly prescribed such  
22 regulations within a reasonable period of time  
23 after the date of such delegation, the Board  
24 shall prescribe such regulations pursuant to  
25 subparagraph (B).

1           “(B) CRITERIA FOR ISSUANCE OF  
2 RULES.—The Board shall prescribe, or, if the  
3 authority is delegated pursuant to subpara-  
4 graph (A)(ii), the Commission and the Com-  
5 modity Futures Trading Commission shall  
6 jointly prescribe, such regulations to establish  
7 margin requirements, including the establish-  
8 ment of levels of margin (initial and mainte-  
9 nance) for security futures products under such  
10 terms, and at such levels, as the Board deems  
11 appropriate, or as the Commission and the  
12 Commodity Futures Trading Commission joint-  
13 ly deem appropriate—

14                   “(i) to preserve the financial integrity  
15 of markets trading security futures prod-  
16 ucts;

17                   “(ii) to prevent systemic risk;

18                   “(iii) to require that—

19                           “(I) the margin requirements for  
20 a security future product be con-  
21 sistent with the margin requirements  
22 for comparable option contracts trad-  
23 ed on any exchange registered pursu-  
24 ant to section 6(a) of this title; and

1           “(II) initial and maintenance  
2           margin levels for a security future  
3           product not be lower than the lowest  
4           level of margin, exclusive of premium,  
5           required for any comparable option  
6           contract traded on any exchange reg-  
7           istered pursuant to section 6(a) of  
8           this title, other than an option on a  
9           security future;

10           except that nothing in this subparagraph  
11           shall be construed to prevent a national se-  
12           curities exchange or national securities as-  
13           sociation from requiring higher margin lev-  
14           els for a security future product when it  
15           deems such action to be necessary or ap-  
16           propriate; and

17           “(iv) to ensure that the margin re-  
18           quirements (other than levels of margin),  
19           including the type, form, and use of collat-  
20           eral for security futures products, are and  
21           remain consistent with the requirements  
22           established by the Board, pursuant to sub-  
23           paragraphs (A) and (B) of paragraph  
24           (1).”.

1           (c) INCORPORATION OF SECURITY FUTURES PROD-  
2 UCTS INTO THE NATIONAL MARKET SYSTEM.—Section  
3 11A of the Securities Exchange Act of 1934 (15 U.S.C.  
4 78k–1) is amended by adding at the end the following:

5           “(e) NATIONAL MARKETS SYSTEM FOR SECURITY  
6 FUTURES PRODUCTS.—

7           “(1) CONSULTATION AND COOPERATION RE-  
8 QUIRED.—With respect to security futures products,  
9 the Commission and the Commodity Futures Trad-  
10 ing Commission shall consult and cooperate so that,  
11 to the maximum extent practicable, their respective  
12 regulatory responsibilities may be fulfilled and the  
13 rules and regulations applicable to security futures  
14 products may foster a national market system for  
15 security futures products if the Commission and the  
16 Commodity Futures Trading Commission jointly de-  
17 termine that such a system would be consistent with  
18 the congressional findings in subsection (a)(1). In  
19 accordance with this objective, the Commission shall,  
20 at least 15 days prior to the issuance for public com-  
21 ment of any proposed rule or regulation under this  
22 section concerning security futures products, consult  
23 and request the views of the Commodity Futures  
24 Trading Commission.

1           “(2) APPLICATION OF RULES BY ORDER OF  
2           CFTC.—No rule adopted pursuant to this section  
3           shall be applied to any person with respect to the  
4           trading of security futures products on an exchange  
5           that is registered under section 6(g) unless the Com-  
6           modity Futures Trading Commission has issued an  
7           order directing that such rule is applicable to such  
8           persons.”.

9           (d) INCORPORATION OF SECURITY FUTURES PROD-  
10          UCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND  
11          SETTLEMENT.—Section 17A(b) of the Securities Ex-  
12          change Act of 1934 (15 U.S.C. 78q–1(b)) is amended by  
13          adding at the end the following:

14          “(7)(A) A clearing agency that is regulated directly  
15          or indirectly by the Commodity Futures Trading Commis-  
16          sion through its association with a designated contract  
17          market for security futures products that is a national se-  
18          curities exchange registered pursuant to section 6(g), and  
19          that would be required to register pursuant to paragraph  
20          (1) of this subsection only because it performs the func-  
21          tions of a clearing agency with respect to security futures  
22          products effected pursuant to the rules of the designated  
23          contract market with which such agency is associated, is  
24          exempted from the provisions of this section and the rules  
25          and regulations thereunder, except that if such a clearing

1 agency performs the functions of a clearing agency with  
2 respect to a security futures product that is not cash set-  
3 tled, it must have arrangements in place with a registered  
4 clearing agency to effect the payment and delivery of the  
5 securities underlying the security futures product.

6 “(B) Any clearing agency that performs the functions  
7 of a clearing agency with respect to security futures prod-  
8 ucts must coordinate with and develop fair and reasonable  
9 links with any and all other clearing agencies that perform  
10 the functions of a clearing agency with respect to security  
11 futures products, in order to permit, as of the compliance  
12 date (as defined in section 6(h)(6)(C)), security futures  
13 products to be purchased on one market and offset on an-  
14 other market that trades such products.”.

15 (e) MARKET EMERGENCY POWERS AND CIRCUIT  
16 BREAKERS.—Section 12(k) of the Securities Exchange  
17 Act of 1934 (15 U.S.C. 78l(k)) is amended—

18 (1) in paragraph (1), by adding at the end the  
19 following: “If the actions described in subparagraph  
20 (A) or (B) involve a security futures product, the  
21 Commission shall consult with and consider the  
22 views of the Commodity Futures Trading Commis-  
23 sion.”; and

24 (2) in paragraph (2)(B), by inserting after the  
25 first sentence the following: “If the actions described

1 in subparagraph (A) involve a security futures prod-  
2 uct, the Commission shall consult with and consider  
3 the views of the Commodity Futures Trading Com-  
4 mission.”.

5 (f) TRANSACTION FEES.—Section 31 of the Securi-  
6 ties Exchange Act of 1934 (15 U.S.C. 78ee) is amended

7 (1) in subsection (a), by inserting “and assess-  
8 ments” after “fees”;

9 (2) in subsections (b), (c), and (d)(1), by strik-  
10 ing “and other evidences of indebtedness” and in-  
11 serting “other evidences of indebtedness, and secu-  
12 rity futures products”;

13 (3) in subsection (f), by inserting “or assess-  
14 ment” after “fee”;

15 (4) in subsection (g), by inserting “and assess-  
16 ment” after “fee”;

17 (5) by redesignating subsections (e), (f), and  
18 (g) as subsections (f), (g), and (h), respectively; and

19 (6) by inserting after subsection (d) the fol-  
20 lowing new subsection:

21 “(e) ASSESSMENTS ON SECURITY FUTURES TRANS-  
22 ACTIONS.—Each national securities exchange and national  
23 securities association shall pay to the Commission an as-  
24 sessment equal to \$0.02 for each round turn transaction  
25 (treated as including one purchase and one sale of a con-

1 tract of sale for future delivery) on a security future trad-  
2 ed on such national securities exchange or by or through  
3 any member of such association otherwise than on a na-  
4 tional securities exchange, except that for fiscal year 2007  
5 or any succeeding fiscal year such assessment shall be  
6 equal to \$0.0075 for each such transaction. Assessments  
7 collected pursuant to this subsection shall be deposited  
8 and collected as general revenue of the Treasury.”.

9 (g) EXEMPTION FROM SHORT SALE PROVISIONS.—  
10 Section 10(a) of the Securities Exchange Act of 1934 (15  
11 U.S.C 78j(a)) is amended—

12 (1) by inserting “(1)” after “(a)”; and

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

14 “(2) Paragraph (1) of this subsection shall not apply  
15 to security futures products.”.

16 (h) RULEMAKING AUTHORITY TO ADDRESS DUPLI-  
17 CATIVE REGULATION OF DUAL REGISTRANTS.—Section  
18 15(c)(3) of the Securities Exchange Act of 1934 (15  
19 U.S.C. 78o(c)(3))is amended—

20 (1) by inserting “(A)” after “(3)”; and

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

22 “(B) Consistent with this title, the Commission, in  
23 consultation with the Commodity Futures Trading Com-  
24 mission, shall issue such rules, regulations, or orders as  
25 are necessary to avoid duplicative or conflicting regula-

1 tions applicable to any broker or dealer registered with  
2 the Commission pursuant to section 15(b) (except para-  
3 graph (11) thereof), that is also registered with the Com-  
4 modity Futures Trading Commission pursuant to section  
5 4f(a) of the Commodity Exchange Act (except paragraph  
6 (2) thereof), with respect to the application of (i) the pro-  
7 visions of section 8, section 15(c)(3), and section 17 of  
8 this title and the rules and regulations thereunder related  
9 to the treatment of customer funds, securities, or prop-  
10 erty, maintenance of books and records, financial report-  
11 ing, or other financial responsibility rules, involving secu-  
12 rity futures products and (ii) similar provisions of the  
13 Commodity Exchange Act and rules and regulations there-  
14 under involving security futures products.”.

15 (i) OBLIGATION TO ADDRESS DUPLICATIVE REGULA-  
16 TION OF DUAL REGISTRANTS.—Section 6 of the Securi-  
17 ties Exchange Act of 1934 (15 U.S.C 78f) is amended  
18 by inserting after subsection (h), as added by subsection  
19 (a), the following:

20 “(i) Consistent with this title, each national securities  
21 exchange registered pursuant to subsection (a) of this sec-  
22 tion shall issue such rules as are necessary to avoid dupli-  
23 cative or conflicting rules applicable to any broker or deal-  
24 er registered with the Commission pursuant to section  
25 15(b) (except paragraph (11) thereof), that is also reg-

1 istered with the Commodity Futures Trading Commission  
2 pursuant to section 4f(a) of the Commodity Exchange Act  
3 (except paragraph (2) thereof), with respect to the appli-  
4 cation of—

5 (1) rules of such national securities exchange of  
6 the type specified in section 15(c)(3)(B) involving  
7 security futures products; and

8 (2) similar rules of national securities ex-  
9 changes registered pursuant to section 6(g) and na-  
10 tional securities associations registered pursuant to  
11 section 15A(k) involving security futures products.”.

12 (j) OBLIGATION TO ADDRESS DUPLICATIVE REGU-  
13 LATION OF DUAL REGISTRANTS.—Section 15A of the Se-  
14 curities Exchange Act of 1934 (15 U.S.C 78o–3) is  
15 amended by inserting after subsection (k), as added by  
16 section 203, the following:

17 “(l) Consistent with this title, each national securities  
18 association registered pursuant to subsection (a) of this  
19 section shall issue such rules as are necessary to avoid du-  
20 plicative or conflicting rules applicable to any broker or  
21 dealer registered with the Commission pursuant to section  
22 15(b) (except paragraph (11) thereof), that is also reg-  
23 istered with the Commodity Futures Trading Commission  
24 pursuant to section 4f(a) of the Commodity Exchange Act

1 (except paragraph (2) thereof), with respect to the appli-  
2 cation of—

3 “(1) rules of such national securities association  
4 of the type specified in section 15(c)(3)(B) involving  
5 security futures products; and

6 “(2) similar rules of national securities associa-  
7 tions registered pursuant to subsection (k) of this  
8 section and national securities exchanges registered  
9 pursuant to section 6(g) involving security futures  
10 products.”.

11 (k) OBLIGATION TO PUT IN PLACE PROCEDURES  
12 AND ADOPT RULES.—

13 (1) NATIONAL SECURITIES ASSOCIATIONS.—  
14 Section 15A of the Securities Exchange Act of 1934  
15 (15 U.S.C. 78o-3) is amended by inserting after  
16 subsection (l), as added by subsection (j) of this sec-  
17 tion, the following new subsection:

18 “(m) PROCEDURES AND RULES FOR SECURITY FU-  
19 TURE PRODUCTS.—A national securities association reg-  
20 istered pursuant to subsection (a) shall, not later than 8  
21 months after the date of enactment of the Commodity Fu-  
22 tures Modernization Act of 2000, implement the proce-  
23 dures specified in section 6(h)(5)(A) of this title and adopt  
24 the rules specified in subparagraphs (B) and (C) of section  
25 6(h)(5) of this title.”.

1           (2) NATIONAL SECURITIES EXCHANGES.—Sec-  
2           tion 6 of the Securities Exchange Act of 1934 (15  
3           U.S.C. 78o-3) is amended by inserting after sub-  
4           section (i), as added by subsection (i) of this section,  
5           the following new subsection:

6           “(j) PROCEDURES AND RULES FOR SECURITY FU-  
7           TURE PRODUCTS.—A national securities exchange reg-  
8           istered pursuant to subsection (a) shall implement the pro-  
9           cedures specified in section 6(h)(5)(A) of this title and  
10          adopt the rules specified in subparagraphs (B) and (C)  
11          of section 6(h)(5) of this title not later than 8 months  
12          after the date of receipt of a request from an alternative  
13          trading system for such implementation and rules.”.

14          (1) OBLIGATION TO ADDRESS SECURITY FUTURES  
15          PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section  
16          6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)  
17          is amended by adding after subsection (i), as added by  
18          subsection (i), the following—

19          “(j)(1) To the extent necessary or appropriate in the  
20          public interest, to promote fair competition, and consistent  
21          with the protection of investors and the maintenance of  
22          fair and orderly markets, the Commission and the Com-  
23          modity Futures Trading Commission shall jointly issue  
24          such rules, regulations, or orders as are necessary and ap-  
25          propriate to permit the offer and sale of a security futures

1 product traded on or subject to the rules of a foreign  
2 board of trade to United States persons.

3 “(2) The rules, regulations, or orders adopted under  
4 paragraph (1) shall take into account, as appropriate, the  
5 nature and size of the markets that the securities under-  
6 lying the security futures product reflect.”.

7 **SEC. 207. CLEARANCE AND SETTLEMENT.**

8 Section 17A(b) of the Securities Exchange Act of  
9 1934 (15 U.S.C. 78q-1(b)) is amended—

10 (1) in paragraph (3)(A), by inserting “and de-  
11 rivative agreements, contracts, and transactions”  
12 after “prompt and accurate clearance and settlement  
13 of securities transactions”;

14 (2) in paragraph (3)(F), by inserting “and, to  
15 the extent applicable, derivative agreements, con-  
16 tracts, and transactions” after “designed to promote  
17 the prompt and accurate clearance and settlement of  
18 securities transactions”; and

19 (3) by inserting after paragraph (7), as added  
20 by section 206(d), the following:

21 “(8) A registered clearing agency shall be permitted  
22 to provide facilities for the clearance and settlement of any  
23 derivative agreements, contracts, or transactions that are  
24 excluded from the Commodity Exchange Act, subject to  
25 the requirements of this section and to such rules and reg-

1 ulations as the Commission may prescribe as necessary or  
2 appropriate in the public interest, for the protection of in-  
3 vestors, or otherwise in furtherance of the purposes of this  
4 title.”.

5 **SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND**  
6 **DISCLOSURE ISSUES UNDER THE SECURI-**  
7 **TIES ACT OF 1933 AND THE SECURITIES EX-**  
8 **CHANGE ACT OF 1934.**

9 (a) AMENDMENTS TO THE SECURITIES ACT OF  
10 1933.—

11 (1) TREATMENT OF SECURITY FUTURES PROD-  
12 UCTS.—Section 2(a) of the Securities Act of 1933  
13 (15 U.S.C. 77b(a)) is amended—

14 (A) in paragraph (1), by inserting “secu-  
15 rity future,” after “treasury stock,”;

16 (B) in paragraph (3), by adding at the end  
17 the following: “Any offer or sale of a security  
18 futures product by or on behalf of the issuer of  
19 the securities underlying the security futures  
20 product, an affiliate of the issuer, or an under-  
21 writer, shall constitute a contract for sale of,  
22 sale of, offer for sale, or offer to sell the under-  
23 lying securities.”;

24 (C) by adding at the end the following:

1           “(16) The terms ‘security future’, ‘narrow-  
2           based security index’, and ‘security futures product’  
3           have the same meanings as provided in section  
4           3(a)(55) of the Securities Exchange Act of 1934.”.

5           (2) EXEMPTION FROM REGISTRATION.—Section  
6           3(a) of the Securities Act of 1933 (15 U.S.C.  
7           77c(a)) is amended by adding at the end the fol-  
8           lowing:

9           “(14) Any security futures product that is—

10           “(A) cleared by a clearing agency reg-  
11           istered under section 17A of the Securities Ex-  
12           change Act of 1934 or exempt from registration  
13           under subsection (b)(7) of such section 17A;  
14           and

15           “(B) traded on a national securities ex-  
16           change or a national securities association reg-  
17           istered pursuant to section 15A(a) of the Secu-  
18           rities Exchange Act of 1934.”.

19           (3) CONFORMING AMENDMENT.—Section  
20           12(a)(2) of the Securities Act of 1933 (15 U.S.C.  
21           77l(a)(2)) is amended by striking “paragraph (2)”  
22           and inserting “paragraphs (2) and (14)”.

23           (b) AMENDMENTS TO THE SECURITIES EXCHANGE  
24           ACT OF 1934.—

1           (1) EXEMPTION FROM REGISTRATION.—Section  
2           12(a) of the Securities Exchange Act of 1934 (15  
3           U.S.C. 78l(a)) is amended by adding at the end the  
4           following: “The provisions of this subsection shall  
5           not apply in respect of a security futures product  
6           traded on a national securities exchange.”.

7           (2) EXEMPTIONS FROM REPORTING REQUIRE-  
8           MENT.—Section 12(g)(5) of the Securities Exchange  
9           Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by  
10          adding at the end the following: “For purposes of  
11          this subsection, a security futures product shall not  
12          be considered a class of equity security of the issuer  
13          of the securities underlying the security futures  
14          product.”.

15          (3) TRANSACTIONS BY CORPORATE INSIDERS.—  
16          Section 16 of the Securities Exchange Act of 1934  
17          (15 U.S.C. 78p) is amended by adding at the end  
18          the following:

19          “(f) TREATMENT OF TRANSACTIONS IN SECURITY  
20          FUTURES PRODUCTS.—The provisions of this section shall  
21          apply to ownership of and transactions in security futures  
22          products as if they were ownership of and transactions in  
23          the underlying equity security. The Commission may  
24          adopt such rules and regulations as it deems necessary

1 or appropriate in the public interest to carry out the pur-  
2 poses of this section.”.

3 **SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY**

4 **ACT OF 1940 AND THE INVESTMENT ADVIS-**  
5 **ERS ACT OF 1940.**

6 (a) DEFINITIONS UNDER THE INVESTMENT COM-  
7 PANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT  
8 OF 1940.—

9 (1) Section 2(a)(36) of the Investment Com-  
10 pany Act of 1940 (15 U.S.C. 80a-2(a)(36)) is  
11 amended by inserting “security future,” after  
12 “treasury stock,”.

13 (2) Section 202(a)(18) of the Investment Advis-  
14 ers Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amend-  
15 ed by inserting “security future,” after “treasury  
16 stock,”.

17 (3) Section 2(a) of the Investment Company  
18 Act of 1940 (15 U.S.C. 80a-2(a)) is amended by  
19 adding at the end the following:

20 “(52) The terms ‘security future’ and ‘narrow-  
21 based security index’ have the same meanings as  
22 provided in section 3(a)(55) of the Securities Ex-  
23 change Act of 1934.”.

1           (4) Section 202(a) of the Investment Advisers  
2 Act of 1940 (15 U.S.C. 80b–2(a)) is amended by  
3 adding at the end the following:

4           “(27) The terms ‘security future’ and ‘narrow-  
5 based security index’ have the same meanings as  
6 provided in section 3(a)(55) of the Securities Ex-  
7 change Act of 1934.”.

8           (b) OTHER PROVISION.—Section 203(b) of the In-  
9 vestment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is  
10 amended—

11           (1) by striking “or” at the end of paragraph  
12 (4);

13           (2) by striking the period at the end of para-  
14 graph (5) and inserting “; or”; and

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

16           “(6) any investment adviser that is registered  
17 with the Commodity Futures Trading Commission  
18 as a commodity trading advisor whose business does  
19 not consist primarily of acting as an investment ad-  
20 viser, as defined in section 202(a)(11) of this title,  
21 and that does not act as an investment adviser to—

22           “(A) an investment company registered  
23 under title I of this Act; or

24           “(B) a company which has elected to be a  
25 business development company pursuant to sec-

1           tion 54 of title I of this Act and has not with-  
2           drawn its election.”.

3 **SEC. 210. PREEMPTION OF STATE LAWS.**

4           Section 28(a) of the Securities Exchange Act of 1934  
5 (15 U.S.C. 78bb(a)) is amended—

6           (1) in the last sentence—

7                 (A) by inserting “subject to this title”  
8                 after “privilege, or other security”; and

9                 (B) by striking “any such instrument, if  
10                 such instrument is traded pursuant to rules and  
11                 regulations of a self-regulatory organization  
12                 that are filed with the Commission pursuant to  
13                 section 19(b) of this Act” and inserting “any  
14                 such security”; and

15           (2) by adding at the end the following new sen-  
16           tence: “No provision of State law regarding the  
17           offer, sale, or distribution of securities shall apply to  
18           any transaction in a security futures product, except  
19           that this sentence shall not be construed as limiting  
20           any State antifraud law of general applicability.”.

1       **Subtitle B—Amendments to the**  
2               **Commodity Exchange Act**

3       **SEC. 221. JURISDICTION OF SECURITIES AND EXCHANGE**

4                       **COMMISSION; OTHER PROVISIONS.**

5               (a) JURISDICTION OF SECURITIES AND EXCHANGE  
6       COMMISSION.—

7                       (1) Section 2(a)(1)(C) of the Commodity Ex-  
8       change Act (7 U.S.C. 2a) (as redesignated by sec-  
9       tion 124(a)(2)(C)) is amended—

10                      (A) in clause (ii)—

11                               (i) by inserting “or register a deriva-  
12       tives transaction execution facility that  
13       trades or executes,” after “contract market  
14       in,”;

15                               (ii) by inserting after “contracts) for  
16       future delivery” the following: “, and no  
17       derivatives transaction execution facility  
18       shall trade or execute such contracts of  
19       sale (or options on such contracts) for fu-  
20       ture delivery,”;

21                               (iii) by striking “making such applica-  
22       tion demonstrates and the Commission ex-  
23       pressly finds that the specific contract (or  
24       option on such contract) with respect to  
25       which the application has been made

1           meets” and inserting “or the derivatives  
2           transaction execution facility, and the ap-  
3           plicable contract, meet”;

4                   (iv) by striking subclause (III) of  
5           clause (ii) and inserting the following:

6                   “(III) Such group or index of securities  
7           shall not constitute a narrow-based security  
8           index.”;

9                   (B) by striking clause (iii);

10                   (C) by striking clause (iv) and inserting  
11           the following:

12                   “(iii) If, in its discretion, the Commission deter-  
13           mines that a stock index futures contract, notwith-  
14           standing its conformance with the requirements in  
15           clause (ii) of this subparagraph, can reasonably be  
16           used as a surrogate for trading a security (including  
17           a security futures product), it may, by order, require  
18           such contract and any option thereon be traded and  
19           regulated as security futures products as defined in  
20           section 3(a)(56) of the Securities Exchange Act of  
21           1934 and section 1a(32) of this Act subject to all  
22           rules and regulations applicable to security futures  
23           products under this Act and the securities laws as  
24           defined in section 3(a)(47) of the Securities Ex-  
25           change Act of 1934.”; and

1 (D) by redesignating clause (v) as clause  
2 (iv).

3 (2) Section 2(a)(1) of the Commodity Exchange  
4 Act (7 U.S.C. 2, 2a, 4) is amended by adding at the  
5 end the following:

6 “(D)(i) Notwithstanding any other provision of this  
7 Act, the Securities and Exchange Commission shall have  
8 jurisdiction and authority over security futures as defined  
9 in section 3(a)(55) of the Securities Exchange Act of  
10 1934, section 2(a)(16) of the Securities Act of 1933, sec-  
11 tion 2(a)(52) of the Investment Company Act of 1940,  
12 and section 202(a)(27) of the Investment Advisers Act of  
13 1940, options on security futures, and persons effecting  
14 transactions in security futures and options thereon, and  
15 this Act shall apply to and the Commission shall have ju-  
16 risdiction with respect to accounts, agreements (including  
17 any transaction which is of the character of, or is com-  
18 monly known to the trade as, an ‘option’, ‘privilege’, ‘in-  
19 demnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or  
20 ‘decline guaranty’) and transactions involving, and may  
21 designate a board of trade as a contract market in, or  
22 register a derivatives transaction execution facility that  
23 trades or executes, a security futures product as defined  
24 in section 1a(32) of this Act: *Provided, however,* That, ex-  
25 cept as provided in clause (vi) of this subparagraph, no

1 board of trade shall be designated as a contract market  
2 with respect to, or registered as a derivatives transaction  
3 execution facility for, any such contracts of sale for future  
4 delivery unless the board of trade and the applicable con-  
5 tract meet the following criteria:

6           “(I) Except as otherwise provided in a rule,  
7           regulation, or order issued pursuant to clause (v) of  
8           this subparagraph, any security underlying the secu-  
9           rity future, including each component security of a  
10          narrow-based security index, is registered pursuant  
11          to section 12 of the Securities Exchange Act of  
12          1934.

13          “(II) If the security futures product is not cash  
14          settled, the board of trade on which the security fu-  
15          tures product is traded has arrangements in place  
16          with a clearing agency registered pursuant to section  
17          17A of the Securities Exchange Act of 1934 for the  
18          payment and delivery of the securities underlying the  
19          security futures product.

20          “(III) Except as otherwise provided in a rule,  
21          regulation, or order issued pursuant to clause (v) of  
22          this subparagraph, the security future is based upon  
23          common stock and such other equity securities as  
24          the Commission and the Securities and Exchange  
25          Commission jointly determine appropriate.

1           “(IV) The security futures product is cleared by  
2           a clearing agency that has in place provisions for  
3           linked and coordinated clearing with other clearing  
4           agencies that clear security futures products, which  
5           permits the security futures product to be purchased  
6           on a designated contract market, registered deriva-  
7           tives transaction execution facility, national securi-  
8           ties exchange registered under section 6(a) of the  
9           Securities Exchange Act of 1934, or national securi-  
10          ties association registered pursuant to section  
11          15A(a) of the Securities Exchange Act of 1934 and  
12          offset on another designated contract market, reg-  
13          istered derivatives transaction execution facility, na-  
14          tional securities exchange registered under section  
15          6(a) of the Securities Exchange Act of 1934, or na-  
16          tional securities association registered pursuant to  
17          section 15A(a) of the Securities Exchange Act of  
18          1934.

19           “(V) Only futures commission merchants, intro-  
20          ducing brokers, commodity trading advisors, com-  
21          modity pool operators or associated persons subject  
22          to suitability rules comparable to those of a national  
23          securities association registered pursuant to section  
24          15A(a) of the Securities Exchange Act of 1934 so-  
25          licit, accept any order for, or otherwise deal in any

1 transaction in or in connection with the security fu-  
2 tures product.

3 “(VI) The security futures product is subject to  
4 a prohibition against dual trading in section 4j of  
5 this Act and the rules and regulations thereunder or  
6 the provisions of section 11(a) of the Securities Ex-  
7 change Act of 1934 and the rules and regulations  
8 thereunder, except to the extent otherwise permitted  
9 under the Securities Exchange Act of 1934 and the  
10 rules and regulations thereunder.

11 “(VII) Trading in the security futures product  
12 is not readily susceptible to manipulation of the  
13 price of such security futures product, nor to caus-  
14 ing or being used in the manipulation of the price  
15 of any underlying security, option on such security,  
16 or option on a group or index including such securi-  
17 ties;

18 “(VIII) The board of trade on which the secu-  
19 rity futures product is traded has procedures in  
20 place for coordinated surveillance among such board  
21 of trade, any market on which any security under-  
22 lying the security futures product is traded, and  
23 other markets on which any related security is trad-  
24 ed to detect manipulation and insider trading, except  
25 that, if the board of trade is an alternative trading

1 system, a national securities association registered  
2 pursuant to section 15A(a) of the Securities Ex-  
3 change Act of 1934 or national securities exchange  
4 registered pursuant to section 6(a) of the Securities  
5 Exchange Act of 1934 of which such alternative  
6 trading system is a member has in place such proce-  
7 dures.

8 “(IX) The board of trade on which the security  
9 futures product is traded has in place audit trails  
10 necessary or appropriate to facilitate the coordinated  
11 surveillance required in subclause (VIII), except  
12 that, if the board of trade is an alternative trading  
13 system, a national securities association registered  
14 pursuant to section 15A(a) of the Securities Ex-  
15 change Act of 1934 or national securities exchange  
16 registered pursuant to section 6(a) of the Securities  
17 Exchange Act of 1934 of which such alternative  
18 trading system is a member has rules to require  
19 such audit trails.

20 “(X) The board of trade on which the security  
21 futures product is traded has in place procedures to  
22 coordinate trading halts between such board of trade  
23 and markets on which any security underlying the  
24 security futures product is traded and other markets  
25 on which any related security is traded, except that,

1 if the board of trade is an alternative trading sys-  
2 tem, a national securities association registered pur-  
3 suant to section 15A(a) of the Securities Exchange  
4 Act of 1934 or national securities exchange reg-  
5 istered pursuant to section 6(a) of the Securities Ex-  
6 change Act of 1934 of which such alternative trad-  
7 ing system is a member has rules to require such co-  
8 ordinated trading halts.

9 “(XI) The margin requirements for a security  
10 futures product comply with the regulations pre-  
11 scribed pursuant to section 7(c)(2)(B) of the Securi-  
12 ties Exchange Act of 1934, except that nothing in  
13 this subclause shall be construed to prevent a board  
14 of trade from requiring higher margin levels for a  
15 security futures product when it deems such action  
16 to be necessary or appropriate.

17 “(ii) It shall be unlawful for any person to offer, to  
18 enter into, to execute, to confirm the execution of, or to  
19 conduct any office or business anywhere in the United  
20 States, its territories or possessions, for the purpose of  
21 soliciting, or accepting any order for, or otherwise dealing  
22 in, any transaction in, or in connection with, a security  
23 futures product unless—

24 “(I) the transaction is conducted on or subject  
25 to the rules of a board of trade that—

1           “(aa) has been designated by the Commis-  
2           sion as a contract market in such security fu-  
3           tures product; or

4           “(bb) is a registered derivatives trans-  
5           action execution facility for the security futures  
6           product that has provided a certification with  
7           respect to the security futures product pursuant  
8           to clause (vii);

9           “(II) the contract is executed or consummated  
10          by, through, or with a member of the contract mar-  
11          ket or registered derivatives transaction execution  
12          facility; and

13          “(III) the security futures product is evidenced  
14          by a record in writing which shows the date, the  
15          parties to such security futures product and their  
16          addresses, the property covered, and its price, and  
17          each contract market member or registered deriva-  
18          tives transaction execution facility member shall  
19          keep the record for a period of 3 years from the date  
20          of the transaction, or for a longer period if the Com-  
21          mission so directs, which record shall at all times be  
22          open to the inspection of any duly authorized rep-  
23          resentative of the Commission.

24          “(iii)(I) Except as provided in subclause (II) but not-  
25          withstanding any other provision of this Act, no person

1 shall offer to enter into, enter into, or confirm the execu-  
2 tion of any option on a security future.

3 “(II) After 3 years after the date of the enactment  
4 of the Commodity Futures Modernization Act of 2000, the  
5 Commission and the Securities and Exchange Commission  
6 may by order jointly determine to permit trading of op-  
7 tions on any security future authorized to be traded under  
8 the provisions of this Act and the Securities Exchange Act  
9 of 1934.

10 “(iv)(I) All relevant records of a futures commission  
11 merchant or introducing broker registered pursuant to  
12 section 4f(a)(2), floor broker or floor trader exempt from  
13 registration pursuant to section 4f(a)(3), associated per-  
14 son exempt from registration pursuant to section 4k(6),  
15 or board of trade designated as a contract market in a  
16 security futures product pursuant to section 5f shall be  
17 subject to such reasonable periodic or special examinations  
18 by representatives of the Commission as the Commission  
19 deems necessary or appropriate in the public interest, for  
20 the protection of investors, or otherwise in furtherance of  
21 the purposes of this Act, and the Commission, before con-  
22 ducting any such examination, shall give notice to the Se-  
23 curities and Exchange Commission of the proposed exam-  
24 ination and consult with the Securities and Exchange  
25 Commission concerning the feasibility and desirability of

1 coordinating the examination with examinations conducted  
2 by the Securities and Exchange Commission in order to  
3 avoid unnecessary regulatory duplication or undue regu-  
4 latory burdens for the registrant or board of trade.

5       “(II) The Commission shall notify the Securities and  
6 Exchange Commission of any examination conducted of  
7 any futures commission merchant or introducing broker  
8 registered pursuant to section 4f(a)(2), floor broker or  
9 floor trader exempt from registration pursuant to section  
10 4f(a)(3), associated person exempt from registration pur-  
11 suant to section 4k(6), or board of trade designated as  
12 a contract market in a security futures product pursuant  
13 to section 5f, and, upon request, furnish to the Securities  
14 and Exchange Commission any examination report and  
15 data supplied to the Commission in connection with the  
16 examination.

17       “(III) Before conducting an examination under sub-  
18 clause (I), the Commission shall use the reports of exami-  
19 nations, unless the information sought is unavailable in  
20 the reports, of any futures commission merchant or intro-  
21 ducing broker registered pursuant to section 4f(a)(2),  
22 floor broker or floor trader exempt from registration pur-  
23 suant to section 4f(a)(3), associated person exempt from  
24 registration pursuant to section 4k(6), or board of trade  
25 designated as a contract market in a security futures

1 product pursuant to section 5f that is made by the Securi-  
2 ties and Exchange Commission, a national securities asso-  
3 ciation registered pursuant to section 15A(a) of the Secu-  
4 rities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a  
5 national securities exchange registered pursuant to section  
6 6(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
7 78f(a)).

8 “(IV) Any records required under this subsection for  
9 a futures commission merchant or introducing broker reg-  
10 istered pursuant to section 4f(a)(2), floor broker or floor  
11 trader exempt from registration pursuant to section  
12 4f(a)(3), associated person exempt from registration pur-  
13 suant to section 4k(6), or board of trade designated as  
14 a contract market in a security futures product pursuant  
15 to section 5f, shall be limited to records with respect to  
16 accounts, agreements, and transactions involving security  
17 futures products.

18 “(v)(I) The Commission and the Securities and Ex-  
19 change Commission, by rule, regulation, or order, may  
20 jointly modify the criteria specified in subclause (I) or  
21 (III) of clause (i), including the trading of security futures  
22 based on securities other than equity securities, to the ex-  
23 tent such modification fosters the development of fair and  
24 orderly markets in security futures products, is necessary

1 or appropriate in the public interest, and is consistent with  
2 the protection of investors.

3 “(II) The Commission and the Securities and Ex-  
4 change Commission, by order, may jointly exempt any per-  
5 son from compliance with the criterion specified in clause  
6 (i)(IV) to the extent such exemption fosters the develop-  
7 ment of fair and orderly markets in security futures prod-  
8 ucts, is necessary or appropriate in the public interest, and  
9 is consistent with the protection of investors.

10 “(vi)(I) Notwithstanding clauses (i) and (vii), until  
11 the compliance date, a board of trade shall not be required  
12 to meet the criterion specified in clause (i)(IV).

13 “(II) The Commission and the Securities and Ex-  
14 change Commission shall jointly publish in the Federal  
15 Register a notice of the compliance date no later than 165  
16 days before the compliance date.

17 “(III) For purposes of this clause, the term ‘compli-  
18 ance date’ means the later of—

19 “(aa) 180 days after the end of the first full  
20 calendar month period in which the average aggreg-  
21 ate comparable share volume for all security fu-  
22 tures products based on single equity securities trad-  
23 ed on all designated contract markets and registered  
24 derivatives transaction execution facilities equals or  
25 exceeds 10 percent of the average aggregate com-

1       parable share volume of options on single equity se-  
2       curities traded on all national securities exchanges  
3       registered pursuant to section 6(a) of the Securities  
4       Exchange Act of 1934 and any national securities  
5       associations registered pursuant to section 15A(a) of  
6       such Act; or

7               “(bb) 2 years after the date on which trading  
8       in any security futures product commences under  
9       this Act.

10       “(vii) It shall be unlawful for a board of trade to  
11       trade or execute a security futures product unless the  
12       board of trade has provided the Commission with a certifi-  
13       cation that the specific security futures product and the  
14       board of trade, as applicable, meet the criteria specified  
15       in subclauses (I) through (XI) of clause (i), except as oth-  
16       erwise provided in clause (vi).”.

17       (b) MARGIN ON SECURITY FUTURES.—Section  
18       2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C.  
19       2a(vi)) (as redesignated by section 124) is amended—

20               (1) by redesignating subclause (V) as subclause  
21       (VI); and

22               (2) by striking “(vi)(I)” and all that follows  
23       through subclause (IV) and inserting the following:

24               “(v)(I) Notwithstanding any other provision of  
25       this Act, any contract market in a stock index fu-

1        tures contract (or option thereon) other than a secu-  
2        rity futures product, or any derivatives transaction  
3        execution facility on which such contract or option  
4        is traded, shall file with the Board of Governors of  
5        the Federal Reserve System any rule establishing or  
6        changing the levels of margin (initial and mainte-  
7        nance) for such stock index futures contract (or op-  
8        tion thereon) other than security futures products.

9            “(II) The Board may at any time request any  
10        contract market to set the margin for any stock  
11        index futures contract (or option thereon), other  
12        than for any security futures product, at such levels  
13        as the Board in its judgment determines are appro-  
14        priate to preserve the financial integrity of the con-  
15        tract market or its clearing system or to prevent sys-  
16        temic risk. If the contract market or derivatives  
17        transaction execution facility fails to do so within  
18        the time specified by the Board in its request, the  
19        Board may direct the contract market to alter or  
20        supplement the rules of the contract market as spec-  
21        ified in the request.

22            “(III) Subject to such conditions as the Board  
23        may determine, the Board may delegate any or all  
24        of its authority, relating to margin for any stock  
25        index futures contract (or option thereon), other

1 than security futures products, under this clause to  
2 the Commission.

3 “(IV) It shall be unlawful for any futures com-  
4 mission merchant to, directly or indirectly, extend or  
5 maintain credit to or for, or collect margin from any  
6 customer on any security futures product unless  
7 such activities comply with the regulations pre-  
8 scribed pursuant to section 7(c)(2)(B) of the Securi-  
9 ties Exchange Act of 1934.

10 “(V) Nothing in this clause shall supersede or  
11 limit the authority granted to the Commission in  
12 section 8a(9) to direct a contract market or reg-  
13 istered derivatives transaction execution facility, on  
14 finding an emergency to exist, to raise temporary  
15 margin levels on any futures contract, or option on  
16 the contract covered by this clause, or on any secu-  
17 rity futures product.”

18 (c) DUAL TRADING.—Section 4j of the Commodity  
19 Exchange Act (7 U.S.C. 6j) is amended to read as follows:

20 **“SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY**  
21 **FUTURES PRODUCTS ON DESIGNATED CON-**  
22 **TRACT MARKETS AND REGISTERED DERIVA-**  
23 **TIVES TRANSACTION EXECUTION FACILITIES.**

24 “(a) The Commission shall issue regulations to pro-  
25 hibit the privilege of dual trading in security futures prod-

1 acts on each contract market and registered derivatives  
2 transaction execution facility. The regulations issued by  
3 the Commission under this section—

4 “(1) shall provide that the prohibition of dual  
5 trading thereunder shall take effect upon issuance of  
6 the regulations; and

7 “(2) shall provide exceptions, as the Commis-  
8 sion determines appropriate, to ensure fairness and  
9 orderly trading in security futures product markets,  
10 including—

11 “(A) exceptions for spread transactions  
12 and the correction of trading errors;

13 “(B) allowance for a customer to designate  
14 in writing not less than once annually a named  
15 floor broker to execute orders for such cus-  
16 tomer, notwithstanding the regulations to pro-  
17 hibit the privilege of dual trading required  
18 under this section; and

19 “(C) other measures reasonably designed  
20 to accommodate unique or special characteris-  
21 tics of individual boards of trade or contract  
22 markets, to address emergency or unusual mar-  
23 ket conditions, or otherwise to further the pub-  
24 lic interest consistent with the purposes of this  
25 section.

1       “(b) As used in this section, the term ‘dual trading’  
2 means the execution of customer orders by a floor broker  
3 during the same trading session in which the floor broker  
4 executes any trade in the same contract market or reg-  
5 istered derivatives transaction execution facility for—

6               “(1) the account of such floor broker;

7               “(2) an account for which such floor broker has  
8 trading discretion; or

9               “(3) an account controlled by a person with  
10 whom such floor broker has a relationship through  
11 membership in a broker association.

12       “(c) As used in this section, the term ‘broker associa-  
13 tion’ shall include two or more contract market members  
14 or registered derivatives transaction execution facility  
15 members with floor trading privileges of whom at least one  
16 is acting as a floor broker, who—

17               “(1) engage in floor brokerage activity on be-  
18 half of the same employer,

19               “(2) have an employer and employee relation-  
20 ship which relates to floor brokerage activity,

21               “(3) share profits and losses associated with  
22 their brokerage or trading activity, or

23               “(4) regularly share a deck of orders.”.

24       (d) EXEMPTION FROM REGISTRATION FOR INVEST-  
25 MENT ADVISERS.—Section 4m of the Commodity Ex-

1 change Act (7 U.S.C. 6m) is amended by adding at the  
2 end the following:

3       “(3) Subsection (1) of this section shall not apply to  
4 any commodity trading advisor that is registered with the  
5 Securities and Exchange Commission as an investment ad-  
6 viser whose business does not consist primarily of acting  
7 as a commodity trading advisor, as defined in section  
8 1a(6), and that does not act as a commodity trading advi-  
9 sor to any investment trust, syndicate, or similar form of  
10 enterprise that is engaged primarily in trading in any com-  
11 modity for future delivery on or subject to the rules of  
12 any contract market or registered derivatives transaction  
13 execution facility.”.

14       (e) EXEMPTION FROM INVESTIGATIONS OF MARKETS  
15 IN UNDERLYING SECURITIES.—Section 16 of the Com-  
16 modity Exchange Act (7 U.S.C. 20) is amended by adding  
17 at the end the following:

18       “(e) This section shall not apply to investigations in-  
19 volving any security underlying a security futures prod-  
20 uct.”.

21       (f) RULEMAKING AUTHORITY TO ADDRESS DUPLI-  
22 CATIVE REGULATION OF DUAL REGISTRANTS.—Section  
23 4d of the Commodity Exchange Act (7 U.S.C. 6d) is  
24 amended—

1           (1) by inserting “(a)” before the first undesig-  
2 nated paragraph;

3           (2) by inserting “(b)” before the second undes-  
4 igned paragraph; and

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

6           “(c) Consistent with this Act, the Commission, in  
7 consultation with the Securities and Exchange Commis-  
8 sion, shall issue such rules, regulations, or orders as are  
9 necessary to avoid duplicative or conflicting regulations  
10 applicable to any futures commission merchant registered  
11 with the Commission pursuant to section 4f(a) (except  
12 paragraph (2) thereof), that is also registered with the Se-  
13 curities and Exchange Commission pursuant to section  
14 15(b) of the Securities Exchange Act (except paragraph  
15 (11) thereof), involving the application of—

16           “(1) section 8, section 15(c)(3), and section 17  
17 of the Securities Exchange Act of 1934 and the  
18 rules and regulations thereunder related to the treat-  
19 ment of customer funds, securities, or property,  
20 maintenance of books and records, financial report-  
21 ing or other financial responsibility rules (as defined  
22 in section 3(a)(40) of the Securities Exchange Act  
23 of 1934), involving security futures products; and

1           “(2) similar provisions of this Act and the rules  
2           and regulations thereunder involving security futures  
3           products.”.

4           (g) OBLIGATION TO ADDRESS DUPLICATIVE REGU-  
5 LATION OF DUAL REGISTRANTS.—Section 17 of the Com-  
6 modity Exchange Act (7 U.S.C. 21) is amended by adding  
7 at the end the following:

8           “(r) Consistent with this Act, each futures associa-  
9 tion registered under this section shall issue such rules  
10 as are necessary to avoid duplicative or conflicting rules  
11 applicable to any futures commission merchant registered  
12 with the Commission pursuant to section 4f(a) of this Act  
13 (except paragraph (2) thereof), that is also registered with  
14 the Securities and Exchange Commission pursuant to sec-  
15 tion 15(b) of the Securities and Exchange Act of 1934  
16 (except paragraph (11) thereof), with respect to the appli-  
17 cation of—

18           “(1) rules of such futures association of the  
19 type specified in section 4d(3) of this Act involving  
20 security futures products; and

21           “(2) similar rules of national securities associa-  
22 tions registered pursuant to section 15A(a) of the  
23 Securities and Exchange Act of 1934 involving secu-  
24 rity futures products.”.

1 (h) OBLIGATION TO ADDRESS DUPLICATIVE REGU-  
2 LATION OF DUAL REGISTRANTS.—Section 5c of the Com-  
3modity Exchange Act (as added by section 114) is amend-  
4ed by adding at the end the following new subsection:

5 “(f) Consistent with this Act, each designated con-  
6tract market and registered derivatives transaction execu-  
7tion facility shall issue such rules as are necessary to avoid  
8duplicative or conflicting rules applicable to any futures  
9commission merchant registered with the Commission pur-  
10suant to section 4f(a) of this Act (except paragraph (2)  
11thereof), that is also registered with the Securities and Ex-  
12change Commission pursuant to section 15(b) of the Secu-  
13rities Exchange Act of 1934 (except paragraph (11) there-  
14of) with respect to the application of—

15 “(1) rules of such designated contract market  
16or registered derivatives transaction execution facil-  
17ity of the type specified in section 4d(3) of this Act  
18involving security futures products; and

19 “(2) similar rules of national securities associa-  
20tions registered pursuant to section 15A(a) of the  
21Securities Exchange Act of 1934 and national secu-  
22rities exchanges registered pursuant to section 6(g)  
23of such Act involving security futures products.”.

24 (i) OBLIGATION TO ADDRESS SECURITY FUTURES  
25 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section

1 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a,  
2 and 4)) is amended by adding at the end the following:

3 “(E)(i) To the extent necessary or appropriate in the  
4 public interest, to promote fair competition, and consistent  
5 with the protection of investors and the maintenance of  
6 fair and orderly markets, the Commission and the Securi-  
7 ties and Exchange Commission shall jointly issue such  
8 rules, regulations, or orders as are necessary and appro-  
9 priate to permit the offer and sale of a security futures  
10 product traded on or subject to the rules of a foreign  
11 board of trade to United States persons.

12 “(ii) The rules, regulations, or orders adopted under  
13 clause (i) shall take into account, as appropriate, the na-  
14 ture and size of the markets that the securities underlying  
15 the security futures product reflects.”.

16 (j) SECURITY FUTURES PRODUCTS TRADED ON FOR-  
17 EIGN BOARDS OF TRADE.—Section 2(a)(1) of the Com-  
18 modity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended  
19 by adding at the end the following:

20 “(F)(i) Nothing in this Act is intended to prohibit  
21 a futures commission merchant from carrying security fu-  
22 tures products traded on or subject to the rules of a for-  
23 eign board of trade in the accounts of persons located out-  
24 side of the United States.

1       “(ii) Nothing in this Act is intended to prohibit any  
2 person located in the United States from purchasing or  
3 carrying securities futures products traded on or subject  
4 to the rules of a foreign board of trade, exchange, or mar-  
5 ket to the same extent such person may be authorized to  
6 purchase or carry other securities traded on a foreign  
7 board of trade, exchange, or market.”.

8 **SEC. 222. APPLICATION OF THE COMMODITY EXCHANGE**  
9                   **ACT TO NATIONAL SECURITIES EXCHANGES**  
10                   **AND NATIONAL SECURITIES ASSOCIATIONS**  
11                   **THAT TRADE SECURITY FUTURES.**

12       (a) NOTICE DESIGNATION OF NATIONAL SECURITIES  
13 EXCHANGES AND NATIONAL SECURITIES ASSOCIA-  
14 TIONS.—The Commodity Exchange Act is amended by in-  
15 serting after section 5e (7 U.S.C. 7b), as redesignated by  
16 section 111(1), the following:

17 **“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND**  
18                   **ASSOCIATIONS AS CONTRACT MARKETS.**

19       “(a) Any board of trade that is registered with the  
20 Securities and Exchange Commission as a national securi-  
21 ties exchange, is a national securities association reg-  
22 istered pursuant to section 15A(a) of the Securities Ex-  
23 change Act of 1934, or is an alternative trading system  
24 shall be a designated contract market in security futures  
25 products if—

1           “(1) such national securities exchange, national  
2 securities association, or alternative trading system  
3 lists or trades no other contracts of sale for future  
4 delivery, except for security futures products;

5           “(2) such national securities exchange, national  
6 securities association, or alternative trading system  
7 files written notice with the Commission in such  
8 form as the Commission, by rule, may prescribe con-  
9 taining such information as the Commission, by rule,  
10 may prescribe as necessary or appropriate in the  
11 public interest or for the protection of customers;  
12 and

13           “(3) the registration of such national securities  
14 exchange, national securities association, or alter-  
15 native trading system is not suspended pursuant to  
16 an order by the Securities and Exchange Commis-  
17 sion.

18 Such designation shall be effective contemporaneously  
19 with the submission of notice, in written or electronic  
20 form, to the Commission.

21           “(b)(1) A national securities exchange, national secu-  
22 rities association, or alternative trading system that is des-  
23 ignated as a contract market pursuant to section 5f shall  
24 be exempt from the following provisions of this Act and  
25 the rules thereunder:

1           “(A) Subsections (c), (e), and (g) of section 4c.

2           “(B) Section 4j.

3           “(C) Section 5.

4           “(D) Section 5c.

5           “(E) Section 6a.

6           “(F) Section 8(d).

7           “(G) Section 9(f).

8           “(H) Section 16.

9           “(2) An alternative trading system that is a des-  
10 ignated contract market under this section shall be re-  
11 quired to be a member of a futures association registered  
12 under section 17 and shall be exempt from any provision  
13 of this Act that would require such alternative trading sys-  
14 tem to—

15           “(A) set rules governing the conduct of sub-  
16 scribers other than the conduct of such subscribers’  
17 trading on such alternative trading system; or

18           “(B) discipline subscribers other than by exclu-  
19 sion from trading.

20           “(3) To the extent that an alternative trading system  
21 is exempt from any provision of this Act pursuant to para-  
22 graph (2) of this subsection, the futures association reg-  
23 istered under section 17 of which the alternative trading  
24 system is a member shall set rules governing the conduct

1 of subscribers to the alternative trading system and dis-  
2 cipline the subscribers.

3 “(4)(A) Except as provided in subparagraph (B), but  
4 notwithstanding any other provision of this Act, the Com-  
5 mission, by rule, regulation, or order, may conditionally  
6 or unconditionally exempt any designated contract market  
7 in security futures subject to the designation requirement  
8 of this section from any provision of this Act or of any  
9 rule or regulation thereunder, to the extent such exemp-  
10 tion is necessary or appropriate in the public interest and  
11 is consistent with the protection of investors.

12 “(B) The Commission shall, by rule or regulation, de-  
13 termine the procedures under which an exemptive order  
14 under this section is granted and may, in its sole discre-  
15 tion, decline to entertain any application for an order of  
16 exemption under this section.

17 “(C) An alternative trading system shall not be  
18 deemed to be an exchange for any purpose as a result of  
19 the designation of such alternative trading system as a  
20 contract market under this section.”.

21 (b) NOTICE REGISTRATION OF CERTAIN SECURITIES  
22 BROKER-DEALERS; EXEMPTION FROM REGISTRATION  
23 FOR CERTAIN SECURITIES BROKER-DEALERS.—Section  
24 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a))  
25 is amended—

1           (1) by inserting “(1)” after “(a)”; and

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

3           “(2) Notwithstanding paragraph (1), and except as  
4 provided in paragraph (3), any broker or dealer that is  
5 registered with the Securities and Exchange Commission  
6 shall be registered as a futures commission merchant or  
7 introducing broker, as applicable, if—

8           “(A) the broker or dealer limits its solicitation  
9 of orders, acceptance of orders, or execution of or-  
10 ders, or placing of orders on behalf of others involv-  
11 ing any contracts of sale of any commodity for fu-  
12 ture delivery, on or subject to the rules of any con-  
13 tract market or registered derivatives transaction  
14 execution facility to security futures products;

15           “(B) the broker or dealer files written notice  
16 with the Commission in such form as the Commis-  
17 sion, by rule, may prescribe containing such infor-  
18 mation as the Commission, by rule, may prescribe as  
19 necessary or appropriate in the public interest or for  
20 the protection of investors;

21           “(C) the registration of the broker or dealer is  
22 not suspended pursuant to an order of the Securities  
23 and Exchange Commission; and

24           “(D) the broker or dealer is a member of a na-  
25 tional securities association registered pursuant to

1 section 15A(a) of the Securities Exchange Act of  
2 1934.

3 The registration shall be effective contemporaneously with  
4 the submission of notice, in written or electronic form, to  
5 the Commission.

6 “(3) A floor broker or floor trader shall be exempt  
7 from the registration requirements of section 4e and para-  
8 graph (1) of this subsection if—

9 “(A) the floor broker or floor trader is a broker  
10 or dealer registered with the Securities and Ex-  
11 change Commission;

12 “(B) the floor broker or floor trader limits its  
13 solicitation of orders, acceptance of orders, or execu-  
14 tion of orders, or placing of orders on behalf of oth-  
15 ers involving any contracts of sale of any commodity  
16 for future delivery, on or subject to the rules of any  
17 contract market to security futures products; and

18 “(C) the registration of the floor broker or floor  
19 trader is not suspended pursuant to an order of the  
20 Securities and Exchange Commission.”.

21 (c) EXEMPTION FOR SECURITIES BROKER-DEALERS  
22 FROM CERTAIN PROVISIONS OF THE COMMODITY EX-  
23 CHANGE ACT.—Section 4f(a) of the Commodity Exchange  
24 Act (7 U.S.C. 6f(a)) is amended by inserting after para-  
25 graph (3), as added by subsection (b), the following:

1           “(4)(A) A broker or dealer that is registered as a fu-  
2           tures commission merchant or introducing broker pursu-  
3           ant to paragraph (2), or that is a floor broker or floor  
4           trader exempt from registration pursuant to paragraph  
5           (3), shall be exempt from the following provisions of this  
6           Act and the rules thereunder:

7                   “(i) Subsections (b), (d), (e), and (g) of section  
8           4c.

9                   “(ii) Sections 4d, 4e, and 4h.

10                   “(iii) Subsections (b) and (c) of this section.

11                   “(iv) Section 4j.

12                   “(v) Section 4k(1).

13                   “(vi) Section 4p.

14                   “(vii) Section 6d.

15                   “(viii) Subsections (d) and (g) of section 8.

16                   “(ix) Section 16.

17           “(B)(i) Except as provided in clause (ii) of this sub-  
18           paragraph, but notwithstanding any other provision of this  
19           Act, the Commission, by rule, regulation, or order, may  
20           conditionally or unconditionally exempt any broker or  
21           dealer subject to the registration requirement of para-  
22           graph (2), or any broker or dealer exempt from registra-  
23           tion pursuant to paragraph (3), from any provision of this  
24           Act or of any rule or regulation thereunder, to the extent

1 the exemption is necessary or appropriate in the public  
2 interest and is consistent with the protection of investors.

3 “(ii) The Commission shall, by rule or regulation, de-  
4 termine the procedures under which an exemptive order  
5 under this section shall be granted and may, in its sole  
6 discretion, decline to entertain any application for an  
7 order of exemption under this section.

8 “(C)(i) A broker or dealer that is registered as a fu-  
9 tures commission merchant or introducing broker pursu-  
10 ant to paragraph (2) or an associated person thereof, or  
11 that is a floor broker or floor trader exempt from registra-  
12 tion pursuant to paragraph (3), shall not be required to  
13 become a member of any futures association registered  
14 under section 17.

15 “(ii) No futures association registered under section  
16 17 shall limit its members from carrying an account, ac-  
17 cepting an order, or transacting business with a broker  
18 or dealer that is registered as a futures commission mer-  
19 chant or introducing broker pursuant to paragraph (2) or  
20 an associated person thereof, or that is a floor broker or  
21 floor trader exempt from registration pursuant to para-  
22 graph (3).”.

23 (d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SE-  
24 CURITIES BROKER-DEALERS.—Section 4k of the Com-  
25 modity Exchange Act (7 U.S.C. 6k), is amended by insert-

1 ing after paragraph (4), as added by subsection (c), the  
2 following:

3 “(5) Any associated person of a broker or dealer that  
4 is registered with the Securities and Exchange Commis-  
5 sion, and who limits its solicitation of orders, acceptance  
6 of orders, or execution of orders, or placing of orders on  
7 behalf of others involving any contracts of sale of any com-  
8 modity for future delivery or any option on such a con-  
9 tract, on or subject to the rules of any contract market  
10 or registered derivatives transaction execution facility to  
11 security futures products, shall be exempt from the fol-  
12 lowing provisions of this Act and the rules thereunder:

13 “(A) Subsections (b), (d), (e), and (g) of section  
14 4c.

15 “(B) Sections 4d, 4e, and 4h.

16 “(C) Subsections (b) and (c) of section 4f.

17 “(D) Section 4j.

18 “(E) Paragraph (1) of this section.

19 “(F) Section 4p.

20 “(G) Section 6d.

21 “(H) Subsections (d) and (g) of section 8.

22 “(I) Section 16.”.

1 **SEC. 223. NOTIFICATION OF INVESTIGATIONS AND EN-**  
2 **FORCEMENT ACTIONS.**

3 (a) Section 8(a) of the Commodity Exchange Act (7  
4 U.S.C. 12(a)) is amended by adding at the end the fol-  
5 lowing:

6 “(3) The Commission shall provide the Securities and  
7 Exchange Commission with notice of the commencement  
8 of any proceeding and a copy of any order entered by the  
9 Commission against any futures commission merchant or  
10 introducing broker registered pursuant to section 4f(a)(2),  
11 any floor broker or floor trader exempt from registration  
12 pursuant to section 4f(a)(3), any associated person exempt  
13 from registration pursuant to section 4k(6), or any board  
14 of trade designated as a contract market pursuant to sec-  
15 tion 5f.”.

16 (b) Section 6 of the Commodity Exchange Act (7  
17 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at  
18 the end the following:

19 “(g) The Commission shall provide the Securities and  
20 Exchange Commission with notice of the commencement  
21 of any proceeding and a copy of any order entered by the  
22 Commission pursuant to subsections (c) and (d) of this  
23 section against any futures commission merchant or intro-  
24 ducing broker registered pursuant to section 4f(a)(2), any  
25 floor broker or floor trader exempt from registration pur-  
26 suant to section 4f(a)(3), any associated person exempt

1 from registration pursuant to section 4k(6), or any board  
2 of trade designated as a contract market pursuant to sec-  
3 tion 5f.”.

4 (c) Section 6c of the Commodity Exchange Act (7  
5 U.S.C. 13a-1) is amended by adding at the end the fol-  
6 lowing:

7 “(h) The Commission shall provide the Securities and  
8 Exchange Commission with notice of the commencement  
9 of any proceeding and a copy of any order entered by the  
10 Commission against any futures commission merchant or  
11 introducing broker registered pursuant to section 4f(a)(2),  
12 any floor broker or floor trader exempt from registration  
13 pursuant to section 4f(a)(3), any associated person exempt  
14 from registration pursuant to section 4k(6), or any board  
15 of trade designated as a contract market pursuant to sec-  
16 tion 5f.”.

Passed the House of Representatives October 19,  
2000.

Attest:

*Clerk.*



106TH CONGRESS  
2D SESSION

# H. R. 4541

---

---

## AN ACT

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.