106TH CONGRESS 2D SESSION

S. 2697

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.

IN THE SENATE OF THE UNITED STATES

June 8, 2000

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

A BILL

- 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,
 - 3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
 - 4 (a) Short Title.—This Act may be cited as the
 - 5 "Commodity Futures Modernization Act of 2000".
- 6 (b) Table of Contents.—The table of contents of
- 7 this Act is as follows:
 - Sec. 1. Short title; table of contents.

- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
- Sec. 5. Legal certainty for excluded derivative transactions.
- Sec. 6. Electronic trading facilities.
- Sec. 7. Hybrid instruments.
- Sec. 8. Futures on securities.
- Sec. 9. Finding and purposes.
- Sec. 10. Prohibited transactions.
- Sec. 11. Designation of boards of trade as contract markets.
- Sec. 12. Derivatives transaction execution facilities.
- Sec. 13. Derivatives clearing organizations.
- Sec. 14. Common provisions applicable to registered entities.
- Sec. 15. Exempt boards of trade.
- Sec. 16. Suspension or revocation of designation as contract market.
- Sec. 17. Authorization of appropriations.
- Sec. 18. Preemption.
- Sec. 19. Predispute resolution agreements for institutional customers.
- Sec. 20. Consideration of costs and benefits and antitrust laws.
- Sec. 21. Contract enforcement between eligible counterparties.
- Sec. 22. Legal certainty for swap agreements.
- Sec. 23. Technical and conforming amendments.
- Sec. 24. Effective date.

1 SEC. 2. PURPOSES.

- 2 The purposes of this Act are—
- 3 (1) to reauthorize the Commodity Exchange Act
- 4 (7 U.S.C. 1 et seq.);
- 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-
- tures Trading Commission in its oversight of the fu-
- 11 tures markets;
- 12 (4) to provide a legislative and regulatory
- framework for allowing the trading of futures on se-
- 14 curities;

1	(5) to clarify the jurisdiction of the Commission
2	over certain retail foreign exchange transactions and
3	bucket shops that are not otherwise regulated;
4	(6) to promote innovation for futures and de-
5	rivatives and to reduce systemic risk by enhancing
6	legal certainty in the markets for certain futures and
7	derivatives;
8	(7) to reduce systemic risk and provide greater
9	stability to markets during times of market disorder
10	by allowing the clearing of transactions in over-the-
11	counter derivatives through appropriately regulated
12	clearing organizations; and
13	(8) to enhance the competitive position of
14	United States financial institutions and financial
15	markets.
16	SEC. 3. DEFINITIONS.
17	Section 1a of the Commodity Exchange Act (7 U.S.C.
18	1a) is amended—
19	(1) by redesignating paragraphs (8) through
20	(12), (13) through (15), and (16) as paragraphs
21	(17) through (21), (23) through (25), and (29), re-
22	spectively;
23	(2) by inserting after paragraph (7) the fol-
24	lowing:
25	"(8) Derivatives clearing organization.—

1	"(A) IN GENERAL.—The term 'derivatives
2	clearing organization' means a clearinghouse,
3	clearing association, clearing corporation, or
4	similar entity, facility, system, or organization
5	that, with respect to a derivative agreement,
6	contract, or transaction (other than a secu-
7	rity)—
8	"(i) enables each party to the deriva-
9	tive agreement, contract, or transaction to
10	substitute, through novation or otherwise,
11	the credit of the derivatives clearing orga-
12	nization for the credit of the parties;
13	"(ii) arranges or provides, on a multi-
14	lateral basis, for the settlement or netting
15	of obligations resulting from such agree-
16	ments, contracts, or transactions executed
17	by participants in the derivatives clearing
18	organization; or
19	"(iii) otherwise provides clearing serv-
20	ices or arrangements that mutualize or
21	transfer among participants in the deriva-
22	tives clearing organization the credit risk
23	arising from such agreements, contracts,
24	or transactions executed by the partici-
25	pants.

1	"(B) Exclusions.—The term 'derivatives
2	clearing organization' does not include an enti-
3	ty, facility, system, or organization solely be-
4	cause it arranges or provides for—
5	"(i) settlement, netting, or novation of
6	obligations resulting from agreements, con-
7	tracts, or transactions, on a bilateral basis
8	and without a centralized counterparty;
9	"(ii) settlement or netting of cash
10	payments through an interbank payment
11	system; or
12	"(iii) settlement, netting, or novation
13	of obligations resulting from a sale of a
14	commodity in a transaction in the spot
15	market for the commodity.
16	"(9) Designated future on a security.—
17	The term 'designated future on a security' means a
18	contract of sale (or option on such a contract) for
19	future delivery of—
20	"(A) a single nonexempted security;
21	"(B) an index based on fewer than 5 non-
22	exempted securities; or
23	"(C) an index in which a single non-
24	exempted security accounts for 30 percent or
25	more of the value of the index.

1	"(10) Electronic trading facility.—The
2	term 'electronic trading facility' means a trading fa-
3	cility that—
4	"(A) operates by means of an electronic
5	network; and
6	"(B) maintains a real-time audit trail of
7	bids, offers, and the matching of orders or the
8	execution of transactions.
9	"(11) ELIGIBLE CONTRACT PARTICIPANT.—The
10	term 'eligible contract participant' means—
11	"(A) acting for its own account—
12	"(i) a financial institution;
13	"(ii) an insurance company (as de-
14	fined in section 2 of the Bank Holding
15	Company Act of 1956 (12 U.S.C. 1841));
16	"(iii) an investment company subject
17	to regulation under the Investment Com-
18	pany Act of 1940 (15 U.S.C. 80a–1 et
19	seq.) or a foreign person performing a
20	similar role or function subject as such to
21	foreign regulation (regardless of whether
22	each investor in the investment company or
23	the foreign person is itself an eligible con-
24	tract participant);
25	"(iv) a commodity pool that—

1	"(I) has total assets exceeding
2	\$5,000,000; and
3	"(II) is formed and operated by a
4	person subject to regulation under
5	this Act or a foreign person per-
6	forming a similar role or function sub-
7	ject as such to foreign regulation (re-
8	gardless of whether each investor in
9	the commodity pool or the foreign per-
10	son is itself an eligible contract partic-
11	ipant);
12	"(v) a corporation, partnership, pro-
13	prietorship, organization, trust, or other
14	entity—
15	"(I) that has total assets exceed-
16	ing \$10,000,000;
17	"(II) the obligations of which
18	under an agreement, contract, or
19	transaction are guaranteed or other-
20	wise supported by a letter of credit or
21	keepwell, support, or other agreement
22	by an entity described in subclause
23	(I), in clause (i), (ii), (iii), (iv), or
24	(vii), or in subparagraph (C); or
25	"(III) that—

1	"(aa) has a net worth ex-
2	ceeding \$1,000,000; and
3	"(bb) enters into an agree-
4	ment, contract, or transaction in
5	connection with the conduct of
6	the entity's business or to man-
7	age the risk associated with an
8	asset or liability owned or in-
9	curred or reasonably likely to be
10	owned or incurred by the entity
11	in the conduct of the entity's
12	business;
13	"(vi) an employee benefit plan subject
14	to the Employee Retirement Income Secu-
15	rity Act of 1974 (29 U.S.C. 1001 et seq.)
16	or a foreign person performing a similar
17	role or function subject as such to foreign
18	regulation—
19	"(I) that has total assets exceed-
20	ing \$5,000,000; or
21	"(II) the investment decisions of
22	which are made by—
23	"(aa) an investment adviser
24	subject to regulation under the
25	Investment Advisers Act of 1940

1	(15 U.S.C. 80b-1 et seq.) or a
2	commodity trading advisor sub-
3	ject to regulation under this Act;
4	"(bb) a foreign person per-
5	forming a role or function similar
6	to that of such an investment ad-
7	viser or commodity trading advi-
8	sor subject to foreign regulation
9	in the performance of that role or
10	function;
11	"(ce) a financial institution;
12	or
13	"(dd) an insurance company
14	(as defined in section 2 of the
15	Bank Holding Company Act of
16	1956 (12 U.S.C. 1841));
17	"(vii)(I) a governmental entity (in-
18	cluding the United States, a State, or a
19	foreign government) or political subdivision
20	of a governmental entity;
21	"(II) a multinational or supranational
22	government entity; or
23	"(III) an instrumentality, agency, or
24	department of an entity described in sub-
25	clause (I) or (II);

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

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

1	"(x) a floor broker or floor trader sub-
2	ject to regulation under this Act, to the ex-
3	tent that the floor broker or floor trader
4	trades on or through the facilities of a reg-
5	istered entity or exempt board of trade or
6	any affiliate of a registered entity or ex-
7	empt board of trade; or
8	"(xi) a natural person with total as-
9	sets exceeding \$10,000,000;
10	"(B)(i) a person described in any of
11	clauses (i) through (x) of subparagraph (A) or
12	in subparagraph (C), acting as broker or per-
13	forming an equivalent agency function on behalf
14	of another person described in subparagraph
15	(A) or (C); or
16	"(ii)(I) an investment adviser subject to
17	regulation under the Investment Advisers Act of
18	1940 (15 U.S.C. 80b–1 et seq.);
19	"(II) a commodity trading advisor subject
20	to regulation under this Act;
21	"(III) a foreign person performing a role
22	or function similar to that of such an invest-
23	ment adviser or commodity trading advisor sub-
24	ject to foreign regulation in the performance of
25	that role or function; or

1	"(IV) a person described in any of clauses
2	(i) through (x) of subparagraph (A) or in sub-
3	paragraph (C), that is acting as an investment
4	manager or fiduciary (but excluding a person
5	acting as a broker or performing an equivalent
6	agency function) for another person described
7	in subparagraph (A) or (C) and that is author-
8	ized by the other person to commit the other
9	person to the transaction; or
10	"(C) any other person that the Commis-
11	sion determines to be eligible in light of the fi-
12	nancial or other qualifications of the person.
13	"(12) Energy commodity.—The term 'energy
14	commodity' includes crude oil, condensates, natural
15	gas, natural gas liquids, electricity, and coal.
16	"(13) Exclusion-eligible commodity.—
17	"(A) In general.—The term 'exclusion-
18	eligible commodity' means—
19	"(i) a financial commodity;
20	"(ii) an energy commodity; and
21	"(iii) a commodity that has no cash
22	market.
23	"(B) Exclusion.—The term 'exclusion-el-
24	igible commodity' does not include any com-

1	modity described in paragraph (3) that is an	
2	agricultural commodity.	
3	"(14) Exempted security.—	
4	"(A) In general.—The term 'exempted	
5	security' means a security that is an exempted	
6	security under section 3(a) of the Securities Act	
7	of 1933 (15 U.S.C. 77c(a)) or section 3(a) of	
8	the Securities Exchange Act of 1934 (15	
9	U.S.C. 78c(a)).	
10	"(B) Exclusion.—The term 'exempted	
11	security' does not include a municipal security	
12	(as defined in section 3(a) of the Securities Ex-	
13	change Act of 1934 (15 U.S.C. 78c(a))).	
14	"(15) Financial commodity.—The term 'fi-	
15	nancial commodity' means—	
16	"(A) an interest rate, exchange rate, cur-	
17	rency, security, security index, credit risk, debt	
18	or equity instrument, or index or measure of in-	
19	flation; or	
20	"(B) any other rate, differential, index, or	
21	measure of economic risk, return, or value (ex-	
22	cluding any rate, differential, index, or measure	
23	based on a commodity not described in subpara-	
24	graph (A) that has a finite supply).	

1	"(16) Financial institution.—The term 'fi-
2	nancial institution' means—
3	"(A) a corporation operating under the
4	fifth undesignated paragraph of section 25 of
5	the Federal Reserve Act (12 U.S.C. 603), com-
6	monly known as 'an agreement corporation';
7	"(B) a corporation organized under section
8	25A of the Federal Reserve Act (12 U.S.C. 611
9	et seq.), commonly known as an 'Edge Act cor-
10	poration';
11	"(C) an institution that is regulated by the
12	Farm Credit Administration;
13	"(D) a Federal credit union or State credit
14	union (as defined in section 101 of the Federal
15	Credit Union Act (12 U.S.C. 1752));
16	"(E) a depository institution (as defined in
17	section 3 of the Federal Deposit Insurance Act
18	(12 U.S.C. 1813));
19	"(F) a foreign bank or a branch or agency
20	of a foreign bank (each as defined in section
21	1(b) of the International Banking Act of 1978
22	(12 U.S.C. 3101(b)));
23	"(G) a trust company; or

1	"(H) a regulated subsidiary or affiliate of
2	an entity described in any of subparagraphs (A)
3	through (G).";
4	(3) by inserting after paragraph (21) (as redes-
5	ignated by paragraph (1)) the following:
6	"(22) Hybrid instrument.—The term 'hybrid
7	instrument' means a deposit (as defined in section 3
8	of the Federal Deposit Insurance Act (12 U.S.C.
9	1813)) offered by a financial institution, or a secu-
10	rity, having 1 or more payments indexed to the
11	value, level, or rate of 1 or more commodities.";
12	(4) by inserting after paragraph (25) (as redes-
13	ignated by paragraph (1)) the following:
14	"(26) National securities exchange.—The
15	term 'national securities exchange' means—
16	"(A) an exchange that is registered as a
17	national securities exchange under section 6 of
18	the Securities Exchange Act of 1934 (15
19	U.S.C. 78f); or
20	"(B) an association that is registered as a
21	national securities association under section
22	15A of the Securities Exchange Act of 1934
23	(15 U.S.C. 780–3).
24	"(27) Option.—The term 'option' means an
25	agreement, contract, or transaction that is of the

1	character of, or is commonly known to the trade as,
2	an 'option', 'privilege', 'indemnity', 'bid', 'offer',
3	'put', 'call', 'advance guaranty', or 'decline guar-
4	anty'.
5	"(28) Organized exchange.—The term 'or-
6	ganized exchange' means a trading facility that—
7	"(A) permits—
8	"(i) trading by or on behalf of a per-
9	son that is not an eligible contract partici-
10	pant; or
11	"(ii) trading by persons other than on
12	a bona fide principal-to-principal basis; or
13	"(B) has adopted (directly or through an-
14	other nongovernmental entity) rules that—
15	"(i) govern the conduct of partici-
16	pants, other than rules that govern the
17	submission of orders or execution of trans-
18	actions on the trading system; or
19	"(ii) include disciplinary sanctions
20	other than the exclusion of participants
21	from trading."; and
22	(5) by adding at the end the following:
23	"(30) Registered entity.—The term 'reg-
24	istered entity' means—

1	"(A) a board of trade designated as a con-
2	tract market under section 5;
3	"(B) a derivatives transaction execution fa-
4	cility registered under section 5a; or
5	"(C) a derivatives clearing organization
6	registered under section 5b.
7	"(31) Security.—The term 'security' has the
8	meaning given the term in section 3(a) of the Secu-
9	rities Exchange Act of 1934 (15 U.S.C. 78c(a)).
10	"(32) Trading facility.—
11	"(A) IN GENERAL.—The term 'trading fa-
12	cility' means a person or group of persons that
13	constitutes, maintains, or provides a physical or
14	electronic facility or system in which multiple
15	participants have the ability to execute or trade
16	agreements, contracts, or transactions by ac-
17	cepting bids and offers made by other partici-
18	pants that are open to multiple participants in
19	the facility or system.
20	"(B) Exclusions.—The term 'trading fa-
21	cility' does not include—
22	"(i) a person or group of persons sole-
23	ly because the person or group of
24	persons—

1	"(I) constitutes, maintains, or
2	provides an electronic facility or sys-
3	tem that enables participants to nego-
4	tiate the terms of and enter into bilat-
5	eral transactions with other partici-
6	pants as a result of the communica-
7	tions exchanged between the partici-
8	pants and not from interaction of
9	multiple orders within a centralized,
10	predetermined, nondiscretionary, auto-
11	mated trade matching algorithm; or
12	"(II)(aa) is a derivatives clearing
13	organization; or
14	"(bb) permits participants to
15	submit agreements, contracts, or
16	transactions to a derivatives clearing
17	organization;
18	"(ii) a government securities dealer or
19	government securities broker, to the extent
20	that the dealer or broker executes or
21	trades agreements, contracts, or trans-
22	actions in government securities, or assists
23	persons in communicating about, negoti-
24	ating, entering into, executing, or trading
25	an agreement, contract, or transaction in

1	government securities (as the terms 'gov-
2	ernment securities dealer', 'government se-
3	curities broker', and 'government securi-
4	ties' are defined in section 3(a) of the Se-
5	curities Exchange Act of 1934 (15 U.S.C.
6	78c(a))); or
7	"(iii) a facility on which bids and of-
8	fers and acceptances of bids and offers ef-
9	fected on the facility are not binding.".
10	SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN
11	FOREIGN CURRENCY, GOVERNMENT SECURI-
12	TIES, AND CERTAIN OTHER COMMODITIES.
13	Section 2 of the Commodity Exchange Act (7 U.S.C.
14	2, 2a, 3, 4, 4a) is amended by adding at the end the fol-
15	lowing:
16	"(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
17	IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND
18	CERTAIN OTHER COMMODITIES.—
19	"(1) In general.—Except as provided in para-
20	graph (2), nothing in this Act (other than section 5b
21	or 12(e)(2)(B)) governs or applies to an agreement,
22	contract, or transaction in—
23	"(A) foreign currency;
24	"(B) government securities;
25	"(C) security warrants;

1	"(D) security rights;
2	"(E) resales of installment loan contracts:
3	"(F) repurchase transactions in a financial
4	commodity; or
5	"(G) mortgages or mortgage purchase
6	commitments.
7	"(2) Commission Jurisdiction.—
8	"(A) AGREEMENTS, CONTRACTS, AND
9	TRANSACTIONS THAT ARE FUTURES TRADED
10	ON AN ORGANIZED EXCHANGE.—This Act ap-
11	plies to, and the Commission shall have juris-
12	diction over, an agreement, contract, or trans-
13	action described in paragraph (1) that—
14	"(i)(I) is a contract of sale of a com-
15	modity for future delivery (or an option on
16	such a contract); and
17	"(II) is executed or traded on an or-
18	ganized exchange;
19	"(ii)(I) is an option on a commodity
20	other than foreign currency or a security;
21	and
22	"(II is executed or traded on an orga-
23	nized exchange; or
24	"(iii)(I) is an option on foreign cur-
25	rency; and

1	"(II) is executed or traded on an or-
2	ganized exchange that is not a national se-
3	curities exchange.
4	"(B) Agreements, contracts, and
5	TRANSACTIONS IN RETAIL FOREIGN CUR-
6	RENCY.—This Act applies to, and the Commis-
7	sion shall have jurisdiction over, an agreement,
8	contract, or transaction in foreign currency
9	that—
10	"(i) is—
11	"(I) a contract of sale for future
12	delivery; or
13	"(II) an option; and
14	"(ii) is offered to, or entered into
15	with, a person that is not an eligible con-
16	tract participant, unless the counterparty,
17	or the person offering to be the
18	counterparty, of the person is—
19	"(I) a financial institution;
20	"(II) a broker or dealer reg-
21	istered under section 15(b) or 15C of
22	the Securities Exchange Act of 1934
23	(15 U.S.C. 78o(b), 78o-5);
24	"(III) an associated person of a
25	broker or dealer registered under sec-

1	tion 15(b) or 15C of the Securities
2	Exchange Act of 1934 (15 U.S.C.
3	78o(b), 78o-5) concerning the finan-
4	cial or securities activities of which
5	the registered person makes and
6	keeps records under section 15C(b) or
7	17(h) of the Securities Exchange Act
8	of 1934 (15 U.S.C. 780–5(b), 78q(h));
9	"(IV) an insurance company (as
10	defined in section 2 of the Bank Hold-
11	ing Company Act of 1956 (12 U.S.C.
12	1841));
13	"(V) a financial holding company
14	(as defined in section 2 of the Bank
15	Holding Company Act of 1956 (12
16	U.S.C. 1841)); or
17	"(VI) an investment bank hold-
18	ing company (as defined in section
19	17(i) of the Securities Exchange Act
20	of 1934 (15 U.S.C. 78q(i))).".
21	SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE
22	TRANSACTIONS.
23	Section 2 of the Commodity Exchange Act (7 U.S.C.
24	2, 2a, 3, 4, 4a) (as amended by section 4) is amended
25	by adding at the end the following:

1	"(d) Excluded Derivative Transactions.—
2	"(1) IN GENERAL.—Nothing in this Act (other
3	than section 5b or 12(e)(2)(B)) governs or applies to
4	an agreement, contract, or transaction in an exclu-
5	sion-eligible commodity if—
6	"(A) the agreement, contract, or trans-
7	action is entered into only between persons that
8	are eligible contract participants at the time at
9	which the persons enter into the agreement,
10	contract, or transaction; and
11	"(B) the agreement, contract, or trans-
12	action is not executed or traded on a trading fa-
13	cility.
14	"(2) Electronic trading facility exclu-
15	SION.—Nothing in this Act (other than section 5b or
16	12(e)(2)(B)) governs or applies to an agreement,
17	contract, or transaction in an exclusion-eligible com-
18	modity if—
19	"(A) the agreement, contract, or trans-
20	action is entered into on a bona fide principal-
21	to-principal basis between parties trading for
22	their own accounts or as described in section
23	1a(11)(B)(ii);
24	"(B) the agreement, contract, or trans-
25	action is entered into only between persons that

1 are eligible contract participants (as defined in 2 subparagraph (A), (B)(ii), or (C) of section 3 1a(11)) at the time at which the persons enter into the agreement, contract, or transaction; 4 5 and 6 "(C) the agreement, contract, or trans-7 action is executed or traded on an electronic 8 trading facility. 9 "(3) Exception TO PREVENT MANIPULA-10 TION.—Notwithstanding paragraphs (1) and (2), 11 any agreement, contract, or transaction in an exclu-12 sion-eligible commodity (other than a financial com-13 modity) that is an energy commodity or is suscep-14 tible to a material risk of manipulation shall be sub-15 ject to sections 6(c) and 9(a)(2).". SEC. 6. ELECTRONIC TRADING FACILITIES. 16 17 Section 2 of the Commodity Exchange Act (7 U.S.C. 18 2, 2a, 3, 4, 4a) (as amended by section 5) is amended by adding at the end the following: 19 20 "(e) ELECTRONIC TRADING FACILITIES.— "(1) IN GENERAL.—Nothing in this Act (other 21 22 than section 12(e)(2)(B) governs or is applicable to 23 an electronic trading facility that limits transactions

authorized to be conducted on the facility to trans-

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1	actions that satisfy the requirements of subsection
2	(d)(2).
3	"(2) Effect on authority to establish
4	AND OPERATE.—Nothing in this Act shall prohibit a
5	board of trade designated by the Commission as a
6	contract market or derivatives transaction execution
7	facility, or an exempt board of trade, from estab-
8	lishing and operating an electronic trading facility
9	excluded under this Act by paragraph (1).".
10	SEC. 7. HYBRID INSTRUMENTS.
11	Section 2 of the Commodity Exchange Act (7 U.S.C.
12	2, 2a, 3, 4, 4a) (as amended by section 6) is amended
13	by adding at the end the following:
14	"(f) Exclusion for Qualifying Hybrid Instru-
15	MENTS.—
16	"(1) In general.—Nothing in this Act (other
17	than section 12(e)(2)(B)) governs or is applicable to
18	a hybrid instrument that is predominantly a security
19	or depository instrument.
20	"(2) Predominance.—A hybrid instrument
21	shall be considered to be predominantly a security or
22	depository instrument if—
23	"(A) the issuer of the hybrid instrument
24	receives payment in full of the purchase price of
25	the hybrid instrument, substantially contem-

poraneously with delivery of the hybrid instrument;

- "(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;
- "(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and
- "(D) the hybrid instrument is not marketed as a contract of sale for future delivery of a commodity (or option on such a contract) subject to this Act.
- "(3) Mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument."

1 SEC. 8. FUTURES ON SECURITIES.

2	Section 2 of the Commodity Exchange Act (7 U.S.C.
3	2, 2a, 3, 4, 4a) (as amended by section 7) is amended
4	by adding at the end the following:
5	"(g) Futures on Securities.—
6	"(1) Exclusions.—
7	"(A) Exclusion of over-the-counter
8	EQUITY INSTRUMENTS.—Nothing in this sub-
9	section governs or applies to—
10	"(i) an agreement, contract, or trans-
11	action in a commodity that is excluded
12	under subsection (c) or (d);
13	"(ii) an electronic trading facility that
14	is excluded under subsection (e); or
15	"(iii) a hybrid instrument that is cov-
16	ered by an exclusion under subsection (f)
17	or an exemption granted by the Commis-
18	sion under section 4(c) (whether or not the
19	hybrid instrument is otherwise subject to
20	this Act).
21	"(B) Exclusion of Security options.—
22	This Act does not apply to, and the Commission
23	shall have no jurisdiction to designate a board
24	of trade as a contract market or register a de-
25	rivatives transaction execution facility for, any
26	transaction under which a party to the trans-

1	action acquires an option on 1 or more securi-
2	ties, group or index of securities, or interest in,
3	or interest that is based on the value of, a secu-
4	rity.
5	"(2) Inclusion of trading of nondes-
6	IGNATED FUTURES ON SECURITIES ON A CONTRACT
7	MARKET.—
8	"(A) In general.—This Act applies to,
9	and the Commission shall have exclusive juris-
10	diction with respect to and may designate a
11	board of trade as a contract market in, ac-
12	counts, agreements, and transactions involving
13	a contract of sale (or option on such a contract)
14	for future delivery of a group or index of non-
15	exempted securities (or an interest in, or inter-
16	est that is based on the value of, such securi-
17	ties), none of which is a designated future on
18	a security.
19	"(B) Requirements for designa-
20	TION.—
21	"(i) In general.—No board of trade
22	shall be designated as a contract market
23	with respect to any contract of sale (or op-
24	tion on such a contract) for future delivery
25	under subparagraph (A) unless—

1	"(I) the board of trade files with
2	the Commission an application for
3	designation; and
4	"(II) the board of trade dem-
5	onstrates and the Commission ex-
6	pressly finds that the specific contract
7	(or option on such a contract) with re-
8	spect to which the application is made
9	meets the minimum requirements of
10	clauses (ii) and (iii).
11	"(ii) Means of effectuation of
12	SETTLEMENT OR DELIVERY.—Settlement
13	of or delivery on a contract (or option on
14	such a contract) described in subparagraph
15	(A) shall be effected in cash or by means
16	other than the transfer or receipt of a se-
17	curity other than an exempted security.
18	"(iii) Susceptibility to price ma-
19	NIPULATION.—Trading in a contract (or
20	option on such a contract) described in
21	subparagraph (A) shall not be readily sus-
22	ceptible to—
23	"(I) manipulation of the price of
24	the contract (or option on such a con-
25	tract); or

1	"(II) causing or being used in
2	the manipulation of the price of any
3	underlying security, option on a secu-
4	rity, or option on a group or index
5	that includes a security.
6	"(3) Trading of designated futures on
7	SECURITIES ON A CONTRACT MARKET OR NATIONAL
8	SECURITIES EXCHANGE.—No person shall offer to
9	enter into, enter into, or confirm the execution of a
10	designated future on a security, or an interest in or
11	interest that is based on the value of a designated
12	future on a security, unless—
13	"(A) the contract—
14	"(i) is transacted on or subject to the
15	rules of a board of trade that has been
16	designated by the Commission as a con-
17	tract market for the commodity that is the
18	subject of the contract; and
19	"(ii) meets the requirements of para-
20	graph (4); or
21	"(B) the contract is transacted on or sub-
22	ject to the rules of a securities exchange that is
23	registered with the Securities and Exchange
24	Commission as a national securities exchange.

1	"(4) Minimum requirements for des-
2	IGNATED FUTURES ON SECURITIES TRADED ON A
3	CONTRACT MARKET.—
4	"(A) In general.—Subject to paragraph
5	(5), this Act applies to, and the Commission
6	shall have jurisdiction with respect to and may
7	designate a board of trade as a contract market
8	in, accounts, agreements, and transactions in-
9	volving a designated future on a security.
10	"(B) Requirements for designa-
11	TION.—
12	"(i) In general.—No board of trade
13	shall be designated as a contract market
14	with respect to any contract of sale (or op-
15	tion on such a contract) under subpara-
16	graph (A) unless—
17	"(I) the board of trade files with
18	the Commission an application for
19	designation; and
20	"(II) the board of trade dem-
21	onstrates and the Commission ex-
22	pressly finds that the specific contract
23	(or option on such a contract) with re-
24	spect to which the application is made

1	meets the minimum requirements of
2	clauses (ii) through (viii).
3	"(ii) Means of effectuation of
4	SETTLEMENT OR DELIVERY.—Settlement
5	of or delivery on a contract (or option on
6	such a contract) described in subparagraph
7	(A) shall be effected in each or by means
8	other than the transfer or receipt of a se-
9	curity other than an exempted security.
10	"(iii) Real-time audit trail.—
11	Trading in a contract (or option on such a
12	contract) described in subparagraph (A)
13	shall occur on a contract market that exe-
14	cutes trades by means of a system that
15	provides a real-time audit trail.
16	"(iv) Susceptibility to price ma-
17	NIPULATION.—Trading in a contract (or
18	option on such a contract) described in
19	subparagraph (A) shall not be readily sus-
20	ceptible to—
21	"(I) manipulation of the price of
22	the contract (or option on such a con-
23	tract); or
24	"(II) causing or being used in
25	the manipulation of the price of any

1	underlying security, option on a secu-
2	rity, or option on a group or index
3	that includes a security.
4	"(v) Underlying security ap-
5	PROVED FOR LISTING ON NATIONAL SECU-
6	RITIES EXCHANGE.—Each security that
7	underlies a designated future on a security
8	shall—
9	"(I) meet all requirements for
10	the listing of an option on that secu-
11	rity on a national securities exchange:
12	or
13	"(II) be the subject of options
14	trading on a national securities ex-
15	change.
16	"(vi) Margins for futures con-
17	TRACTS.—The contract described in sub-
18	paragraph (A) shall be traded on a board
19	of trade that establishes and maintains
20	margin levels for designated futures on se-
21	curities that are consistent with the mar-
22	gin levels established and maintained on an
23	option contract on the same underlying se-
24	curity that is listed on any national securi-
25	ties exchange.

1	"(vii) Conflicts of Interest.—The
2	contract described in subparagraph (A)
3	shall be traded on a board of trade that es
4	tablishes and enforces rules that protect
5	the customer from conflicts of interest and
6	related trading abuses on the part of bro-
7	kers or any other person performing simi-
8	lar roles or functions.
9	"(viii) Provision of Information
10	NECESSARY FOR ENFORCEMENT.—The
11	contract described in subparagraph (A)
12	shall be traded on a board of trade that
13	in accordance with regulations promul-
14	gated by the Commission, collects, main-
15	tains, and promptly provides to the Securi-
16	ties and Exchange Commission on request
17	such information as the Commission and
18	the Securities and Exchange Commission
19	jointly determine to be appropriate for the
20	performance of the enforcement respon-
21	sibilities described in paragraph (5).
22	"(5) SEC Enforcement authority for des
23	IGNATED FUTURES ON SECURITIES CONTRACTS
24	LISTED ON A CONTRACT MARKET.—

1	"(A) IN GENERAL.—With the concurrence
2	of the Commission, the Securities and Ex-
3	change Commission may enforce the provisions
4	of the securities laws specified in subparagraph
5	(B) against any person that purchases or sells
6	a designated future on a security to the same
7	extent as if the person had purchased or sold
8	an option on a security.
9	"(B) Provisions of the securities
10	LAWS.—The provisions of the securities laws re-
11	ferred to in subparagraph (A) are—
12	"(i) section 16 of the Securities Ex-
13	change Act of 1934 (15 U.S.C. 78p); and
14	"(ii) section 10(b) of the Securities
15	Exchange Act of 1934 (15 U.S.C. 78j(b)).
16	"(C) AUTHORITY OF SEC.—Nothing in this
17	paragraph expands the authority of the Securi-
18	ties and Exchange Commission with respect to
19	registered entities or contracts of sale of a com-
20	modity for future delivery (or options on such
21	contracts) except as specifically provided in this
22	paragraph.
23	"(D) Report.—Not earlier than the date
24	that is 3 years after the date of enactment of
25	this subsection, the Commission and the Securi-

ties and Exchange Commission shall begin to
compile, and not later than the date that is 4
years after the date of enactment of this subsection, the Commission and the Securities and
Exchange Commission shall submit to Congress, a report on the implementation of this
subsection.

- "(6) CFTC ENFORCEMENT AUTHORITY FOR DESIGNATED FUTURES ON SECURITIES LISTED ON A NATIONAL SECURITIES EXCHANGE.—
 - "(A) IN GENERAL.—Except as provided in subparagraph (B), the Securities and Exchange Commission shall have jurisdiction over a designated future on a security to the extent that the designated future on a security is traded on a national securities exchange.
 - "(B) Large trader reporting, antifraud, and antimanipulation authority.— With the concurrence of the Securities and Exchange Commission, the Commission shall enforce sections 4b, 4i, 4o, 6(c), and 9(a)(2) against any person that purchases or sells a designated future on a security on a national securities exchange.

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1 "(C) Provision of Information Nec-2 ESSARY FOR ENFORCEMENT.—A designated future on a security shall be traded on a national 3 4 securities exchange that, in accordance with 5 regulations promulgated by the Securities and 6 Exchange Commission, collects, maintains, and 7 promptly provides to the Commission on re-8 quest such information as the Securities and 9 Exchange Commission and the Commission 10 jointly determine to be appropriate for the per-11 formance of the enforcement responsibilities de-12 scribed in subparagraph (B). 13 "(7) Process for listing futures on a se-14 CURITY.— "(A) CONTRACT MARKET PROCESS.— 15 "(i) In General.—The Commission 16 17 shall transmit to the Securities and Ex-18 change Commission a copy of any applica-19 tion that is submitted by a board of trade 20 for designation as a contract market with 21 respect to a contract of sale (or option on 22 such a contract) for future delivery of a 23 nonexempted security or a group or index 24 of nonexempted securities.

"(I) OBJECTION BY SEC.—If, not 1 2 later than 15 days following trans-3 mittal of an application under clause (i), the Securities and Exchange Commission submits to the Commission an 6 objection to designation of the board 7 of trade as a contract market in the 8 contract (or option on such a con-9 tract) based on evidence (including an 10 economic analysis of relevant factors 11 including benefits and costs) that any 12 minimum requirement under para-13 graph (2)(B) or (4)(B) is not met, the 14 Commission shall afford the Securities 15 and Exchange Commission an oppor-16 tunity for a hearing on the record be-17 fore the Commission. 18 "(II) TIMING.—A hearing under 19 subclause (I) shall be held before the 20 Commission takes action on the appli-21 cation, and not less than 30 nor more 22 than 45 days after the Securities and 23 Exchange Commission submits the ob-

jection.

1	"(B) National securities exchange
2	PROCESS.—
3	"(i) In General.—The Securities
4	and Exchange Commission shall transmit
5	to the Commission a copy of any applica-
6	tion that is submitted by a person for list-
7	ing of a designated future on a security on
8	a national securities exchange.
9	"(ii) Objection by the commis-
10	SION.—If, not later than 15 days following
11	transmittal of an application under clause
12	(i), the Commission submits to the Securi-
13	ties and Exchange Commission an objec-
14	tion to listing of a designated future on a
15	security on a national securities exchange
16	based on evidence (including an economic
17	analysis of relevant factors including bene-
18	fits and costs) that any minimum require-
19	ment under paragraph (4)(B) is not met,
20	the Securities and Exchange Commission
21	shall afford the Commission an oppor-
22	tunity for a hearing on the record before
23	the Securities and Exchange Commission.
24	"(8) Margin.—

"(A) IN GENERAL.—Notwithstanding any 1 2 other provision of this Act, any designated contract market in a contract for sale of future de-3 4 livery of a nonexempted security or non-5 exempted securities index (or option on such a 6 contract) shall file with the Board of Governors 7 of the Federal Reserve System any rule estab-8 lishing or changing the level of initial margin or 9 maintenance margin for the nonexempted secu-10 rity or nonexempted securities index futures 11 contract (or option on such a contract). 12 "(B) REQUEST TO SET MARGIN.— 13 "(i) IN GENERAL.—The Board may at 14 any time request a contract market to set 15 the margin for a nonexempted security or 16 nonexempted securities index futures con-17 tract (or option on a nonexempted security 18 or nonexempted securities index futures 19 contract) at a level that the Board deter-20 mines is appropriate to— "(I) preserve the financial integ-21 22 rity of the contract market or of the 23 clearing system of the contract mar-24 ket; or

"(II) prevent systemic risk.

1	"(ii) Failure to set margin.—If
2	the contract market fails to comply with a
3	request under clause (i) within the time
4	specified by the Board in the request, the
5	Board may direct the contract market to
6	alter or supplement the rules of the con-
7	tract market as specified in the request.
8	"(C) Delegation of authority to the
9	COMMISSION.—Subject to such conditions as
10	the Board may determine, the Board may dele-
11	gate any or all of its authority with respect to
12	margin levels—
13	"(i) in the case of a designated future
14	on a security or other stock index futures
15	contract or related option, to the Commis-
16	sion, if the contract or option is traded on
17	a designated contract market or derivatives
18	transaction execution facility; or
19	"(ii) in the case of a designated future
20	on a security—
21	"(I) to the Securities and Ex-
22	change Commission, if the designated
23	future on a security is listed on a na-
24	tional securities exchange; or

1	"(II) to the intermarket margin
2	board established under subparagraph
3	(D).
4	"(D) Intermarket margin board.—
5	"(i) Establishment.—With the con-
6	currence of the Securities and Exchange
7	Commission and the Commission, the
8	Board may establish an intermarket mar-
9	gin board consisting of representatives of
10	each of those 3 entities.
11	"(ii) Duties.—The intermarket mar-
12	gin board established under clause (i) may
13	set and maintain margin levels and rules
14	pertaining to margin for a designated fu-
15	ture on a security listed on a contract mar-
16	ket or on a national securities exchange.
17	"(E) Relationship to other author-
18	ITY.—Nothing in this section supersedes or lim-
19	its the authority of the Commission under sec-
20	tion $8a(9)$.
21	"(F) Judicial review.—
22	"(i) In general.—Any action taken
23	by the Board (or by the Commission acting
24	under the delegation of authority under
25	subparagraph (C) or by the intermarket

margin board established under subparagraph (D)) under this paragraph directing a contract market to alter or supplement a contract market rule shall be subject to review only in the United States Court of Appeals for the judicial circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit.

"(ii) Basis for review.—Review under clause (i) shall be based on the examination of all information before the Board (or the Commission, Securities and Exchange Commission, or intermarket margin board) at the time at which the action was taken.

"(iii) STANDARD OF REVIEW.—The court reviewing an action of the Board (or the Commission, Securities and Exchange Commission, or intermarket margin board) shall not enter a stay or order of mandamus unless the court determines, after notice and hearing, that the action was ar-

1	bitrary, capricious, an abuse of discretion,
2	or otherwise not in accordance with law.".
3	SEC. 9. FINDING AND PURPOSES.
4	The Commodity Exchange Act is amended by striking
5	section 3 (7 U.S.C. 5) and inserting the following:
6	"SEC. 3. FINDING AND PURPOSES.
7	"(a) FINDING.—Congress finds that the futures con-
8	tracts and options contracts that are subject to this Act
9	are entered into regularly in interstate and international
10	commerce and are affected with a national public interest,
11	in that such futures contracts and options contracts pro-
12	vide a means for managing and assuming price risks, dis-
13	covering prices, and disseminating pricing information
14	through trading in liquid, fair, and financially secure trad-
15	ing facilities.
16	"(b) Purposes.—The purposes of this Act are—
17	"(1) to serve the public interest described in
18	subsection (a) through a system of effective self-reg-
19	ulation of trading facilities, clearing systems, market
20	participants, and market professionals under the
21	oversight of the Commission; and
22	"(2) to authorize the Commission—
23	"(A) to deter and prevent price manipula-
24	tion or any other disruptions to market integ-
25	rity;

1	"(B) to ensure the financial integrity of all
2	transactions subject to this Act and the avoid-
3	ance of systemic risk;
4	"(C) to protect all market participants
5	from fraudulent or other abusive sales practices
6	and misuse of customer assets; and
7	"(D) to promote responsible innovation
8	and fair competition among boards of trade,
9	other markets, and market participants.".
10	SEC. 10. PROHIBITED TRANSACTIONS.
11	Section 4c of the Commodity Exchange Act (7 U.S.C.
12	6c) is amended by striking "Sec. 4c." and all that follows
13	through subsection (a) and inserting the following:
14	"SEC. 4c. PROHIBITED TRANSACTIONS.
15	"(a) In General.—
16	"(1) Prohibition.—It shall be unlawful for
17	any person to offer to enter into, enter into, or con-
18	firm the execution of a transaction described in
19	paragraph (2) involving any commodity if the trans-
20	action is used or may be used to—
21	"(A) hedge any transaction in interstate
22	commerce in the commodity or the product or
23	byproduct of the commodity;

1	"(B) determine the price basis of any such
2	transaction in interstate commerce in the com-
3	modity; or
4	"(C) deliver any such commodity sold,
5	shipped, or received in interstate commerce for
6	the execution of the transaction.
7	"(2) Transaction.—A transaction referred to
8	in paragraph (1) is a transaction that—
9	"(A)(i) is, is of the character of, or is com-
10	monly known to the trade as, a 'wash sale',
11	'cross trade', or 'accommodation trade'; or
12	"(ii) is a fictitious sale; or
13	"(B) is used to cause any price to be re-
14	ported, registered, or recorded that is not a
15	true and bona fide price.
16	"(3) Effect of subsection.—Nothing in this
17	subsection—
18	"(A) makes unlawful an exchange of—
19	"(i) futures in connection with a cash
20	commodity transaction;
21	"(ii) futures for cash commodities;
22	"(iii) transfer trades or office trades;
23	or
24	"(iv) futures for swaps;

1	if the exchange is made in accordance with
2	rules of the contract market or derivatives
3	transaction execution facility that apply to such
4	transactions, and those rules have been ap-
5	proved by the Commission; or
6	"(B) makes it unlawful for a futures com-
7	mission merchant, acting as principal or agent,
8	to enter into, execute, or confirm the execution
9	of a contract for the purchase or sale of a com-
10	modity for future delivery if the contract is en-
11	tered into, executed, reported, recorded, or
12	cleared in accordance with the rules of a con-
13	tract market or derivatives transaction execu-
14	tion facility.".
15	SEC. 11. DESIGNATION OF BOARDS OF TRADE AS CON-
16	TRACT MARKETS.
17	The Commodity Exchange Act is amended—
18	(1) by redesignating section 5b (7 U.S.C. 7b)
19	as section 5e; and
20	(2) by striking sections 5 and 5a (7 U.S.C. 7,
21	7a) and inserting the following:
22	"SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-
23	TRACT MARKETS.
24	"(a) APPLICATIONS.—A board of trade applying to
25	the Commission for designation as a contract market shall

1	submit an application to the Commission that includes any
2	relevant materials and records the Commission may re-
3	quire consistent with this Act.
4	"(b) Criteria for Designation.—
5	"(1) In general.—To be designated as a con-
6	tract market, the board of trade shall demonstrate
7	to the Commission that the board of trade meets the
8	criteria specified in this subsection.
9	"(2) Prevention of Market Manipula-
10	TION.—The board of trade shall have the capacity to
11	prevent market manipulation through market sur-
12	veillance, compliance, and enforcement practices and
13	procedures, including methods for conducting real-
14	time monitoring of trading and comprehensive and
15	accurate trade reconstructions.
16	"(3) Fair and equitable trading.—The
17	board of trade shall establish and enforce trading
18	rules to ensure fair and equitable trading through
19	the facilities of the contract market, and the capac-
20	ity to detect, investigate, and discipline any person
21	that violates the rules.
22	"(4) Trade execution facility.—The board
23	of trade shall—
24	"(A) establish and enforce rules defining

or specifications detailing, the manner of oper-

- ation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and
 - "(B) demonstrate that the trading facility operates in accordance with the rules or specifications.
 - "(5) FINANCIAL INTEGRITY OF TRANS-ACTIONS.—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.
 - "(6) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.
 - "(7) Public access.—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

- 1 "(8) ABILITY TO OBTAIN INFORMATION.—The
 2 board of trade shall establish and enforce rules that
 3 will allow the board of trade to obtain any necessary
 4 information to perform any of the functions de5 scribed in this subsection, including the capacity to
 6 carry out such international information-sharing
 7 agreements as the Commission may require.
- 8 "(c) EXISTING CONTRACT MARKETS.—A designated 9 contract market on the effective date of the Commodity 10 Futures Modernization Act of 2000 shall be considered to 11 be a designated contract market under this section.
- 12 "(d) Core Principles for Contract Markets.—
- "(1) IN GENERAL.—To maintain the designation of a board of trade as a contract market, a board of trade shall comply with the core principles specified in this subsection.
 - "(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.
 - "(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

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1	"(4) Monitoring of trading.—The board of
2	trade shall monitor trading to prevent manipulation,
3	price distortion, and disruptions of the delivery or
4	cash-settlement process.
5	"(5) Position limitations or account-
6	ABILITY.—To reduce the potential threat of market
7	manipulation or congestion, especially during trading
8	in the delivery month, the board of trade shall adopt
9	position limitations or position accountability for
10	speculators, where necessary and appropriate.
11	"(6) Emergency authority.—The board of
12	trade shall adopt rules to provide for the exercise of
13	emergency authority, in consultation or cooperation
14	with the Commission, where necessary and appro-
15	priate, including the authority to—
16	"(A) liquidate or transfer open positions in
17	any contract;
18	"(B) suspend or curtail trading in any con-
19	tract; and
20	"(C) require market participants in any
21	contract to meet special margin requirements.
22	"(7) Availability of general informa-
23	TION.—The board of trade shall make available to
24	market authorities, market participants, and the

public information concerning—

1	"(A) the terms and conditions of the con-
2	tracts of the contract market; and
3	"(B) the mechanisms for executing trans-
4	actions on or through the facilities of the con-
5	tract market.
6	"(8) Daily publication of trading infor-
7	MATION.—The board of trade shall make public
8	daily information on settlement prices, volume, open
9	interest, and opening and closing ranges for actively
10	traded contracts on the contract market.
11	"(9) Execution of transactions.—The
12	board of trade shall provide a competitive, open, and
13	efficient market and mechanism for executing trans-
14	actions.
15	"(10) Trade information.—The board of
16	trade shall maintain rules and procedures to provide
17	for the recording and safe storage of all identifying
18	data entry and trade information in a manner that
19	enables the contract market to use the information
20	for purposes of assisting in the prevention of cus-
21	tomer and market abuses and providing evidence of
22	any violations of the rules of the contract market.
23	"(11) Financial integrity of contracts.—
24	The board of trade shall establish and enforce rules

providing for the financial integrity of any contracts

- traded on the contract market, including rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.
 - "(12) PROTECTION OF MARKET PARTICI-PANTS.—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party (including a party acting as an agent for the participants).
 - "(13) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.
 - "(14) GOVERNANCE FITNESS STANDARDS.—
 The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the board of trade, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).
 - "(15) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of

1	the contract market and establish a process for re-
2	solving such conflicts of interest.
3	"(16) Composition of boards of mutually
4	OWNED CONTRACT MARKETS.—In the case of a mu-
5	tually owned contract market, the board of trade
6	shall ensure that the composition of the governing
7	board reflects market participants.
8	"(17) Recordkeeping.—The board of trade
9	shall—
10	"(A) maintain full records of all activities
11	related to the business of the contract market
12	in a form and manner acceptable to the Com-
13	mission for a period of 5 years;
14	"(B) make the records readily available
15	during at least the first 2-years of the 5-year
16	period and provide the records to the Commis-
17	sion during that 2-year period at the expense of
18	the person required to maintain the records
19	and
20	"(C) keep the records open to inspection
21	by any representative of the Commission or the
22	Department of Justice.
23	"(18) Antitrust considerations.—Unless
24	appropriate to achieve the purposes of this Act, the
25	board of trade shall avoid—

1	"(A) adopting any rule or taking any ac-
2	tion that results in any unreasonable restraint
3	of trade; or
4	"(B) imposing any material anticompeti-
5	tive burden on trading on the contract mar-
6	ket.".
7	SEC. 12. DERIVATIVES TRANSACTION EXECUTION FACILI-
8	TIES.
9	The Commodity Exchange Act (7 U.S.C. 1 et seq.)
10	is amended by inserting after section 5 (as amended by
11	section 11(2)) the following:
12	"SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-
13	TIES.
14	"(a) In General.—In lieu of compliance with the
15	contract market designation requirements of section 5, a
16	board of trade may elect to operate as a registered deriva-
17	tives transaction execution facility if the facility is—
18	"(1) designated as a contract market and meets
19	the requirements of this section; or
20	"(2) registered as a derivative transaction exe-
21	cution facility under subsection (c).
22	"(b) Requirements for Trading Futures Con-
23	TRACTS OR OTHER DERIVATIVES TRANSACTIONS.—
24	"(1) In general.—A registered derivatives

1	may trade any futures contract (or option on such
2	a contract) that is not a designated future on a se-
3	curity on or through the facility only by satisfying
4	the requirements of this section.
5	"(2) Requirements for underlying com-
6	MODITIES.—A registered derivatives transaction exe-
7	cution facility may trade any futures contract only
8	if—
9	"(A) the underlying commodity has a near-
10	ly inexhaustible deliverable supply;
11	"(B) the underlying commodity has a de-
12	liverable supply that is sufficiently large that
13	the contract is highly unlikely to be susceptible
14	to manipulation;
15	"(C) the underlying commodity has no
16	cash market; or
17	"(D) the Commission determines, based on
18	the market characteristics, surveillance history,
19	self-regulatory record, and capacity of the facil-
20	ity that trading in the futures contract is highly
21	unlikely to be susceptible to manipulation.
22	"(3) Eligible traders.—To trade on a reg-
23	istered derivatives transaction execution facility, a
24	person shall—

1	"(A) be authorized by the board of trade
2	to trade on the facility; and
3	"(B)(i) be an eligible contract participant;
4	or
5	"(ii) be a person trading through a futures
6	commission merchant that—
7	"(I) is registered with the Commis-
8	sion;
9	"(II) is a member of a futures self-
10	regulatory organization;
11	"(III) is a clearing member of a de-
12	rivatives clearing organization; and
13	"(IV) has adjusted net capital of at
14	least \$20,000,000.
15	"(4) Trading by contract markets.—A
16	board of trade that is designated as a contract mar-
17	ket shall, to the extent that the contract market also
18	operates a registered derivatives transaction execu-
19	tion facility—
20	"(A) provide a physical location for the
21	contract market trading of the board of trade
22	that is separate from trading on the derivatives
23	transaction execution facility of the board of
24	trade; or

1	"(B) if the board of trade uses the same
2	electronic trading system for trading on the
3	contract market and derivatives transaction
4	execution facility of the board of trade, identify
5	whether the electronic trading is taking place
6	on the contract market or the derivatives trans-
7	action execution facility.
8	"(c) Criteria for Registration.—
9	"(1) In general.—To be registered as a reg-
10	istered derivatives transaction execution facility, the
11	board of trade shall demonstrate to the Commission
12	that the board of trade meets the criteria specified
13	in this paragraph.
14	"(2) Deterrence of abuses.—The board of
15	trade shall establish and enforce trading rules that
16	will deter abuses and has the capacity to detect, in-
17	vestigate, and enforce those rules, including means
18	to—
19	"(A) obtain information necessary to per-
20	form the functions required under this section;
21	or
22	"(B) use technological means to—
23	"(i) provide market participants with
24	impartial access to the market; and

1	"(ii) capture information that may be
2	used in establishing whether rule violations
3	have occurred.
4	"(3) Trading procedures.—The board of
5	trade shall establish and enforce rules or terms and
6	conditions defining, or specifications detailing, trad-
7	ing procedures to be used in entering and executing
8	orders traded on the facilities of the board of trade.
9	"(4) Financial integrity of trans-
10	ACTIONS.—The board of trade shall establish and
11	enforce rules or terms and conditions providing for
12	the financial integrity of transactions entered on or
13	through the facilities of the board of trade, including
14	rules or terms and conditions to ensure the financial
15	integrity of any futures commission merchants and
16	introducing brokers and the protection of customer
17	funds.
18	"(d) Core Principles for Registered Deriva-
19	TIVES TRANSACTION EXECUTION FACILITIES.—
20	"(1) In general.—To maintain the registra-
21	tion of a board of trade as a derivatives transaction
22	execution facility, a board of trade shall comply with
23	the core principles specified in this subsection.
24	"(2) COMPLIANCE WITH RULES.—The board of
25	trade shall monitor and enforce the rules of the fa-

1	cility, including any terms and conditions of any
2	contracts traded on or through the facility and any
3	limitations on access to the facility.
4	"(3) Monitoring of trading.—The board of
5	trade shall monitor trading in the contracts of the
6	facility to ensure orderly trading in the contract and
7	to maintain an orderly market while providing any
8	necessary trading information to the Commission to
9	allow the Commission to discharge the responsibil-
10	ities of the Commission under the Act.
11	"(4) Disclosure of General Informa-
12	TION.—The board of trade shall disclose publicly
13	and to the Commission information concerning—
14	"(A) contract terms and conditions;
15	"(B) trading conventions, mechanisms, and
16	practices;
17	"(C) financial integrity protections; and
18	"(D) other information relevant to partici-
19	pation in trading on the facility.
20	"(5) Provision of trading information.—
21	The board of trade shall provide to market partici-
22	pants on a fair, equitable, and timely basis—
23	"(A) information regarding prices, bids
24	and offers; and

1	"(B) for actively traded contracts, daily in-
2	formation on settlement prices, volume, open in-
3	terest, and opening and closing ranges.
4	"(6) FITNESS STANDARDS.—The board of trade
5	shall establish and enforce appropriate fitness stand-
6	ards for directors, members of any disciplinary com-
7	mittee, members, and any other persons with direct
8	access to the facility, including any parties affiliated
9	with any of the persons described in this paragraph.
10	"(7) Conflicts of interest.—The board of
11	trade shall establish and enforce rules to minimize
12	conflicts of interest in the decisionmaking process of
13	the derivatives transaction execution facility and es-
14	tablish a process for resolving such conflicts of inter-
15	est.
16	"(8) Recordkeeping.—The board of trade
17	shall—
18	"(A) maintain full records of all activities
19	related to the business of the derivatives trans-
20	action execution facility in a form and manner
21	acceptable to the Commission for a period of at
22	least 5 years;
23	"(B) make the records readily available
24	during at least the first 2 years of the 5-year
25	period and provide the records to the Commis-

1	sion at the expense of the person required to
2	maintain the records; and
3	"(C) keep the records open to inspection
4	by any representative of the Commission or the
5	Department of Justice.
6	"(9) Antitrust considerations.—Unless ap-
7	propriate to achieve the purposes of this Act, the
8	board of trade shall avoid—
9	"(A) adopting any rule or taking any ac-
10	tion that results in any unreasonable restraint
11	of trade; or
12	"(B) imposing any material anticompeti-
13	tive burden on trading on the derivatives trans-
14	action execution facility.
15	"(e) Use of Broker-Dealers and Depository
16	Institutions as Intermediaries.—
17	"(1) In General.—A registered derivatives
18	transaction execution facility may by rule allow a
19	broker-dealer or depository institution that meets
20	the requirements of paragraph (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 or depository insti-
24	tution; and

1	"(B) receive funds of customers to serve as
2	margin or security for such transactions.
3	"(2) Requirements.—The requirements re-
4	ferred to in paragraph (1) are that—
5	"(A) a broker-dealer be in good standing
6	with the Securities and Exchange Commission
7	and a depository institution be in good stand-
8	ing, as determined by the appropriate Federal
9	banking agency (as defined in section 3 of the
10	Federal Deposit Insurance Act (12 U.S.C.
11	1813)) (including the Farm Credit Administra-
12	tion), as applicable; and
13	"(B) if a broker-dealer or depository insti-
14	tution carries or holds customer accounts or
15	funds for transactions on the derivatives trans-
16	action execution facility for more than 1 busi-
17	ness day, the broker-dealer or depository insti-
18	tution is registered as a futures commission
19	merchant and is a member of a registered fu-
20	tures association.
21	"(3) Implementation.—The Commission shall
22	cooperate and coordinate with the Securities and Ex-
23	change Commission and Federal banking regulatory
24	agencies (including the Farm Credit Administration)
25	in adopting rules and taking any other appropriate

- action to facilitate the implementation of this sub-
- 2 section.
- 3 "(f) Segregation of Customer Funds.—Not
- 4 later than 180 days after the effective date of the Com-
- 5 modity Futures Modernization Act of 2000, consistent
- 6 with regulations adopted by the Commission, a registered
- 7 derivatives transaction execution facility may authorize a
- 8 futures commission merchant to offer any customer of the
- 9 futures commission merchant that is an eligible contract
- 10 participant the right to not segregate the customer funds
- 11 of the futures commission merchant for purposes of trad-
- 12 ing on or through the facilities of the registered derivatives
- 13 transaction execution facility.
- 14 "(g) Election To Trade Excluded Trans-
- 15 ACTIONS.—
- 16 "(1) IN GENERAL.—A board of trade that is a
- 17 registered derivatives transaction execution facility
- may trade on the facility any agreements, contracts,
- or transactions that are excluded from this Act
- under subsection (c) or (d) of section 2.
- 21 "(2) Exclusive jurisdiction of the com-
- 22 MISSION.—The Commission shall have exclusive ju-
- 23 risdiction over agreements, contracts, or transactions
- described in paragraph (1) to the extent that the

- 1 agreements, contracts, or transactions are traded on
- a derivatives transaction execution facility.".

3 SEC. 13. DERIVATIVES CLEARING ORGANIZATIONS.

- 4 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
- 5 is amended by inserting after section 5a (as added by sec-
- 6 tion 12) the following:

7 "SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

- 8 "(a) Registration Requirement.—Except as pro-
- 9 vided in subsection (b), it shall be unlawful for a deriva-
- 10 tives clearing organization, unless registered with the
- 11 Commission, directly or indirectly to make use of the mails
- 12 or any means or instrumentality of interstate commerce
- 13 to perform the functions of a derivatives clearing organiza-
- 14 tion described in section 1a(8).
- 15 "(b) Exclusion of Derivatives Clearing Orga-
- 16 NIZATIONS SUBJECT TO OTHER REGULATORY AUTHORI-
- 17 Ties.—A derivatives clearing organization shall not be re-
- 18 quired to register with the Commission, and the Commis-
- 19 sion shall have no jurisdiction with respect to the deriva-
- 20 tives clearing organization, if the derivatives clearing
- 21 organization—
- 22 "(1)(A) is registered as a clearing agency under
- the Securities Exchange Act of 1934 (15 U.S.C. 78a
- 24 et seq.);

- "(B) is subject to the supervisory jurisdiction of a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or the National Credit Union Administration;
- 6 "(C) is subject to the supervisory jurisdiction of 7 a foreign regulatory authority that is recognized by 8 the Securities and Exchange Commission, the Board 9 of Governors of the Federal Reserve System, the 10 Comptroller of the Currency, or the Commission as 11 overseeing a system of consolidated supervision com-12 parable to that provided under applicable United 13 States law; and
- "(2) does not clear a contract of sale for future delivery, option on a contract of sale for future delivery, or option on a commodity that is not a security (unless the contract or option is excluded under subsection (c) or (d) of section 2).
- "(c) Voluntary Registration.—A derivatives clearing organization that is exempt from registration under subsection (b) may register with the Commission as a derivatives clearing organization.
- 23 "(d) Registration of Derivatives Clearing Or-24 Ganizations.—

or

"(1) APPLICATION.—A person desiring to reg-1 2 ister as a derivatives clearing organization shall sub-3 mit to the Commission an application in such form 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)."(2) Core principles.— 8 "(A) IN GENERAL.—To be registered and 9 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. "(B) FINANCIAL RESOURCES.—The appli-15 16 cant shall demonstrate that the applicant has 17 adequate financial, operational, and managerial 18 resources to discharge the responsibilities of a 19 derivatives clearing organization without inter-20 ruption in various market conditions. "(C) PARTICIPANT AND PRODUCT ELIGI-21 22 BILITY.—The applicant shall establish— "(i) appropriate admission and con-23 24 tinuing eligibility standards (including ap-25 propriate minimum financial requirements)

1	for members of and participants in the or-
2	ganization; and
3	"(ii) appropriate standards for deter-
4	mining eligibility of agreements, contracts,
5	or transactions submitted to the applicant.
6	"(D) RISK MANAGEMENT.—The applicant
7	shall have the ability to manage the risks asso-
8	ciated with discharging the responsibilities of a
9	derivatives clearing organization through the
10	use of appropriate tools and procedures.
11	"(E) Settlement procedures.—The
12	applicant shall have the ability to—
13	"(i) complete settlements on a timely
14	basis under varying circumstances;
15	"(ii) maintain an adequate record of
16	the flow of funds associated with each
17	transaction that the applicant clears; and
18	"(iii) comply with the terms and con-
19	ditions of any permitted netting or offset
20	arrangements with other clearing organiza-
21	tions.
22	"(F) Treatment of funds.—The appli-
23	cant shall have standards and procedures de-
24	signed to protect and ensure the safety of mem-
25	ber and participant funds.

1	"(G) DEFAULT RULES AND PROCE-
2	DURES.—The applicant shall have rules and
3	procedures designed to allow for efficient, fair
4	and safe management of events when members
5	or participants become insolvent or otherwise
6	default on their obligations to the derivatives
7	clearing organization.
8	"(H) Rule enforcement.—The appli-
9	cant shall—
10	"(i) maintain adequate arrangements
11	and resources for the effective monitoring
12	and enforcement of compliance with rules
13	of the applicant and for resolution of dis-
14	putes; and
15	"(ii) have the authority and ability to
16	discipline, limit, suspend, or terminate ϵ
17	member's or participant's activities for vio-
18	lations of rules of the applicant.
19	"(I) System safeguards.—The applicant
20	shall demonstrate that the applicant—
21	"(i) has established and will maintain
22	a program of oversight and risk analysis to
23	ensure that the automated systems of the
24	applicant function properly and have ade-
25	quate capacity and security; and

1	"(ii) has established and will maintain
2	emergency procedures and a plan for dis-
3	aster recovery, and will periodically test
4	backup facilities sufficient to ensure daily
5	processing, clearing, and settlement of
6	transactions.
7	"(J) Reporting.—The applicant shall
8	provide to the Commission all information nec-
9	essary for the Commission to conduct the over-
10	sight function of the applicant with respect to
11	the activities of the derivatives clearing organi-
12	zation.
13	"(K) Recordkeeping.—The applicant
14	shall—
15	"(i) maintain full records of all activi-
16	ties related to the business of the applicant
17	as a derivatives clearing organization in a
18	form and manner acceptable to the Com-
19	mission for a period of at least 5 years;
20	"(ii) make the records readily avail-
21	able during at least the first 2 years of the
22	5-year period and provide the records to
23	the Commission at the expense of the per-
24	son required to maintain the records; and

1	"(iii) keep the records open to inspec-
2	tion by any representative of the Commis-
3	sion or the Department of Justice.
4	"(L) Public information.—The appli-
5	cant shall make information concerning the
6	rules and operating procedures governing the
7	clearing and settlement systems (including de-
8	fault procedures) available to market partici-
9	pants.
10	"(M) Information sharing.—The appli-
11	cant shall—
12	"(i) enter into and abide by the terms
13	of all appropriate and applicable domestic
14	and international information-sharing
15	agreements; and
16	"(ii) use relevant information obtained
17	from the agreements in carrying out the
18	clearing organization's risk management
19	program.
20	"(N) Antitrust considerations.—Un-
21	less appropriate to achieve the purposes of this
22	Act, the derivatives clearing organization shall
23	avoid—

1	"(i) adopting any rule or taking any
2	action that results in any unreasonable re-
3	straint of trade; or
4	"(ii) imposing any material anti-
5	competitive burden on trading on the con-
6	tract market.
7	"(3) Orders concerning competition.—A
8	derivatives clearing organization may request the
9	Commission to issue an order concerning whether a
10	rule or practice of the applicant is the least anti-
11	competitive means of achieving the objectives, pur-
12	poses, and policies of this Act.
13	"(e) Existing Derivatives Clearing Organiza-
14	TIONS.—A derivatives clearing organization shall be
15	deemed to be registered under this section to the extent
16	that—
17	"(1) the derivatives clearing organization clears
18	agreements, contracts, or transactions for a board of
19	trade that has been designated by the Commission
20	as a contract market for such agreements, contracts,
21	or transactions before the date of enactment of this
22	section; and
23	"(2) the Commission has reviewed and ap-
24	proved the rules of the derivatives clearing organiza-
25	tion before that date

"(1	APPOINTMENT	OF TRUSTEE.—
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"(1) In General.—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

- "(2) Assumption of Jurisdiction.—If the Commission applies for appointment of a trustee under paragraph (1)—
 - "(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and
 - "(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection

1	of participants, subject to such terms and con-
2	ditions as the court may prescribe.
3	"(g) Linking of Regulated Clearing Facili-
4	TIES.—
5	"(1) In General.—The Commission shall fa-
6	cilitate the linking or coordination of derivatives
7	clearing organizations registered under this Act with
8	other regulated clearance facilities for the coordi-
9	nated settlement of cleared transactions.
10	"(2) Coordination.—In carrying out para-
11	graph (1), the Commission shall coordinate with the
12	Federal banking agencies and the Securities and Ex-
13	change Commission.".
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14	SEC. 14. COMMON PROVISIONS APPLICABLE TO REG-
14	SEC. 14. COMMON PROVISIONS APPLICABLE TO REG-
14 15 16	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.
14 15 16 17	SEC. 14. COMMON PROVISIONS APPLICABLE TO REG- ISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.)
14 15 16 17	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by sec-
14 15 16 17 18	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 13) the following:
14 15 16 17 18	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 13) the following: "SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-
14 15 16 17 18 19 20	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 13) the following: "SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.
14 15 16 17 18 19 20 21	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 13) the following: "SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. "(a) Acceptable Business Practices Under
14 15 16 17 18 19 20 21	SEC. 14. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 13) the following: "SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES. "(a) Acceptable Business Practices Under Core Principles.—

- the Commission, of the core principles for registered entities specified in sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under the core principles.
- 5 "(2) TIMING.—If any person submits to the 6 Commission a request for an interpretation or for 7 approval of an interpretation under paragraph (1), 8 the Commission shall issue the interpretation or 9 shall approve or disapprove the interpretation not 10 later than 45 days after receiving the request.
- "(3) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with the core principles.
- 15 "(b) Delegation of Functions Under Core 16 Principles.—
- "(1) IN GENERAL.—A registered entity may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.
- "(2) Responsibility.—A registered entity that delegates a function under paragraph (1) shall remain responsible for carrying out the function.
- 24 "(c) New Contracts, New Rules, and Rule
- 25 Amendments.—

"(1) In General.—Subject to paragraph (2), a registered entity may elect to list for trading any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission a written certification that the new contract, new rule, or rule amendment complies with this Act (including regulations under this Act).

"(2) Prior approval.—

- "(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.
- "(B) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.
- "(C) AGRICULTURAL CONTRACTS.—Notwithstanding any other provision of this section, a designated contract market shall submit for prior approval by the Commission each rule amendment that materially changes a term or

1	condition in any contract of sale of a com-
2	modity for future delivery or related option
3	traded through the facilities of the designated
4	contract market, if—
5	"(i) the commodity is specifically list-
6	ed in section 1a(3); and
7	"(ii) the rule amendment applies to
8	contracts and delivery months that have
9	previously been listed for trading and have
10	open interest.
11	"(3) Approval.—The Commission shall ap-
12	prove any such new contract or instrument, new
13	rule, or rule amendment unless the Commission
14	finds that the new contract or instrument, new rule,
15	or rule amendment would violate this Act.
16	"(d) Violation of Core Principles.—
17	"(1) In General.—If the Commission deter-
18	mines, on the basis of substantial evidence, that a
19	registered entity is violating any of the applicable
20	core principles specified in sections 5(d), 5a(d), and
21	5b(d)(2), the Commission shall—
22	"(A) notify the registered entity of the de-
23	termination; and
24	"(B) afford the registered entity an oppor-
25	tunity to make appropriate changes to bring the

- 1 registered entity into compliance with the core
- 2 principles.
- 3 "(2) Failure to make changes.—If, not
- 4 later than 30 days after receiving a notification
- 5 under paragraph (1), a registered entity fails to
- 6 make changes that, in the opinion of the Commis-
- sion, are necessary to accomplish the objectives of
- 8 the core principles, the Commission may take fur-
- 9 ther action in accordance with this Act.
- 10 "(e) Reservation of Emergency Authority.—
- 11 Notwithstanding any other provision of this section, the
- 12 Commission shall retain the full scope of its emergency
- 13 powers under section 8a(9) to direct any contract market
- 14 to take emergency action in compliance with the provisions
- 15 and standards of section 8a(9).".
- 16 SEC. 15. EXEMPT BOARDS OF TRADE.
- 17 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
- 18 is amended by inserting after section 5c (as added by sec-
- 19 tion 14) the following:
- 20 "SEC. 5d. EXEMPT BOARDS OF TRADE.
- 21 "(a) In General.—Except as otherwise provided in
- 22 this section, a contract of sale (or option on such a con-
- 23 tract) of a commodity for future delivery traded on or
- 24 through the facilities of an exempt board of trade shall

1	be exempt from all provisions of this Act, other than sec-
2	tion $2(g)$.
3	"(b) Criteria for Exemption.—To qualify for an
4	exemption under subsection (a), a board of trade shall
5	limit trading on or through the facilities of the board of
6	trade to contracts of sale of a commodity for future deliv-
7	ery (or options on such contracts)—
8	"(1) that have—
9	"(A) a nearly inexhaustible deliverable sup-
10	ply;
11	"(B) a deliverable supply that is suffi-
12	ciently large, and a cash market sufficiently liq-
13	uid, to render any contract traded on the com-
14	modity highly unlikely to be susceptible to ma-
15	nipulation; or
16	"(C) no cash market; and
17	"(2) that are entered into only between persons
18	that—
19	"(A) are eligible contract participants at
20	the time at which the persons enter into the
21	contract; or
22	"(B) enter into the contract or option for
23	the benefit only of eligible contract participants
24	"(c) Antimanipulation Requirements.—A party
25	to a futures contract or related ontion that is traded or

- 1 an exempt board of trade shall be subject to sections 4b,
- 2 40, 6(c), and 9(a)(2), and the Commission shall enforce
- 3 those provisions with respect to any such trading.
- 4 "(d) Price Discovery.—If the Commission finds
- 5 that an exempt board of trade is a significant source of
- 6 price discovery for any underlying commodity in any
- 7 transaction traded on or through the facilities of the board
- 8 of trade, the board of trade shall disseminate publicly on
- 9 a daily basis trading volume, opening and closing price
- 10 ranges, open interest, and other trading data as appro-
- 11 priate to the market.
- 12 "(e) Jurisdiction.—The Commission shall have ex-
- 13 clusive jurisdiction over any account, agreement, or trans-
- 14 action involving a contract of sale of a commodity for fu-
- 15 ture delivery, or related option, to the extent that such
- 16 an account, agreement, or transaction is traded on an ex-
- 17 empt board of trade.
- 18 "(f) Subsidiaries.—A board of trade that is des-
- 19 ignated as a contract market or registered as a derivatives
- 20 transaction execution facility may operate an exempt
- 21 board of trade by establishing a separate subsidiary or
- 22 other legal entity and otherwise satisfying the require-
- 23 ments of this section.".

1	SEC. 16. 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 $11(1)$) is amended to read
5	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. 17. 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. 18. PREEMPTION.
20	Section 12(e) of the Commodity Exchange Act (7
21	U.S.C. 16(e)) is amended by striking paragraph (2) and
22	inserting the following:
23	"(2) the application of any Federal or State law
24	(including any regulation) to an agreement, contract,
25	or transaction in or involving any commodity, prod-

1	uct, right, service, or interest, except that this Act
2	shall supersede and preempt—
3	"(A) any Federal or State law (including
4	any regulation), in the case of any such agree-
5	ment, contract, or transaction—
6	"(i) that is conducted on or subject to
7	the rules of a registered entity or exempt
8	board of trade;
9	"(ii) that is conducted on or subject
10	to the rules of any board of trade, ex-
11	change, or market located outside the
12	United States, or any territory or posses-
13	sion of the United States (in accordance
14	with any terms or conditions specified by
15	the Commission by regulation); and
16	"(iii) that is subject to regulation by
17	the Commission under section 4c or 19;
18	and
19	"(B) any State or local law that prohibits
20	or regulates gaming or the operation of bucket
21	shops (other than antifraud provisions of gen-
22	eral applicability) in the case of—
23	"(i) an excluded trading facility under
24	section 2(e); or

1	"(ii) an agreement, contract, or trans-
2	action that—
3	"(I) is excluded under subsection
4	(c), (d), or (f) of section 2; or
5	"(II) is covered by the terms of
6	an exemption granted by the Commis-
7	sion under section 4(c) (regardless of
8	whether any such agreement, con-
9	tract, or transaction is otherwise sub-
10	ject to this Act); or".
11	SEC. 19. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-
12	STITUTIONAL CUSTOMERS.
13	Section 14 of the Commodity Exchange Act (7 U.S.C.
14	18) is amended by striking subsection (g) and inserting
15	the following:
16	"(g) Predispute Resolution Agreements for
17	Institutional Customers.—Nothing in this section
18	prohibits a registered futures commission merchant from
19	requiring a customer that is an eligible contract partici-
20	pant, as a condition to the commission merchant's con-
21	ducting a transaction for the customer, to enter into an
22	agreement waiving the right to file a claim under this sec-
23	tion.".

1	SEC. 20. CONSIDERATION OF COSTS AND BENEFITS AND
2	ANTITRUST LAWS.
3	Section 15 of the Commodity Exchange Act (7 U.S.C.
4	19) is amended by striking "Sec. 15. The Commission"
5	and inserting the following:
6	"SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND
7	ANTITRUST LAWS.
8	"(a) Costs and Benefits.—
9	"(1) In general.—Before promulgating a reg-
10	ulation under this Act or issuing an order (except as
11	provided in paragraph (3)), the Commission shall
12	consider the costs and benefits of the action of the
13	Commission.
14	"(2) Considerations.—The costs and benefits
15	of the proposed Commission action shall be evalu-
16	ated in light of—
17	"(A) considerations of protection of market
18	participants and the public;
19	"(B) considerations of the efficiency, com-
20	petitiveness, and financial integrity of futures
21	markets;
22	"(C) considerations of price discovery;
23	"(D) considerations of sound risk manage-
24	ment practices; and
25	"(E) other public interest considerations.

1	"(3) Applicability.—This subsection does not
2	apply to the following actions of the Commission:
3	"(A) An order that initiates, is part of, or
4	is the result of an adjudicatory or investigative
5	process of the Commission.
6	"(B) An emergency action.
7	"(C) A finding of fact regarding compli-
8	ance with a requirement of the Commission.
9	"(b) Antitrust Laws.—The Commission".
10	SEC. 21. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE
11	COUNTERPARTIES.
12	Section 22(a) of the Commodity Exchange Act (7
13	U.S.C. 25(a)) is amended by adding at the end the fol-
14	lowing:
15	"(4) Contract enforcement between eli-
16	GIBLE COUNTERPARTIES.—No agreement, contract,
17	or transaction between eligible contract participants
18	
19	shall be void, voidable, or unenforceable, and no
1)	shall be void, voidable, or unenforceable, and no such eligible contract participant shall be entitled to
20	
	such eligible contract participant shall be entitled to
20	such eligible contract participant shall be entitled to rescind, or recover any payment made with respect
20 21	such eligible contract participant shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction,

- 1 from any provision of this Act or regulations of the
- 2 Commission.".

3 SEC. 22. LEGAL CERTAINTY FOR SWAP AGREEMENTS.

- 4 (a) Definition of Swap Agreement.—In this sec-
- 5 tion, the term "swap agreement" has the meaning given
- 6 the term in section 5220 of the Revised Statutes.
- 7 (b) Legal Certainty.—
- 9 amendment made by this Act authorizes the Securi10 ties and Exchange Commission to regulate, super11 vise, or otherwise subject to oversight any activity,
 12 agreement, instrument, transaction, or product over
 13 which the Securities and Exchange Commission is
 14 not granted specific jurisdiction under this Act, any

amendment made by this Act, or any other law.

- (2) SWAP AGREEMENTS.—Nothing in this Act or any amendment made by this Act grants the Commodity Futures Trading Commission or the Securities and Exchange Commission any jurisdiction over any swap agreement, except that a registered entity may voluntarily submit to the jurisdiction of the Commodities Futures Trading Commission under section 12 or 13 of the Commodities Exchange Act (7 U.S.C. 16, 13c).
- 25 (c) Moratorium on Retail Swap Agreements.—

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- (1) In General.—During the 1-year period beginning on the date of enactment of this Act, no financial institution engaged in activities authorized or permitted under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)) may initiate through a widespread offering the opportunity for individuals other than accredited investors to enter into swap agreements. In the preceding sentence, the term "accredited investor" means an individual with net worth of at least \$5,000,000.
 - (2) Report.—Not later than the date that is

 1 year after the date of enactment of this Act, the
 Federal banking agencies (as defined in section 3 of
 the Federal Deposit Insurance Act (12 U.S.C.
 1813)), the Department of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall submit to the
 Committee on Agriculture, Nutrition, and Forestry
 and the Committee on Banking, Housing, and
 Urban Affairs of the Senate, and the Committee on
 Agriculture and the Committee on Banking and Financial Services of the House of Representatives a
 report on—

1	(A) the regulatory framework under which
2	swap agreements identified in paragraph (1)
3	should be supervised;
4	(B) the jurisdictional issues relating to
5	swap agreements identified in paragraph (1);
6	and
7	(C) investor protection concerns in connec-
8	tion with swap agreements identified in para-
9	graph (1).
10	SEC. 23. TECHNICAL AND CONFORMING AMENDMENTS.
11	(a) Commodity Exchange Act.—
12	(1) Section 1a of the Commodity Exchange Act
13	(7 U.S.C. 1a) (as amended by section 3(1)) is
14	amended—
15	(A) in paragraphs (4), (5), (17), (18),
16	(21), and (24), by inserting "or derivatives
17	transaction execution facility" after "contract
18	market" each place it appears; and
19	(B) in paragraph (25)—
20	(i) in the paragraph heading, by strik-
21	ing "CONTRACT MARKET" and inserting
22	"REGISTERED ENTITY"; and
23	(ii) by striking "contract market"
24	each place it appears and inserting "reg-
25	istered entity".

1	(2) Section 2 of the Commodity Exchange Act
2	(7 U.S.C. 2, 2a, 4, 4a, 3) is amended—
3	(A) by striking "Sec. 2. (a)(1)(A)(i) The"
4	and inserting the following:
5	"SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF
6	PRINCIPAL FOR ACT OF AGENT; COMMODITY
7	FUTURES TRADING COMMISSION; TRANS-
8	ACTION IN INTERSTATE COMMERCE.
9	"(a) Jurisdiction of Commission; Commodity
10	FUTURES TRADING COMMISSION.—
11	"(1) Jurisdiction of commission.—
12	"(A) In general.—The"; and
13	(B) in subsection (a)—
14	(i) in paragraph (1) (as amended by
15	subparagraph (A))—
16	(I) by striking subparagraph (B);
17	(II) by striking "subparagraph
18	(B) of this subparagraph" and insert-
19	ing "subsection (g)";
20	(III) by striking "contract mar-
21	ket designated pursuant to section 5
22	of this Act" and inserting "contract
23	market designated or derivatives
24	transaction execution facility reg-
25	istered pursuant to section 5 or 5a";

1	(IV) by striking clause (ii); and
2	(V) in clause (iii), by striking
3	"(iii) The" and inserting the fol-
4	lowing:
5	"(B) Liability of Principal for act of
6	AGENT.—The";
7	(ii) in paragraph (7), by striking
8	"contract market" and inserting "reg-
9	istered entity"; and
10	(iii) in paragraph (8)(B)(ii)—
11	(I) in the first sentence, by strik-
12	ing "designation as a contract mar-
13	ket" and inserting "designation or
14	registration as a contract market or
15	derivatives transaction execution facil-
16	ity'';
17	(II) in the second sentence, by
18	striking "designate a board of trade
19	as a contract market" and inserting
20	"designate or register a board of
21	trade as a contract market or deriva-
22	tives transaction execution facility";
23	and
24	(III) in the fourth sentence, by
25	striking "designating or refusing

1	suspending, or revoking the designa-
2	tion of, a board of trade as a contract
3	market" and inserting "designating,
4	registering, or refusing, suspending,
5	or revoking the designation or reg-
6	istration of, a board of trade as a con-
7	tract market or derivatives trans-
8	action execution facility".
9	(3) Section 4 of the Commodity Exchange Act
10	(7 U.S.C. 6) is amended—
11	(A) in subsection (a)—
12	(i) by inserting "exempted by oper-
13	ation of section 5d or unless" after "Un-
14	less'';
15	(ii) in paragraph (1), by striking
16	"designated by the Commission as a 'con-
17	tract market' for" and inserting "des-
18	ignated or registered by the Commission as
19	a contract market or derivatives trans-
20	action execution facility for";
21	(iii) in paragraph (2), by striking
22	"member of such"; and
23	(iv) in paragraph (3), by inserting "or
24	derivatives transaction execution facility"
25	after "contract market"; and

1	(B) in subsection (c)—
2	(i) in paragraph (1)—
3	(I) by striking "designated as a
4	contract market" and inserting "des-
5	ignated or registered as a contract
6	market or derivatives transaction exe-
7	cution facility"; and
8	(II) by striking "section
9	2(a)(1)(B)" and inserting "section
10	2(g)"; and
11	(ii) in paragraph (2)(B)(ii), by insert-
12	ing "or derivatives transaction execution
13	facility" after "contract market".
14	(4) Section 4a of the Commodity Exchange Act
15	(7 U.S.C. 6a) is amended—
16	(A) in subsection (a)—
17	(i) in the first sentence, by inserting
18	"or derivatives transaction execution facili-
19	ties" after "contract markets"; and
20	(ii) in the second sentence, by insert-
21	ing "or derivatives transaction execution
22	facility" after "contract market";
23	(B) in subsection (b), by inserting "or de-
24	rivatives transaction execution facility" after
25	"contract market" each place it appears; and

1	(C) in subsection (e)—
2	(i) by striking "contract market or"
3	each place it appears and inserting "con-
4	tract market, derivatives transaction execu-
5	tion facility, or";
6	(ii) by striking "licensed or des-
7	ignated" each place it appears and insert-
8	ing "licensed, designated, or registered";
9	and
10	(iii) by striking "contract market, or"
11	and inserting "contract market or deriva-
12	tives transaction execution facility, or".
13	(5) Section 4b(a) of the Commodity Exchange
14	Act (7 U.S.C. 6b(a)) is amended by striking "con-
15	tract market" each place it appears and inserting
16	"registered entity".
17	(6) Sections 4c(g), 4d, 4e, and 4f of the Com-
18	modity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f)
19	are amended by inserting "or derivatives transaction
20	execution facility" after "contract market" each
21	place it appears.
22	(7) Section 4g of the Commodity Exchange Act
23	(7 U S C 69) is amended—

1	(A) in subsection (b), by striking "clear-
2	inghouse and contract market" and inserting
3	"registered entity"; and
4	(B) in subsection (f), by striking "clearing-
5	houses, contract markets, and exchanges" and
6	inserting "registered entities".
7	(8) Section 4h of the Commodity Exchange Act
8	(7 U.S.C. 6h) is amended by striking "contract mar-
9	ket" each place it appears and inserting "registered
10	entity".
11	(9) Section 4i of the Commodity Exchange Act
12	(7 U.S.C. 6i) is amended in the first sentence by in-
13	serting "or derivatives transaction execution facility"
14	after "contract market".
15	(10) Section 4j of the Commodity Exchange
16	Act (7 U.S.C. 6j) is repealed.
17	(11) 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	(12) 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	(13) The Commodity Exchange Act (as amend-
7	ed by paragraphs (10), (11), and (12)) is amended
8	by redesignating section 4k through 4p (7 U.S.C. 6k
9	through 6p) as sections 4j through 4o, respectively.
10	(14) Section 6 of the Commodity Exchange Act
11	(7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—
12	(A) in subsection (a)—
13	(i) in the first sentence—
14	(I) by striking "board of trade
15	desiring to be designated a 'contract
16	market' shall make application to the
17	Commission for such designation" and
18	inserting "person desiring to be des-
19	ignated or registered as a registered
20	entity shall make application to the
21	Commission for such designation or
22	registration";
23	(II) by striking "above condi-
24	tions" and inserting "conditions set
25	forth in this Act'': and

1	(III) by striking "above require-
2	ments" and inserting "the require-
3	ments of this Act";
4	(ii) in the second sentence, by striking
5	"designation as a contract market within
6	one year" and inserting "designation or
7	registration as a registered entity within
8	180 days'';
9	(iii) in the third sentence—
10	(I) by striking "board of trade"
11	and inserting "person"; and
12	(II) by striking "one-year period"
13	and inserting "180-day period"; and
14	(iv) in the last sentence, by striking
15	"designate as a 'contract market' any
16	board of trade that has made application
17	therefor, such board of trade" and insert-
18	ing "designate or register as a registered
19	entity any person that has made applica-
20	tion therefor, such person";
21	(B) in subsection (b)—
22	(i) in the first sentence—
23	(I) by striking "designation of
24	any board of trade as a 'contract mar-
25	ket' upon" and inserting "designation

1	or registration of any registered entity
2	on'';
3	(II) by striking "board of trade"
4	each place it appears and inserting
5	"registered entity"; and
6	(III) by striking "designation as
7	set forth in section 5 of this Act" and
8	inserting "designation or registration
9	as set forth in sections 5 through 5c";
10	(ii) in the second sentence—
11	(I) by striking "board of trade"
12	the first place it appears and inserting
13	"registered entity"; and
14	(II) by striking "board of trade"
15	the second and third places it appears
16	and inserting "person"; and
17	(iii) in the last sentence, by striking
18	"board of trade" each place it appears and
19	inserting "person";
20	(C) in subsection (c)—
21	(i) by striking "contract market" each
22	place it appears and inserting "registered
23	entity";

1	(ii) by striking "contract markets"
2	each place it appears and inserting "reg-
3	istered entities"; and
4	(iii) by striking "trading privileges"
5	each place it appears and inserting "privi-
6	leges";
7	(D) in subsection (d), by striking "contract
8	market" each place it appears and inserting
9	"registered entity"; and
10	(E) in subsection (e), by striking "trading
11	on all contract markets" each place it appears
12	and inserting "the privileges of all registered
13	entities".
14	(15) Section 6a of the Commodity Exchange
15	Act (7 U.S.C. 10a) is amended—
16	(A) in the first sentence of subsection (a),
17	by striking "designated as a 'contract market'
18	shall" and inserting "designated or registered
19	as a contract market or a derivatives trans-
20	action execution facility"; and
21	(B) in subsection (b), by striking "des-
22	ignated as a contract market" and inserting
23	"designated or registered as a contract market
24	or a derivatives transaction execution facility".

1	(16) Section 6b of the Commodity Exchange
2	Act (7 U.S.C. 13a) is amended—
3	(A) by striking "contract market" each
4	place it appears and inserting "registered enti-
5	ty'';
6	(B) in the first sentence, by striking "des-
7	ignation as set forth in section 5 of this Act"
8	and inserting "designation or registration as set
9	forth in sections 5 through 5c"; and
10	(C) in the last sentence, by striking "the
11	contract market's ability" and inserting "the
12	ability of the registered entity".
13	(17) Section 6c(a) of the Commodity Exchange
14	Act (7 U.S.C. 13a-1(a)) by striking "contract mar-
15	ket" and inserting "registered entity".
16	(18) Section 6d(1) of the Commodity Exchange
17	Act (7 U.S.C. 13a-2(1)) is amended by inserting
18	"derivatives transaction execution facility," after
19	"contract market,".
20	(19) Section 7 of the Commodity Exchange Act
21	(7 U.S.C. 11) is amended—
22	(A) in the first sentence—
23	(i) by striking "board of trade" and
24	inserting "person":

1	(ii) by inserting "or registered" after
2	"designated";
3	(iii) by inserting "or registration"
4	after "designation" each place it appears
5	and
6	(iv) by striking "contract market"
7	each place it appears and inserting "reg-
8	istered entity";
9	(B) in the second sentence—
10	(i) by striking "designation of such
11	board of trade as a contract market" and
12	inserting "designation or registration of
13	the registered entity"; and
14	(ii) by striking "contract markets"
15	and inserting "registered entities"; and
16	(C) in the last sentence—
17	(i) by striking "board of trade" and
18	inserting "person"; and
19	(ii) by striking "designated again a
20	contract market" and inserting "des-
21	ignated or registered again a registered en-
22	tity".
23	(20) Section 8(c) of the Commodity Exchange
24	Act (7 U.S.C. 12(c)) is amended in the first sen-

1	tence by striking "board of trade" and inserting
2	"registered entity".
3	(21) Section 8a of the Commodity Exchange
4	Act (7 U.S.C. 12a) is amended—
5	(A) by striking "contract market" each
6	place it appears and inserting "registered enti-
7	ty''; and
8	(B) in paragraph (2)(F), by striking "trad-
9	ing privileges" and inserting "privileges".
10	(22) Sections 8b and 8c(e) of the Commodity
11	Exchange Act (7 U.S.C. 12b, 12c(e)) are amended
12	by striking "contract market" each place it appears
13	and inserting "registered entity".
14	(23) Section 8e of the Commodity Exchange
15	Act (7 U.S.C. 12e) is amended—
16	(A) by striking "contract market" each
17	place it appears and inserting "registered enti-
18	ty'';
19	(B) in subsection (a), by striking "section
20	5a(b)" and inserting "sections 5 through 5c";
21	(C) in subsection (b)—
22	(i) in paragraph (1), by striking "a
23	contract market's trade monitoring system
24	implemented pursuant to section 5a(b)"
25	and inserting "the trade monitoring system

1	of a registered entity implemented pursu-
2	ant to sections 5 through 5c";
3	(ii) by striking paragraph (3) and in-
4	serting the following:
5	"(3) Remedies.—On becoming final, the Com-
6	mission deficiency order may require the registered
7	entity to—
8	"(A) institute appropriate improvements in
9	its trade monitoring system necessary to correct
10	the deficiencies in the order;
11	"(B) satisfy stated objective performance
12	criteria to correct the deficiencies; or
13	"(C) upgrade or reconfigure existing sys-
14	tems for collecting or processing relevant data
15	on trading and trader or broker activity, includ-
16	ing, where appropriate, the commitment of ad-
17	ditional resources."; and
18	(iii) in paragraph (5)—
19	(I) in the paragraph heading, by
20	striking "Designation as contract
21	MARKET" and inserting "Designa-
22	TION OR REGISTRATION AS REG-
23	ISTERED ENTITY";
24	(II) by inserting "or registra-
25	tion" after "designation"; and

1	(III) by striking "board of trade"
2	and inserting "person";
3	(D) in subsection (d)(2), by striking "sec-
4	tion 5b" and inserting "section 5e"; and
5	(E) in the paragraph heading of subsection
6	(e)(2), by striking "Contract Markets" and
7	inserting "Registered entities".
8	(24) Section 9 of the Commodity Exchange Act
9	(7 U.S.C. 13) is amended—
10	(A) by striking "contract market" each
11	place it appears and inserting "registered enti-
12	ty''; and
13	(B) in subsection (a)(2), by striking "sec-
14	tion $4o(1)$," and inserting "section $4n(1)$,".
15	(25) Section 14 of the Commodity Exchange
16	Act (7 U.S.C. 18) is amended—
17	(A) in subsection (a)(1)(B), by striking
18	"contract market" and inserting "registered en-
19	tity"; and
20	(B) in subsection (f), by striking "contract
21	markets" and inserting "registered entities".
22	(26) Sections 15 and 17 of the Commodity Ex-
23	change Act (7 U.S.C. 19, 21) are amended by strik-
24	ing "contract market" each place it appears and in-
25	serting "registered entity".

1	(27) Section 22 of the Commodity Exchange
2	Act (7 U.S.C. 25) is amended—
3	(A) in subsection (a)—
4	(i) in paragraph (1)—
5	(I) by striking "contract market,
6	clearing organization of a contract
7	market, licensed board of trade," and
8	inserting "registered entity"; and
9	(II) in subparagraph (C)(i), by
10	striking "contract market" and insert-
11	ing "registered entity";
12	(ii) in paragraph (2), by striking "sec-
13	tions 5a(11)," and inserting "sections
14	5(d)(13), $5b(d)(2)(H)(i)$,"; and
15	(iii) in paragraph (3), by striking
16	"contract market" and inserting "reg-
17	istered entity"; and
18	(B) in subsection (b)—
19	(i) in paragraph (1)—
20	(I) by striking "contract market
21	or clearing organization of a contract
22	market" and inserting "registered en-
23	tity";

1	(II) by striking "section 5a(8)
2	and section 5a(9) of this Act" and in-
3	serting "sections 5 through 5c";
4	(III) by striking "contract mar-
5	ket, clearing organization of a con-
6	tract market, or licensed board of
7	trade" and inserting "registered enti-
8	ty''; and
9	(IV) by striking "contract market
10	or licensed board of trade" and insert-
11	ing "registered entity";
12	(ii) in paragraph (3)—
13	(I) by striking "a contract mar-
14	ket, clearing organization, licensed
15	board of trade," and inserting "reg-
16	istered entity"; and
17	(II) by striking "contract market,
18	licensed board of trade" and inserting
19	"registered entity";
20	(iii) in paragraph (4), by striking
21	"contract market, licensed board of trade,
22	clearing organization," and inserting "reg-
23	istered entity"; and
24	(iv) in paragraph (5), by striking
25	"contract market, licensed board of trade,

1	clearing organization," and inserting "reg-
2	istered entity".
3	(b) Federal Deposit Insurance Corporation
4	IMPROVEMENT ACT OF 1991.—Section 402(2) of the Fed-
5	eral Deposit Insurance Corporation Improvement Act of
6	1991 (12 U.S.C. 4402(2)) is amended by striking sub-
7	paragraph (B) and inserting the following:
8	"(B) that is registered as a derivatives
9	clearing organization under section 5b of the
10	Commodity Exchange Act.".
11	(c) REVISED STATUTES.—Chapter three of title LXII
12	of the Revised Statutes is amended by adding at the end
13	the following:
14	"SEC. 5220. SWAP AGREEMENTS.
15	"(a) In General.—The term 'swap agreement'
16	means—
17	"(1) an individually negotiated contract, agree-
18	ment, warrant, note, option, or transaction that is
19	based, in whole or in part, on the occurrence of any
20	event, or on the value of, any interest in, or any
21	quantitative measure relating to, 1 or more commod-
22	ities, securities, currencies, interest rates, indices,
23	other rates, or other assets;
24	"(2) any other agreement or combination of
25	agreements that is similar to a contract, agreement,

1	warrant, note, option, or transaction described in
2	paragraph (1); and
3	"(3) an option to enter into a contract, agree-
4	ment, warrant, note, or option described in para-
5	graph (1) or an agreement described in paragraph
6	(2).
7	"(b) Inclusions.—The term 'swap agreement' in-
8	cludes a master swap agreement, and all supplements to
9	a master swap agreement, without regard to whether the
10	master swap agreement contains a contract, agreement
11	warrant, note, option, or transaction that is not a swap
12	agreement described in subsection (a), but only to the ex-
13	tent that the master swap agreement contains such a con-
14	tract, agreement, warrant, note, option, or transaction."
15	(d) Gramm-Leach-Bliley Act.—Section 206 of the
16	Gramm-Leach-Bliley Act (15 U.S.C. 78c note; Public Law
17	106–102) is amended—
18	(1) in subsection (a), by striking paragraph (6)
19	and inserting the following:
20	"(6) a swap agreement (as defined in section
21	5220 of the Revised Statutes).";
22	(2) by striking subsection (b); and
23	(3) by redesignating subsections (c) and (d) as
24	subsections (b) and (c), respectively.

- 1 (e) Securities Act of 1933.—The Securities Act
- 2 of 1933 (15 U.S.C. 77a et seq.) is amended by inserting
- 3 after section 3 the following:
- 4 "SEC. 3A. SWAP AGREEMENTS.
- 5 "Nothing in this Act (including regulations under
- 6 this Act) authorizes the Commission to regulate, super-
- 7 vise, or otherwise subject to oversight—
- 8 "(1) an activity, agreement, instrument, trans-
- 9 action, or product over which the Commission is not
- explicitly granted jurisdiction or enforcement author-
- ity under this Act; or
- 12 "(2) a swap agreement (as defined in section
- 13 5220 of the Revised Statutes), without regard to
- whether the swap agreement is entered into or en-
- gaged in by a depository institution (as defined in
- section 3 of the Federal Deposit Insurance Act (12
- 17 U.S.C. 1813)).".
- 18 (f) Securities Exchange Act of 1934.—The Se-
- 19 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
- 20 is amended by inserting after section 3 the following:
- 21 "SEC. 3A. SWAP AGREEMENTS.
- 22 "Nothing in this Act (including regulations under
- 23 this Act) authorizes the Commission to regulate, super-
- 24 vise, or otherwise subject to oversight—

1	"(1) an activity, agreement, instrument, trans-
2	action, or product over which the Commission is not
3	explicitly granted jurisdiction or enforcement author-
4	ity under this Act; or
5	"(2) a swap agreement (as defined in section
6	5220 of the Revised Statutes), without regard to
7	whether the swap agreement is entered into or en-
8	gaged in by a depository institution (as defined in
9	section 3 of the Federal Deposit Insurance Act (12
10	U.S.C. 1813)).".
11	(g) Trust Indenture Act of 1939.—The Trust
12	Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
13	amended by inserting after section 304 the following:
14	"SEC. 304A. SWAP AGREEMENTS.
15	"Nothing in this Act (including regulations under
16	this Act) authorizes the Commission to regulate, super-
17	
	vise, or otherwise subject to oversight—
18	vise, or otherwise subject to oversight— "(1) an activity, agreement, instrument, trans-
18 19	, v
	"(1) an activity, agreement, instrument, trans-
19	"(1) an activity, agreement, instrument, trans- action, or product over which the Commission is not
19 20	"(1) an activity, agreement, instrument, trans- action, or product over which the Commission is not explicitly granted jurisdiction or enforcement author-
19 20 21	"(1) an activity, agreement, instrument, trans- action, or product over which the Commission is not explicitly granted jurisdiction or enforcement author- ity under this Act; or
19 20 21 22	"(1) an activity, agreement, instrument, trans- action, or product over which the Commission is not explicitly granted jurisdiction or enforcement author- ity under this Act; or "(2) a swap agreement (as defined in section

- 1 section 3 of the Federal Deposit Insurance Act (12
- 2 U.S.C. 1813)).".
- 3 (h) Investment Company Act of 1940.—The In-
- 4 vestment Company Act of 1940 (15 U.S.C. 80a-1 et seq.)
- 5 is amended by inserting after section 6 the following:
- 6 "SEC. 6A. SWAP AGREEMENTS.
- 7 "Nothing in this Act (including regulations under
- 8 this Act) authorizes the Commission to regulate, super-
- 9 vise, or otherwise subject to oversight—
- 10 "(1) an activity, agreement, instrument, trans-
- action, or product over which the Commission is not
- explicitly granted jurisdiction or enforcement author-
- ity under this Act; or
- 14 "(2) a swap agreement (as defined in section
- 15 5220 of the Revised Statutes), without regard to
- whether the swap agreement is entered into or en-
- gaged in by a depository institution (as defined in
- section 3 of the Federal Deposit Insurance Act (12
- 19 U.S.C. 1813)).".
- 20 (i) Investment Advisers Act of 1940.—The In-
- 21 vestment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.)
- 22 is amended by inserting after section 206A the following:

1 "SEC. 206B. SWAP AGREEMENTS.

2	"Nothing	in	this	Act	(including	regulations	under
_	- 10 0111119		01110		(111010101111)	1050110110	CLIICICI

- 3 this Act) authorizes the Commission to regulate, super-
- 4 vise, or otherwise subject to oversight—
- 5 "(1) an activity, agreement, instrument, trans-
- 6 action, or product over which the Commission is not
- 7 explicitly granted jurisdiction or enforcement author-
- 8 ity under this Act; or
- 9 "(2) a swap agreement (as defined in section
- 10 5220 of the Revised Statutes), without regard to
- 11 whether the swap agreement is entered into or en-
- gaged in by a depository institution (as defined in
- section 3 of the Federal Deposit Insurance Act (12)
- 14 U.S.C. 1813)).".
- 15 (j) Public Utility Holding Company Act of
- 16 1935.—The Public Utility Holding Company Act of 1935
- 17 (15 U.S.C. 79 et seq.) is amended by inserting after sec-
- 18 tion 34 the following:
- 19 "SEC. 34A. SWAP AGREEMENTS.
- 20 "Nothing in this Act (including regulations under
- 21 this Act) authorizes the Commission to regulate, super-
- 22 vise, or otherwise subject to oversight—
- 23 "(1) an activity, agreement, instrument, trans-
- action, or product over which the Commission is not
- explicitly granted jurisdiction or enforcement author-
- 26 ity under this Act; or

1	"(2) a swap agreement (as defined in section
2	5220 of the Revised Statutes), without regard to
3	whether the swap agreement is entered into or en-
4	gaged in by a depository institution (as defined in
5	section 3 of the Federal Deposit Insurance Act (12
6	U.S.C. 1813)).".
7	(k) Securities Investor Protection Act of
8	1970.—The Securities Investor Protection Act of 1970
9	(15 U.S.C. 78aaa et seq.) is amended by adding at the
10	end the following:
11	"SEC. 17. SWAP AGREEMENTS.
12	"Nothing in this Act (including regulations under
13	this Act) authorizes the Commission to regulate, super-
14	vise, or otherwise subject to oversight—
15	"(1) an activity, agreement, instrument, trans-
16	action, or product over which the Commission is not
17	explicitly granted jurisdiction or enforcement author-
18	ity under this Act; or
19	"(2) a swap agreement (as defined in section
20	5220 of the Revised Statutes), without regard to
21	whether the swap agreement is entered into or en-
22	gaged in by a depository institution (as defined in
23	section 3 of the Federal Deposit Insurance Act (12
24	II Q (1 1919)) "

1 SEC. 24. EFFECTIVE DATE.

- 2 (a) In General.—Except as provided in subsection
- 3 (b), this Act takes effect on the date of enactment of this
- 4 Act.
- 5 (b) Jurisdiction of Commodities Futures
- 6 Trading Commission.—Section 8, and the amendments
- 7 made by that section, take effect 1 year after the date
- 8 of enactment of this Act.

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