

Calendar No. 766

106TH CONGRESS
2^D SESSION

S. 2697

[Report No. 106-390]

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

AUGUST 25, 2000

Reported under authority of the order of the Senate of July 26, 2000, by Mr. LUGAR, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, govern-
ment 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. Pre-dispute 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.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to reauthorize the Commodity Exchange Act
9 (~~7 U.S.C. 1 et seq.~~);

10 (2) to streamline and eliminate unnecessary
11 regulation for the commodity futures exchanges and
12 other entities regulated under the Commodity Ex-
13 change Act;

1 (3) to transform the role of the Commodity Fu-
2 tures Trading Commission in its oversight of the fu-
3 tures markets;

4 (4) to provide a legislative and regulatory
5 framework for allowing the trading of futures on se-
6 curities;

7 (5) to clarify the jurisdiction of the Commission
8 over certain retail foreign exchange transactions and
9 bucket shops that are not otherwise regulated;

10 (6) to promote innovation for futures and de-
11 rivatives and to reduce systemic risk by enhancing
12 legal certainty in the markets for certain futures and
13 derivatives;

14 (7) to reduce systemic risk and provide greater
15 stability to markets during times of market disorder
16 by allowing the clearing of transactions in over-the-
17 counter derivatives through appropriately regulated
18 clearing organizations; and

19 (8) to enhance the competitive position of
20 United States financial institutions and financial
21 markets.

22 **SEC. 3. DEFINITIONS.**

23 Section 1a of the Commodity Exchange Act (7 U.S.C.
24 1a) is amended—

1 (1) by redesignating paragraphs (8) through
 2 (12), (13) through (15), and (16) as paragraphs
 3 (17) through (21), (23) through (25), and (29), re-
 4 spectively;

5 (2) by inserting after paragraph (7) the fol-
 6 lowing:

7 “(8) DERIVATIVES CLEARING ORGANIZATION.—

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

15 “(i) enables each party to the deriva-
 16 tive agreement, contract, or transaction to
 17 substitute, through novation or otherwise,
 18 the credit of the derivatives clearing orga-
 19 nization for the credit of the parties;

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

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

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

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

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

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

23 ~~“(9) DESIGNATED FUTURE ON A SECURITY.—~~
 24 ~~The term ‘designated future on a security’ means a~~

1 contract of sale (or option on such a contract) for
 2 future delivery of—

3 “(A) a single nonexempted security;

4 “(B) an index based on fewer than 5 non-
 5 exempted securities; or

6 “(C) an index in which a single non-
 7 exempted security accounts for 30 percent or
 8 more of the value of the index.

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

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

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

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

19 “(A) acting for its own account—

20 “(i) a financial institution;

21 “(ii) an insurance company (as de-
 22 fined in section 2 of the Bank Holding
 23 Company Act of 1956 (12 U.S.C. 1841));

24 “(iii) an investment company subject
 25 to regulation under the Investment Com-

1 pany Act of 1940 (15 U.S.C. 80a-1 et
2 seq.) or a foreign person performing a
3 similar role or function subject as such to
4 foreign regulation (regardless of whether
5 each investor in the investment company or
6 the foreign person is itself an eligible con-
7 tract participant);

8 “(iv) a commodity pool that—

9 “(I) has total assets exceeding
10 \$5,000,000; and

11 “(II) is formed and operated by a
12 person subject to regulation under
13 this Act or a foreign person per-
14 forming a similar role or function sub-
15 ject as such to foreign regulation (re-
16 gardless of whether each investor in
17 the commodity pool or the foreign per-
18 son is itself an eligible contract partic-
19 ipant);

20 “(v) a corporation, partnership, pro-
21 prietorship, organization, trust, or other
22 entity—

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

1 ~~“(H) the obligations of which~~
2 ~~under an agreement, contract, or~~
3 ~~transaction are guaranteed or other-~~
4 ~~wise supported by a letter of credit or~~
5 ~~keepwell, support, or other agreement~~
6 ~~by an entity described in subclause~~
7 ~~(I), in clause (i), (ii), (iii), (iv), or~~
8 ~~(vii), or in subparagraph (C); or~~

9 ~~“(III) that—~~

10 ~~“(aa) has a net worth ex-~~
11 ~~ceeding \$1,000,000; and~~

12 ~~“(bb) enters into an agree-~~
13 ~~ment, contract, or transaction in~~
14 ~~connection with the conduct of~~
15 ~~the entity’s business or to man-~~
16 ~~age the risk associated with an~~
17 ~~asset or liability owned or in-~~
18 ~~curred or reasonably likely to be~~
19 ~~owned or incurred by the entity~~
20 ~~in the conduct of the entity’s~~
21 ~~business;~~

22 ~~“(vi) an employee benefit plan subject~~
23 ~~to the Employee Retirement Income Secu-~~
24 ~~rity Act of 1974 (29 U.S.C. 1001 et seq.)~~
25 ~~or a foreign person performing a similar~~

1 role or function subject as such to foreign
2 regulation—

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

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

7 “(aa) an investment adviser
8 subject to regulation under the
9 Investment Advisers Act of 1940
10 (15 U.S.C. 80b-1 et seq.) or a
11 commodity trading advisor sub-
12 ject to regulation under this Act;

13 “(bb) a foreign person per-
14 forming a role or function similar
15 to that of such an investment ad-
16 viser or commodity trading advi-
17 sor subject to foreign regulation
18 in the performance of that role or
19 function;

20 “(cc) a financial institution;
21 or

22 “(dd) an insurance company
23 (as defined in section 2 of the
24 Bank Holding Company Act of
25 1956 (12 U.S.C. 1841));

1 ~~“(vii)(I) a governmental entity (in-~~
2 ~~cluding the United States, a State, or a~~
3 ~~foreign government) or political subdivision~~
4 ~~of a governmental entity;~~

5 ~~“(II) a multinational or supranational~~
6 ~~government entity; or~~

7 ~~“(III) an instrumentality, agency, or~~
8 ~~department of an entity described in sub-~~
9 ~~clause (I) or (II);~~

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

22 ~~“(ix) a futures commission merchant~~
23 ~~subject to regulation under this Act or a~~
24 ~~foreign person performing a similar role or~~
25 ~~function subject as such to foreign regula-~~

1 tion, except that, if the futures commission
2 merchant or foreign person is a natural
3 person or proprietorship, the futures com-
4 mission merchant or foreign person shall
5 not be considered to be an eligible contract
6 participant unless the futures commission
7 merchant or foreign person also meets the
8 requirements of clause (v) or (xi);

9 “~~(x)~~ a floor broker or floor trader sub-
10 ject to regulation under this Act, to the ex-
11 tent that the floor broker or floor trader
12 trades on or through the facilities of a reg-
13 istered entity or exempt board of trade or
14 any affiliate of a registered entity or ex-
15 empt board of trade; or

16 “~~(xi)~~ a natural person with total as-
17 sets exceeding \$10,000,000;

18 “~~(B)(i)~~ a person described in any of
19 clauses (i) through (x) of subparagraph (A) or
20 in subparagraph (C), acting as broker or per-
21 forming an equivalent agency function on behalf
22 of another person described in subparagraph
23 (A) or (C); or

1 “(ii)(I) an investment adviser subject to
2 regulation under the Investment Advisers Act of
3 1940 (15 U.S.C. 80b-1 et seq.);

4 “(II) a commodity trading advisor subject
5 to regulation under this Act;

6 “(III) a foreign person performing a role
7 or function similar to that of such an invest-
8 ment adviser or commodity trading advisor sub-
9 ject to foreign regulation in the performance of
10 that role or function; or

11 “(IV) a person described in any of clauses
12 (i) through (x) of subparagraph (A) or in sub-
13 paragraph (C); that is acting as an investment
14 manager or fiduciary (but excluding a person
15 acting as a broker or performing an equivalent
16 agency function) for another person described
17 in subparagraph (A) or (C) and that is author-
18 ized by the other person to commit the other
19 person to the transaction; or

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

23 “(12) ENERGY COMMODITY.—The term ‘energy
24 commodity’ includes crude oil, condensates, natural
25 gas, natural gas liquids, electricity, and coal.

1 “(13) EXCLUSION-ELIGIBLE COMMODITY.—

2 “(A) IN GENERAL.—The term ‘exclusion-
3 eligible commodity’ means—

4 “(i) a financial commodity;

5 “(ii) an energy commodity; and

6 “(iii) a commodity that has no cash
7 market.

8 “(B) EXCLUSION.—The term ‘exclusion-el-
9 igible commodity’ does not include any com-
10 modity described in paragraph (3) that is an
11 agricultural commodity.

12 “(14) EXEMPTED SECURITY.—

13 “(A) IN GENERAL.—The term ‘exempted
14 security’ means a security that is an exempted
15 security under section 3(a) of the Securities Act
16 of 1933 (15 U.S.C. 77e(a)) or section 3(a) of
17 the Securities Exchange Act of 1934 (15
18 U.S.C. 78e(a)).

19 “(B) EXCLUSION.—The term ‘exempted
20 security’ does not include a municipal security
21 (as defined in section 3(a) of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78e(a))).

23 “(15) FINANCIAL COMMODITY.—The term ‘fi-
24 nancial commodity’ means—

1 “(A) an interest rate, exchange rate, cur-
2 rency, security, security index, credit risk, debt
3 or equity instrument, or index or measure of in-
4 flation; or

5 “(B) any other rate, differential, index, or
6 measure of economic risk, return, or value (ex-
7 cluding any rate, differential, index, or measure
8 based on a commodity not described in subpara-
9 graph (A) that has a finite supply).

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

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

16 “(B) a corporation organized under section
17 25A of the Federal Reserve Act (12 U.S.C. 611
18 et seq.); commonly known as an ‘Edge Act cor-
19 poration’;

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

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

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

4 “(F) a foreign bank or a branch or agency
5 of a foreign bank (each as defined in section
6 1(b) of the International Banking Act of 1978
7 (12 U.S.C. 3101(b));

8 “(G) a trust company; or

9 “(H) a regulated subsidiary or affiliate of
10 an entity described in any of subparagraphs (A)
11 through (G).”;

12 (3) by inserting after paragraph (21) (as reded-
13 icated by paragraph (1)) the following:

14 “(22) HYBRID INSTRUMENT.—The term ‘hybrid
15 instrument’ means a deposit (as defined in section 3
16 of the Federal Deposit Insurance Act (12 U.S.C.
17 1813)) offered by a financial institution; or a secu-
18 rity, having 1 or more payments indexed to the
19 value, level, or rate of 1 or more commodities.”;

20 (4) by inserting after paragraph (25) (as reded-
21 icated by paragraph (1)) the following:

22 “(26) NATIONAL SECURITIES EXCHANGE.—The
23 term ‘national securities exchange’ means—

24 “(A) an exchange that is registered as a
25 national securities exchange under section 6 of

1 the Securities Exchange Act of 1934 (15
2 U.S.C. 78f); or

3 “(B) an association that is registered as a
4 national securities association under section
5 15A of the Securities Exchange Act of 1934
6 (15 U.S.C. 78o-3).

7 “(27) OPTION.—The term ‘option’ means an
8 agreement, contract, or transaction that is of the
9 character of, or is commonly known to the trade as,
10 an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’,
11 ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guar-
12 anty’.

13 “(28) ORGANIZED EXCHANGE.—The term ‘or-
14 ganized exchange’ means a trading facility that—

15 “(A) permits—

16 “(i) trading by or on behalf of a per-
17 son that is not an eligible contract partici-
18 pant; or

19 “(ii) trading by persons other than on
20 a bona fide principal-to-principal basis; or

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

23 “(i) govern the conduct of partici-
24 pants; other than rules that govern the

1 submission of orders or execution of trans-
 2 actions on the trading system; or

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

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

7 “(30) REGISTERED ENTITY.—The term ‘reg-
 8 istered entity’ means—

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

11 “(B) a derivatives transaction execution fa-
 12 cility registered under section 5a; or

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

15 “(31) SECURITY.—The term ‘security’ has the
 16 meaning given the term in section 3(a) of the Secu-
 17 rities Exchange Act of 1934 (15 U.S.C. 78e(a)).

18 “(32) TRADING FACILITY.—

19 “(A) IN GENERAL.—The term ‘trading fa-
 20 cility’ means a person or group of persons that
 21 constitutes, maintains, or provides a physical or
 22 electronic facility or system in which multiple
 23 participants have the ability to execute or trade
 24 agreements, contracts, or transactions by ac-
 25 cepting bids and offers made by other partici-

1 pants that are open to multiple participants in
2 the facility or system.

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

5 “(i) a person or group of persons sole-
6 ly because the person or group of
7 persons—

8 “(I) constitutes, maintains, or
9 provides an electronic facility or sys-
10 tem that enables participants to nego-
11 tiate the terms of and enter into bilat-
12 eral transactions with other partici-
13 pants as a result of the communica-
14 tions exchanged between the partici-
15 pants and not from interaction of
16 multiple orders within a centralized,
17 predetermined, nondiscretionary, auto-
18 mated trade matching algorithm; or

19 “(II)(aa) is a derivatives clearing
20 organization; or

21 “(bb) permits participants to
22 submit agreements, contracts, or
23 transactions to a derivatives clearing
24 organization;

1 “(ii) a government securities dealer or
 2 government securities broker, to the extent
 3 that the dealer or broker executes or
 4 trades agreements, contracts, or trans-
 5 actions in government securities, or assists
 6 persons in communicating about, negoti-
 7 ating, entering into, executing, or trading
 8 an agreement, contract, or transaction in
 9 government securities (as the terms ‘gov-
 10 ernment securities dealer’, ‘government se-
 11 curities broker’, and ‘government securi-
 12 ties’ are defined in section 3(a) of the Se-
 13 curities Exchange Act of 1934 (15 U.S.C.
 14 78c(a))); or

15 “(iii) a facility on which bids and of-
 16 fers and acceptances of bids and offers ef-
 17 fected on the facility are not binding.”.

18 **SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN**
 19 **FOREIGN CURRENCY, GOVERNMENT SECURI-**
 20 **TIES, AND CERTAIN OTHER COMMODITIES.**

21 Section 2 of the Commodity Exchange Act (7 U.S.C.
 22 2, 2a, 3, 4, 4a) is amended by adding at the end the fol-
 23 lowing:

1 “(e) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
2 IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND
3 CERTAIN OTHER COMMODITIES.—

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

8 “(A) foreign currency;

9 “(B) government securities;

10 “(C) security warrants;

11 “(D) security rights;

12 “(E) resales of installment loan contracts;

13 “(F) repurchase transactions in a financial
14 commodity; or

15 “(G) mortgages or mortgage purchase
16 commitments.

17 “(2) COMMISSION JURISDICTION.—

18 “(A) AGREEMENTS, CONTRACTS, AND
19 TRANSACTIONS THAT ARE FUTURES TRADED
20 ON AN ORGANIZED EXCHANGE.—This Act ap-
21 plies to, and the Commission shall have juris-
22 diction over, an agreement, contract, or trans-
23 action described in paragraph (1) that—

1 “(i)(I) is a contract of sale of a com-
2 modity for future delivery (or an option on
3 such a contract); and

4 “(II) is executed or traded on an or-
5 ganized exchange;

6 “(ii)(I) is an option on a commodity
7 other than foreign currency or a security;
8 and

9 “(II) is executed or traded on an orga-
10 nized exchange; or

11 “(iii)(I) is an option on foreign cur-
12 rency; and

13 “(II) is executed or traded on an or-
14 ganized exchange that is not a national se-
15 curities exchange.

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

22 “(i) is—

23 “(I) a contract of sale for future
24 delivery; or

25 “(II) an option; and

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

6 “(I) a financial institution;

7 “(II) a broker or dealer reg-
8 istered under section 15(b) or 15C of
9 the Securities Exchange Act of 1934
10 (15 U.S.C. 78o(b), 78o-5);

11 “(III) an associated person of a
12 broker or dealer registered under sec-
13 tion 15(b) or 15C of the Securities
14 Exchange Act of 1934 (15 U.S.C.
15 78o(b), 78o-5) concerning the finan-
16 cial or securities activities of which
17 the registered person makes and
18 keeps records under section 15C(b) or
19 17(h) of the Securities Exchange Act
20 of 1934 (15 U.S.C. 78o-5(b), 78q(h));

21 “(IV) an insurance company (as
22 defined in section 2 of the Bank Hold-
23 ing Company Act of 1956 (12 U.S.C.
24 1841));

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

5 “(VI) an investment bank hold-
6 ing company (as defined in section
7 17(i) of the Securities Exchange Act
8 of 1934 (15 U.S.C. 78q(i))).”.

9 **SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**
10 **TRANSACTIONS.**

11 Section 2 of the Commodity Exchange Act (7 U.S.C.
12 2, 2a, 3, 4, 4a) (as amended by section 4) is amended
13 by adding at the end the following:

14 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

15 “(1) IN GENERAL.—Nothing in this Act (other
16 than section 5b or 12(c)(2)(B)) governs or applies to
17 an agreement, contract, or transaction in an exclu-
18 sion-eligible commodity if—

19 “(A) the agreement, contract, or trans-
20 action is entered into only between persons that
21 are eligible contract participants at the time at
22 which the persons enter into the agreement,
23 contract, or transaction; and

1 ~~“(B) the agreement, contract, or trans-~~
2 ~~action is not executed or traded on a trading fa-~~
3 ~~cility.~~

4 ~~“(2) ELECTRONIC TRADING FACILITY EXCLU-~~
5 ~~SION.—Nothing in this Act (other than section 5b or~~
6 ~~12(e)(2)(B)) governs or applies to an agreement,~~
7 ~~contract, or transaction in an exclusion-eligible com-~~
8 ~~modity if—~~

9 ~~“(A) the agreement, contract, or trans-~~
10 ~~action is entered into on a bona fide principal-~~
11 ~~to-principal basis between parties trading for~~
12 ~~their own accounts or as described in section~~
13 ~~1a(11)(B)(ii);~~

14 ~~“(B) the agreement, contract, or trans-~~
15 ~~action is entered into only between persons that~~
16 ~~are eligible contract participants (as defined in~~
17 ~~subparagraph (A), (B)(ii), or (C) of section~~
18 ~~1a(11)) at the time at which the persons enter~~
19 ~~into the agreement, contract, or transaction;~~
20 ~~and~~

21 ~~“(C) the agreement, contract, or trans-~~
22 ~~action is executed or traded on an electronic~~
23 ~~trading facility.~~

24 ~~“(3) EXCEPTION TO PREVENT MANIPULA-~~
25 ~~TION.—Notwithstanding paragraphs (1) and (2),~~

1 any agreement, contract, or transaction in an exclu-
 2 sion-eligible commodity (other than a financial com-
 3 modity) that is an energy commodity or is suscep-
 4 tible to a material risk of manipulation shall be sub-
 5 ject to sections 6(e) and 9(a)(2).”.

6 **SEC. 6. ELECTRONIC TRADING FACILITIES.**

7 Section 2 of the Commodity Exchange Act (7 U.S.C.
 8 2, 2a, 3, 4, 4a) (as amended by section 5) is amended
 9 by adding at the end the following:

10 “(e) **ELECTRONIC TRADING FACILITIES.**—

11 “(1) **IN GENERAL.**—Nothing in this Act (other
 12 than section 12(e)(2)(B)) governs or is applicable to
 13 an electronic trading facility that limits transactions
 14 authorized to be conducted on the facility to trans-
 15 actions that satisfy the requirements of subsection
 16 (d)(2).

17 “(2) **EFFECT ON AUTHORITY TO ESTABLISH**
 18 **AND OPERATE.**—Nothing in this Act shall prohibit a
 19 board of trade designated by the Commission as a
 20 contract market or derivatives transaction execution
 21 facility, or an exempt board of trade, from estab-
 22 lishing and operating an electronic trading facility
 23 excluded under this Act by paragraph (1).”.

1 **SEC. 7. HYBRID INSTRUMENTS.**

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

5 “(f) **EXCLUSION FOR QUALIFYING HYBRID INSTRU-**
6 **MENTS.—**

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

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

14 “(A) the issuer of the hybrid instrument
15 receives payment in full of the purchase price of
16 the hybrid instrument, substantially contem-
17 poraneously with delivery of the hybrid instru-
18 ment;

19 “(B) the purchaser or holder of the hybrid
20 instrument is not required to make any pay-
21 ment to the issuer in addition to the purchase
22 price paid under subparagraph (A), whether as
23 margin, settlement payment, or otherwise, dur-
24 ing the life of the hybrid instrument or at ma-
25 turity;

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

4 “(D) the hybrid instrument is not mar-
5 keted as a contract of sale for future delivery
6 of a commodity (or option on such a contract)
7 subject to this Act.

8 “(3) ~~MARK-TO-MARKET MARGINING REQUIRE-~~
9 ~~MENTS.—~~For the purposes of paragraph (2)(C),
10 ~~mark-to-market~~ margining requirements do not in-
11 clude the obligation of an issuer of a secured debt
12 instrument to increase the amount of collateral held
13 in pledge for the benefit of the purchaser of the se-
14 cured debt instrument to secure the repayment obli-
15 gations of the issuer under the secured debt instru-
16 ment.”.

17 **SEC. 8. FUTURES ON SECURITIES.**

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

21 “(g) ~~FUTURES ON SECURITIES.—~~

22 “(1) ~~EXCLUSIONS.—~~

23 “(A) ~~EXCLUSION OF OVER-THE-COUNTER~~
24 ~~EQUITY INSTRUMENTS.—~~Nothing in this sub-
25 section governs or applies to—

1 “(i) an agreement, contract, or trans-
2 action in a commodity that is excluded
3 under subsection (e) or (d);

4 “(ii) an electronic trading facility that
5 is excluded under subsection (e); or

6 “(iii) a hybrid instrument that is cov-
7 ered by an exclusion under subsection (f)
8 or an exemption granted by the Commis-
9 sion under section 4(c) (whether or not the
10 hybrid instrument is otherwise subject to
11 this Act).

12 “(B) EXCLUSION OF SECURITY OPTIONS.—

13 This Act does not apply to, and the Commission
14 shall have no jurisdiction to designate a board
15 of trade as a contract market or register a de-
16 rivatives transaction execution facility for, any
17 transaction under which a party to the trans-
18 action acquires an option on 1 or more securi-
19 ties, group or index of securities, or interest in,
20 or interest that is based on the value of, a secu-
21 rity.

22 “(2) INCLUSION OF TRADING OF NONDES-
23 IGNATED FUTURES ON SECURITIES ON A CONTRACT
24 MARKET.—

1 “(A) IN GENERAL.—This Act applies to,
2 and the Commission shall have exclusive juris-
3 diction with respect to and may designate a
4 board of trade as a contract market in, ac-
5 counts, agreements, and transactions involving
6 a contract of sale (or option on such a contract)
7 for future delivery of a group or index of non-
8 exempted securities (or an interest in, or inter-
9 est that is based on the value of, such securi-
10 ties), none of which is a designated future on
11 a security.

12 “(B) REQUIREMENTS FOR DESIGNA-
13 TION.—

14 “(i) IN GENERAL.—No board of trade
15 shall be designated as a contract market
16 with respect to any contract of sale (or op-
17 tion on such a contract) for future delivery
18 under subparagraph (A) unless—

19 “(I) the board of trade files with
20 the Commission an application for
21 designation; and

22 “(II) the board of trade dem-
23 onstrates and the Commission ex-
24 pressly finds that the specific contract
25 (or option on such a contract) with re-

1 spect to which the application is made
 2 meets the minimum requirements of
 3 clauses (ii) and (iii).

4 “(ii) MEANS OF EFFECTUATION OF
 5 SETTLEMENT OR DELIVERY.—Settlement
 6 of or delivery on a contract (or option on
 7 such a contract) described in subparagraph
 8 (A) shall be effected in cash or by means
 9 other than the transfer or receipt of a se-
 10 curity other than an exempted security.

11 “(iii) SUSCEPTIBILITY TO PRICE MA-
 12 NIPULATION.—Trading in a contract (or
 13 option on such a contract) described in
 14 subparagraph (A) shall not be readily sus-
 15 ceptible to—

16 “(I) manipulation of the price of
 17 the contract (or option on such a con-
 18 tract); or

19 “(II) causing or being used in
 20 the manipulation of the price of any
 21 underlying security, option on a secu-
 22 rity, or option on a group or index
 23 that includes a security.

24 “(3) TRADING OF DESIGNATED FUTURES ON
 25 SECURITIES ON A CONTRACT MARKET OR NATIONAL

1 SECURITIES EXCHANGE.—No person shall offer to
 2 enter into, enter into, or confirm the execution of a
 3 designated future on a security, or an interest in or
 4 interest that is based on the value of a designated
 5 future on a security, unless—

6 “(A) the contract—

7 “(i) is transacted on or subject to the
 8 rules of a board of trade that has been
 9 designated by the Commission as a con-
 10 tract market for the commodity that is the
 11 subject of the contract; and

12 “(ii) meets the requirements of para-
 13 graph (4); or

14 “(B) the contract is transacted on or sub-
 15 ject to the rules of a securities exchange that is
 16 registered with the Securities and Exchange
 17 Commission as a national securities exchange.

18 “(4) MINIMUM REQUIREMENTS FOR DES-
 19 IGNATED FUTURES ON SECURITIES TRADED ON A
 20 CONTRACT MARKET.—

21 “(A) IN GENERAL.—Subject to paragraph
 22 (5), this Act applies to, and the Commission
 23 shall have jurisdiction with respect to and may
 24 designate a board of trade as a contract market

1 in, accounts, agreements, and transactions in-
2 volving a designated future on a security.

3 “(B) REQUIREMENTS FOR DESIGNA-
4 TION.—

5 “(i) IN GENERAL.—No board of trade
6 shall be designated as a contract market
7 with respect to any contract of sale (or op-
8 tion on such a contract) under subpara-
9 graph (A) unless—

10 “(I) the board of trade files with
11 the Commission an application for
12 designation; and

13 “(II) the board of trade dem-
14 onstrates and the Commission ex-
15 pressly finds that the specific contract
16 (or option on such a contract) with re-
17 spect to which the application is made
18 meets the minimum requirements of
19 clauses (ii) through (viii).

20 “(ii) MEANS OF EFFECTUATION OF
21 SETTLEMENT OR DELIVERY.—Settlement
22 of or delivery on a contract (or option on
23 such a contract) described in subparagraph
24 (A) shall be effected in cash or by means

1 other than the transfer or receipt of a se-
2 curity other than an exempted security.

3 ~~“(iii) REAL-TIME AUDIT TRAIL.—~~

4 Trading in a contract (or option on such a
5 contract) described in subparagraph (A)
6 shall occur on a contract market that exe-
7 cutes trades by means of a system that
8 provides a real-time audit trail.

9 ~~“(iv) SUSCEPTIBILITY TO PRICE MA-~~

10 ~~NIPULATION.—~~Trading in a contract (or
11 option on such a contract) described in
12 subparagraph (A) shall not be readily sus-
13 ceptible to—

14 ~~“(I) manipulation of the price of~~

15 ~~the contract (or option on such a con-~~
16 ~~tract); or~~

17 ~~“(II) causing or being used in~~

18 ~~the manipulation of the price of any~~
19 ~~underlying security, option on a secu-~~
20 ~~rity, or option on a group or index~~
21 ~~that includes a security.~~

22 ~~“(v) UNDERLYING SECURITY AP-~~

23 ~~PROVED FOR LISTING ON NATIONAL SECU-~~
24 ~~RITIES EXCHANGE.—~~Each security that

1 underlies a designated future on a security
2 shall—

3 “(I) meet all requirements for
4 the listing of an option on that secu-
5 rity on a national securities exchange;
6 or

7 “(II) be the subject of options
8 trading on a national securities ex-
9 change.

10 “(vi) MARGINS FOR FUTURES CON-
11 TRACTS.—The contract described in sub-
12 paragraph (A) shall be traded on a board
13 of trade that establishes and maintains
14 margin levels for designated futures on se-
15 curities that are consistent with the mar-
16 gin levels established and maintained on an
17 option contract on the same underlying se-
18 curity that is listed on any national securi-
19 ties exchange.

20 “(vii) CONFLICTS OF INTEREST.—The
21 contract described in subparagraph (A)
22 shall be traded on a board of trade that es-
23 tablishes and enforces rules that protect
24 the customer from conflicts of interest and
25 related trading abuses on the part of bro-

1 kers or any other person performing simi-
2 lar roles or functions.

3 “(viii) PROVISION OF INFORMATION
4 NECESSARY FOR ENFORCEMENT.—The
5 contract described in subparagraph (A)
6 shall be traded on a board of trade that,
7 in accordance with regulations promul-
8 gated by the Commission, collects, main-
9 tains, and promptly provides to the Securi-
10 ties and Exchange Commission on request
11 such information as the Commission and
12 the Securities and Exchange Commission
13 jointly determine to be appropriate for the
14 performance of the enforcement respon-
15 sibilities described in paragraph (5).

16 “(5) SEC ENFORCEMENT AUTHORITY FOR DES-
17 IGNATED FUTURES ON SECURITIES CONTRACTS
18 LISTED ON A CONTRACT MARKET.—

19 “(A) IN GENERAL.—With the concurrence
20 of the Commission, the Securities and Ex-
21 change Commission may enforce the provisions
22 of the securities laws specified in subparagraph
23 (B) against any person that purchases or sells
24 a designated future on a security to the same

1 extent as if the person had purchased or sold
2 an option on a security.

3 “(B) PROVISIONS OF THE SECURITIES
4 LAWS.—The provisions of the securities laws re-
5 ferred to in subparagraph (A) are—

6 “(i) section 16 of the Securities Ex-
7 change Act of 1934 (15 U.S.C. 78p); and

8 “(ii) section 10(b) of the Securities
9 Exchange Act of 1934 (15 U.S.C. 78j(b)).

10 “(C) AUTHORITY OF SEC.—Nothing in this
11 paragraph expands the authority of the Securi-
12 ties and Exchange Commission with respect to
13 registered entities or contracts of sale of a com-
14 modity for future delivery (or options on such
15 contracts) except as specifically provided in this
16 paragraph.

17 “(D) REPORT.—Not earlier than the date
18 that is 3 years after the date of enactment of
19 this subsection, the Commission and the Securi-
20 ties and Exchange Commission shall begin to
21 compile, and not later than the date that is 4
22 years after the date of enactment of this sub-
23 section, the Commission and the Securities and
24 Exchange Commission shall submit to Con-

1 gress, a report on the implementation of this
2 subsection.

3 “(6) CFTC ENFORCEMENT AUTHORITY FOR
4 DESIGNATED FUTURES ON SECURITIES LISTED ON A
5 NATIONAL SECURITIES EXCHANGE.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the Securities and Exchange
8 Commission shall have jurisdiction over a des-
9 ignated future on a security to the extent that
10 the designated future on a security is traded on
11 a national securities exchange.

12 “(B) LARGE TRADER REPORTING, ANTI-
13 FRAUD, AND ANTIMANIPULATION AUTHORITY.—
14 With the concurrence of the Securities and Ex-
15 change Commission, the Commission shall en-
16 force sections 4b, 4i, 4o, 6(c), and 9(a)(2)
17 against any person that purchases or sells a
18 designated future on a security on a national
19 securities exchange.

20 “(C) PROVISION OF INFORMATION NEC-
21 CESSARY FOR ENFORCEMENT.—A designated fu-
22 ture on a security shall be traded on a national
23 securities exchange that, in accordance with
24 regulations promulgated by the Securities and
25 Exchange Commission, collects, maintains, and

1 promptly provides to the Commission on re-
 2 quest such information as the Securities and
 3 Exchange Commission and the Commission
 4 jointly determine to be appropriate for the per-
 5 formance of the enforcement responsibilities de-
 6 scribed in subparagraph (B).

7 “(7) PROCESS FOR LISTING FUTURES ON A SE-
 8 CURITY.—

9 “(A) CONTRACT MARKET PROCESS.—

10 “(i) IN GENERAL.—The Commission
 11 shall transmit to the Securities and Ex-
 12 change Commission a copy of any applica-
 13 tion that is submitted by a board of trade
 14 for designation as a contract market with
 15 respect to a contract of sale (or option on
 16 such a contract) for future delivery of a
 17 nonexempted security or a group or index
 18 of nonexempted securities.

19 “(ii) HEARING.—

20 “(I) OBJECTION BY SEC.—If, not
 21 later than 15 days following trans-
 22 mittal of an application under clause
 23 (i), the Securities and Exchange Com-
 24 mission submits to the Commission an
 25 objection to designation of the board

1 of trade as a contract market in the
2 contract (or option on such a con-
3 tract) based on evidence (including an
4 economic analysis of relevant factors
5 including benefits and costs) that any
6 minimum requirement under para-
7 graph (2)(B) or (4)(B) is not met, the
8 Commission shall afford the Securities
9 and Exchange Commission an oppor-
10 tunity for a hearing on the record be-
11 fore the Commission.

12 “(H) TIMING.—A hearing under
13 subclause (I) shall be held before the
14 Commission takes action on the appli-
15 cation, and not less than 30 nor more
16 than 45 days after the Securities and
17 Exchange Commission submits the ob-
18 jection.

19 “(B) NATIONAL SECURITIES EXCHANGE
20 PROCESS.—

21 “(i) IN GENERAL.—The Securities
22 and Exchange Commission shall transmit
23 to the Commission a copy of any applica-
24 tion that is submitted by a person for list-

1 ing of a designated future on a security on
2 a national securities exchange.

3 “(ii) OBJECTION BY THE COMMISS-
4 SION.—If, not later than 15 days following
5 transmittal of an application under clause
6 (i), the Commission submits to the Securi-
7 ties and Exchange Commission an objec-
8 tion to listing of a designated future on a
9 security on a national securities exchange
10 based on evidence (including an economic
11 analysis of relevant factors including bene-
12 fits and costs) that any minimum require-
13 ment under paragraph (4)(B) is not met,
14 the Securities and Exchange Commission
15 shall afford the Commission an oppor-
16 tunity for a hearing on the record before
17 the Securities and Exchange Commission.

18 “(8) MARGIN.—

19 “(A) IN GENERAL.—Notwithstanding any
20 other provision of this Act, any designated con-
21 tract market in a contract for sale of future de-
22 livery of a nonexempted security or non-
23 exempted securities index (or option on such a
24 contract) shall file with the Board of Governors
25 of the Federal Reserve System any rule estab-

1 lishing or changing the level of initial margin or
2 maintenance margin for the nonexempted secu-
3 rity or nonexempted securities index futures
4 contract (or option on such a contract):

5 “(B) REQUEST TO SET MARGIN.—

6 “(i) IN GENERAL.—The Board may at
7 any time request a contract market to set
8 the margin for a nonexempted security or
9 nonexempted securities index futures con-
10 tract (or option on a nonexempted security
11 or nonexempted securities index futures
12 contract) at a level that the Board deter-
13 mines is appropriate to—

14 “(I) preserve the financial integ-
15 rity of the contract market or of the
16 clearing system of the contract mar-
17 ket; or

18 “(II) prevent systemic risk.

19 “(ii) FAILURE TO SET MARGIN.—If
20 the contract market fails to comply with a
21 request under clause (i) within the time
22 specified by the Board in the request, the
23 Board may direct the contract market to
24 alter or supplement the rules of the con-
25 tract market as specified in the request.

1 “(C) DELEGATION OF AUTHORITY TO THE
2 COMMISSION.—Subject to such conditions as
3 the Board may determine, the Board may dele-
4 gate any or all of its authority with respect to
5 margin levels—

6 “(i) in the case of a designated future
7 on a security or other stock index futures
8 contract or related option, to the Commis-
9 sion, if the contract or option is traded on
10 a designated contract market or derivatives
11 transaction execution facility; or

12 “(ii) in the case of a designated future
13 on a security—

14 “(I) to the Securities and Ex-
15 change Commission, if the designated
16 future on a security is listed on a na-
17 tional securities exchange; or

18 “(II) to the intermarket margin
19 board established under subparagraph
20 (D).

21 “(D) INTERMARKET MARGIN BOARD.—

22 “(i) ESTABLISHMENT.—With the con-
23 currence of the Securities and Exchange
24 Commission and the Commission, the
25 Board may establish an intermarket mar-

1 gin board consisting of representatives of
2 each of those 3 entities.

3 “(ii) DUTIES.—The intermarket mar-
4 gin board established under clause (i) may
5 set and maintain margin levels and rules
6 pertaining to margin for a designated fu-
7 ture on a security listed on a contract mar-
8 ket or on a national securities exchange.

9 “(E) RELATIONSHIP TO OTHER AUTHOR-
10 ITY.—Nothing in this section supersedes or lim-
11 its the authority of the Commission under sec-
12 tion 8a(9).

13 “(F) JUDICIAL REVIEW.—

14 “(i) IN GENERAL.—Any action taken
15 by the Board (or by the Commission acting
16 under the delegation of authority under
17 subparagraph (C) or by the intermarket
18 margin board established under subpara-
19 graph (D)) under this paragraph directing
20 a contract market to alter or supplement
21 a contract market rule shall be subject to
22 review only in the United States Court of
23 Appeals for the judicial circuit in which the
24 party seeking review resides or has its
25 principal place of business, or in the

1 United States Court of Appeals for the
2 District of Columbia Circuit.

3 “(ii) BASIS FOR REVIEW.—Review
4 under clause (i) shall be based on the ex-
5 amination of all information before the
6 Board (or the Commission, Securities and
7 Exchange Commission, or intermarket
8 margin board) at the time at which the ac-
9 tion was taken.

10 “(iii) STANDARD OF REVIEW.—The
11 court reviewing an action of the Board (or
12 the Commission, Securities and Exchange
13 Commission, or intermarket margin board)
14 shall not enter a stay or order of man-
15 damus unless the court determines, after
16 notice and hearing, that the action was ar-
17 bitrary, capricious, an abuse of discretion,
18 or otherwise not in accordance with law.”.

19 **SEC. 9. FINDING AND PURPOSES.**

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

22 **“SEC. 3. FINDING AND PURPOSES.**

23 “(a) FINDING.—Congress finds that the futures con-
24 tracts and options contracts that are subject to this Act
25 are entered into regularly in interstate and international

1 commerce and are affected with a national public interest,
2 in that such futures contracts and options contracts pro-
3 vide a means for managing and assuming price risks, dis-
4 covering prices, and disseminating pricing information
5 through trading in liquid, fair, and financially secure trad-
6 ing facilities.

7 “(b) PURPOSES.—The purposes of this Act are—

8 “(1) to serve the public interest described in
9 subsection (a) through a system of effective self-reg-
10 ulation of trading facilities, clearing systems, market
11 participants, and market professionals under the
12 oversight of the Commission; and

13 “(2) to authorize the Commission—

14 “(A) to deter and prevent price manipula-
15 tion or any other disruptions to market integ-
16 rity;

17 “(B) to ensure the financial integrity of all
18 transactions subject to this Act and the avoid-
19 ance of systemic risk;

20 “(C) to protect all market participants
21 from fraudulent or other abusive sales practices
22 and misuse of customer assets; and

23 “(D) to promote responsible innovation
24 and fair competition among boards of trade,
25 other markets, and market participants.”.

1 **SEC. 10. PROHIBITED TRANSACTIONS.**

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

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

6 **“(a) IN GENERAL.—**

7 **“(1) PROHIBITION.—**It shall be unlawful for
8 any person to offer to enter into, enter into, or con-
9 firm the execution of a transaction described in
10 paragraph (2) involving any commodity if the trans-
11 action is used or may be used to—

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

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

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

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

23 **“(A)(i)** is, is of the character of, or is com-
24 monly known to the trade as, a ‘wash sale’,
25 ‘cross trade’, or ‘accommodation trade’; or

26 **“(ii)** is a fictitious sale; or

1 “(B) is used to cause any price to be re-
2 ported, registered, or recorded that is not a
3 true and bona fide price.

4 “(3) EFFECT OF SUBSECTION.—Nothing in this
5 subsection—

6 “(A) makes unlawful an exchange of—

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

9 “(ii) futures for cash commodities;

10 “(iii) transfer trades or office trades;

11 or

12 “(iv) futures for swaps;

13 if the exchange is made in accordance with
14 rules of the contract market or derivatives
15 transaction execution facility that apply to such
16 transactions, and those rules have been ap-
17 proved by the Commission; or

18 “(B) makes it unlawful for a futures com-
19 mission merchant, acting as principal or agent,
20 to enter into, execute, or confirm the execution
21 of a contract for the purchase or sale of a com-
22 modity for future delivery if the contract is en-
23 tered into, executed, reported, recorded, or
24 cleared in accordance with the rules of a con-

1 tract market or derivatives transaction execu-
2 tion facility.”.

3 **SEC. 11. DESIGNATION OF BOARDS OF TRADE AS CON-**
4 **TRACT MARKETS.**

5 The Commodity Exchange Act is amended—

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

8 (2) by striking sections 5 and 5a (7 U.S.C. 7,
9 7a) and inserting the following:

10 **“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-**
11 **TRACT MARKETS.**

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

17 “(b) CRITERIA FOR DESIGNATION.—

18 “(1) IN GENERAL.—To be designated as a con-
19 tract market, the board of trade shall demonstrate
20 to the Commission that the board of trade meets the
21 criteria specified in this subsection.

22 “(2) PREVENTION OF MARKET MANIPULA-
23 TION.—The board of trade shall have the capacity to
24 prevent market manipulation through market sur-
25 veillance, compliance, and enforcement practices and

1 procedures, including methods for conducting real-
2 time monitoring of trading and comprehensive and
3 accurate trade reconstructions.

4 “(3) FAIR AND EQUITABLE TRADING.—The
5 board of trade shall establish and enforce trading
6 rules to ensure fair and equitable trading through
7 the facilities of the contract market, and the capac-
8 ity to detect, investigate, and discipline any person
9 that violates the rules.

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

12 “(A) establish and enforce rules defining,
13 or specifications detailing, the manner of oper-
14 ation of the trade execution facility maintained
15 by the board of trade, including rules or speci-
16 fications describing the operation of any elec-
17 tronic matching platform; and

18 “(B) demonstrate that the trading facility
19 operates in accordance with the rules or speci-
20 fications.

21 “(5) FINANCIAL INTEGRITY OF TRANS-
22 ACTIONS.—The board of trade shall establish and
23 enforce rules and procedures for ensuring the finan-
24 cial integrity of transactions entered into by or
25 through the facilities of the contract market.

1 “(6) DISCIPLINARY PROCEDURES.—The board
2 of trade shall establish and enforce disciplinary pro-
3 ceedures that authorize the board of trade to dis-
4 cipline, suspend, or expel members or market par-
5 ticipants that violate the rules of the board of trade,
6 or similar methods for performing the same func-
7 tions, including delegation of the functions to third
8 parties.

9 “(7) PUBLIC ACCESS.—The board of trade shall
10 provide the public with access to the rules, regula-
11 tions, and contract specifications of the board of
12 trade.

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

20 “(e) EXISTING CONTRACT MARKETS.—A designated
21 contract market on the effective date of the Commodity
22 Futures Modernization Act of 2000 shall be considered to
23 be a designated contract market under this section.

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

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

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

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

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

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

24 “(6) EMERGENCY AUTHORITY.—The board of
25 trade shall adopt rules to provide for the exercise of

1 emergency authority, in consultation or cooperation
2 with the Commission, where necessary and appro-
3 priate, including the authority to—

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

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

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

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

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

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

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

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

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

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

11 “(11) FINANCIAL INTEGRITY OF CONTRACTS.—
12 The board of trade shall establish and enforce rules
13 providing for the financial integrity of any contracts
14 traded on the contract market, including rules to en-
15 sure the financial integrity of any futures commis-
16 sion merchants and introducing brokers and the pro-
17 tection of customer funds.

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

23 “(13) DISPUTE RESOLUTION.—The board of
24 trade shall establish and enforce rules regarding and
25 provide facilities for alternative dispute resolution as

1 appropriate for market participants and any market
2 intermediaries.

3 “(14) GOVERNANCE FITNESS STANDARDS.—

4 The board of trade shall establish and enforce ap-
5 propriate fitness standards for directors, members of
6 any disciplinary committee, members of the board of
7 trade, and any other persons with direct access to
8 the facility (including any parties affiliated with any
9 of the persons described in this paragraph).

10 “(15) 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 contract market and establish a process for re-
14 solving such conflicts of interest.

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

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

22 “(A) maintain full records of all activities
23 related to the business of the contract market
24 in a form and manner acceptable to the Com-
25 mission for a period of 5 years;

1 “(B) make the records readily available
 2 during at least the first 2-years of the 5-year
 3 period and provide the records to the Commis-
 4 sion during that 2-year period at the expense of
 5 the person required to maintain the records;
 6 and

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

10 “(18) ANTITRUST CONSIDERATIONS.—Unless
 11 appropriate to achieve the purposes of this Act, the
 12 board of trade shall avoid—

13 “(A) adopting any rule or taking any ac-
 14 tion that results in any unreasonable restraint
 15 of trade; or

16 “(B) imposing any material anticompeti-
 17 tive burden on trading on the contract mar-
 18 ket.”.

19 **SEC. 12. DERIVATIVES TRANSACTION EXECUTION FACILI-**
 20 **TIES.**

21 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 22 is amended by inserting after section 5 (as amended by
 23 section 11(2)) the following:

1 **“SEC. 5A. DERIVATIVES TRANSACTION EXECUTION FACILI-**
 2 **TIES.**

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

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

9 “(2) registered as a derivatives transaction exe-
 10 cution facility under subsection (c).

11 “(b) REQUIREMENTS FOR TRADING FUTURES CON-
 12 TRACTS OR OTHER DERIVATIVES TRANSACTIONS.—

13 “(1) IN GENERAL.—A registered derivatives
 14 transaction execution facility under subsection (a)
 15 may trade any futures contract (or option on such
 16 a contract) that is not a designated future on a se-
 17 curity on or through the facility only by satisfying
 18 the requirements of this section.

19 “(2) REQUIREMENTS FOR UNDERLYING COM-
 20 MODITIES.—A registered derivatives transaction exe-
 21 cution facility may trade any futures contract only
 22 if—

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

25 “(B) the underlying commodity has a de-
 26 liverable supply that is sufficiently large that

1 the contract is highly unlikely to be susceptible
2 to manipulation;

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

5 ~~“(D) the Commission determines, based on~~
6 ~~the market characteristics, surveillance history,~~
7 ~~self-regulatory record, and capacity of the facil-~~
8 ~~ity that trading in the futures contract is highly~~
9 ~~unlikely to be susceptible to manipulation.~~

10 ~~“(3) ELIGIBLE TRADERS.—To trade on a reg-~~
11 ~~istered derivatives transaction execution facility, a~~
12 ~~person shall—~~

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

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

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

19 ~~“(I) is registered with the Commis-~~
20 ~~sion;~~

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

23 ~~“(III) is a clearing member of a de-~~
24 ~~rivatives clearing organization; and~~

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

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

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

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

20 “~~(e) CRITERIA FOR REGISTRATION.—~~

21 “~~(1) IN GENERAL.—To be registered as a reg-~~
22 istered derivatives transaction execution facility, the
23 board of trade shall demonstrate to the Commission
24 that the board of trade meets the criteria specified
25 in this paragraph.

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

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

8 or

9 “(B) use technological means to—

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

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

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

20 “(4) FINANCIAL INTEGRITY OF TRANS-
21 ACTIONS.—The board of trade shall establish and
22 enforce rules or terms and conditions providing for
23 the financial integrity of transactions entered on or
24 through the facilities of the board of trade, including
25 rules or terms and conditions to ensure the financial

1 integrity of any futures commission merchants and
 2 introducing brokers and the protection of customer
 3 funds.

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

6 “(1) IN GENERAL.—To maintain the registra-
 7 tion of a board of trade as a derivatives transaction
 8 execution facility, a board of trade shall comply with
 9 the core principles specified in this subsection.

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

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

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

25 “(A) contract terms and conditions;

1 “(B) trading conventions, mechanisms, and
2 practices;

3 “(C) financial integrity protections; and

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

6 ~~“(5) PROVISION OF TRADING INFORMATION.—~~

7 The board of trade shall provide to market partici-
8 pants on a fair, equitable, and timely basis—

9 “(A) information regarding prices, bids,
10 and offers; and

11 “(B) for actively traded contracts, daily in-
12 formation on settlement prices, volume, open in-
13 terest, and opening and closing ranges.

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

20 ~~“(7) CONFLICTS OF INTEREST.—~~The board of
21 trade shall establish and enforce rules to minimize
22 conflicts of interest in the decisionmaking process of
23 the derivatives transaction execution facility and es-
24 tablish a process for resolving such conflicts of inter-
25 est.

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

3 ~~“(A) maintain full records of all activities~~
4 related to the business of the derivatives trans-
5 action execution facility in a form and manner
6 acceptable to the Commission for a period of at
7 least 5 years;

8 ~~“(B) make the records readily available~~
9 during at least the first 2 years of the 5-year
10 period and provide the records to the Commis-
11 sion at the expense of the person required to
12 maintain the records; and

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

16 ~~“(9) ANTITRUST CONSIDERATIONS.—~~Unless ap-
17 propriate to achieve the purposes of this Act, the
18 board of trade shall avoid—

19 ~~“(A) adopting any rule or taking any ac-~~
20 tion that results in any unreasonable restraint
21 of trade; or

22 ~~“(B) imposing any material anticompeti-~~
23 tive burden on trading on the derivatives trans-
24 action execution facility.

1 “(e) USE OF BROKER-DEALERS AND DEPOSITORY
2 INSTITUTIONS AS INTERMEDIARIES.—

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

7 “(A) act as an intermediary in trans-
8 actions executed on the facility on behalf of cus-
9 tomers of the broker-dealer or depository insti-
10 tution; and

11 “(B) receive funds of customers to serve as
12 margin or security for such transactions.

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

15 “(A) a broker-dealer be in good standing
16 with the Securities and Exchange Commission
17 and a depository institution be in good stand-
18 ing, as determined by the appropriate Federal
19 banking agency (as defined in section 3 of the
20 Federal Deposit Insurance Act (12 U.S.C.
21 1813)) (including the Farm Credit Administra-
22 tion), as applicable; and

23 “(B) if a broker-dealer or depository insti-
24 tution carries or holds customer accounts or

1 funds for transactions on the derivatives trans-
2 action execution facility for more than 1 busi-
3 ness day, the broker-dealer or depository insti-
4 tution is registered as a futures commission
5 merchant and is a member of a registered fu-
6 tures association.

7 “(3) IMPLEMENTATION.—The Commission shall
8 cooperate and coordinate with the Securities and Ex-
9 change Commission and Federal banking regulatory
10 agencies (including the Farm Credit Administration)
11 in adopting rules and taking any other appropriate
12 action to facilitate the implementation of this sub-
13 section.

14 “(f) SEGREGATION OF CUSTOMER FUNDS.—Not
15 later than 180 days after the effective date of the Com-
16 modify Futures Modernization Act of 2000, consistent
17 with regulations adopted by the Commission, a registered
18 derivatives transaction execution facility may authorize a
19 futures commission merchant to offer any customer of the
20 futures commission merchant that is an eligible contract
21 participant the right to not segregate the customer funds
22 of the futures commission merchant for purposes of trad-
23 ing on or through the facilities of the registered derivatives
24 transaction execution facility.

1 “(g) ELECTION TO TRADE EXCLUDED TRANS-
2 ACTIONS.—

3 “(1) IN GENERAL.—A board of trade that is a
4 registered derivatives transaction execution facility
5 may trade on the facility any agreements, contracts,
6 or transactions that are excluded from this Act
7 under subsection (c) or (d) of section 2.

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

14 **SEC. 13. DERIVATIVES CLEARING ORGANIZATIONS.**

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

18 **“SEC. 5B. DERIVATIVES CLEARING ORGANIZATIONS.**

19 “(a) REGISTRATION REQUIREMENT.—Except as pro-
20 vided in subsection (b), it shall be unlawful for a deriva-
21 tives clearing organization, unless registered with the
22 Commission, directly or indirectly to make use of the mails
23 or any means or instrumentality of interstate commerce
24 to perform the functions of a derivatives clearing organiza-
25 tion described in section 1a(8).

1 “(b) EXCLUSION OF DERIVATIVES CLEARING ORGA-
2 NIZATIONS SUBJECT TO OTHER REGULATORY AUTHORI-
3 TIES.—A derivatives clearing organization shall not be re-
4 quired to register with the Commission, and the Commis-
5 sion shall have no jurisdiction with respect to the deriva-
6 tives clearing organization, if the derivatives clearing
7 organization—

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

11 “(B) is subject to the supervisory jurisdiction of
12 a Federal banking agency (as defined in section 3 of
13 the Federal Deposit Insurance Act (12 U.S.C.
14 1813)) or the National Credit Union Administration;
15 or

16 “(C) is subject to the supervisory jurisdiction of
17 a foreign regulatory authority that is recognized by
18 the Securities and Exchange Commission, the Board
19 of Governors of the Federal Reserve System, the
20 Comptroller of the Currency, or the Commission as
21 overseeing a system of consolidated supervision com-
22 parable to that provided under applicable United
23 States law; and

24 “(2) does not clear a contract of sale for future
25 delivery, option on a contract of sale for future deliv-

1 ery, or option on a commodity that is not a security
 2 (unless the contract or option is excluded under sub-
 3 section (e) or (d) of section 2).

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

8 “(d) REGISTRATION OF DERIVATIVES CLEARING OR-
 9 GANIZATIONS.—

10 “(1) APPLICATION.—A person desiring to reg-
 11 ister as a derivatives clearing organization shall sub-
 12 mit to the Commission an application in such form
 13 and containing such information as the Commission
 14 may require for the purpose of making the deter-
 15 minations required for approval under paragraph
 16 (2).

17 “(2) CORE PRINCIPLES.—

18 “(A) IN GENERAL.—To be registered and
 19 to maintain registration as a derivatives clear-
 20 ing organization, an applicant shall demonstrate
 21 to the Commission that the applicant complies
 22 with the core principles specified in this para-
 23 graph.

24 “(B) FINANCIAL RESOURCES.—The appli-
 25 cant shall demonstrate that the applicant has

1 adequate financial, operational, and managerial
2 resources to discharge the responsibilities of a
3 derivatives clearing organization without inter-
4 ruption in various market conditions.

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

7 “(i) appropriate admission and con-
8 tinuing eligibility standards (including ap-
9 propriate minimum financial requirements)
10 for members of and participants in the or-
11 ganization; and

12 “(ii) appropriate standards for deter-
13 mining eligibility of agreements, contracts,
14 or transactions submitted to the applicant.

15 “(D) RISK MANAGEMENT.—The applicant
16 shall have the ability to manage the risks asso-
17 ciated with discharging the responsibilities of a
18 derivatives clearing organization through the
19 use of appropriate tools and procedures.

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

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

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

4 “(iii) comply with the terms and con-
5 ditions of any permitted netting or offset
6 arrangements with other clearing organiza-
7 tions.

8 “(F) TREATMENT OF FUNDS.—The appli-
9 cant shall have standards and procedures de-
10 signed to protect and ensure the safety of mem-
11 ber and participant funds.

12 “(G) DEFAULT RULES AND PROCE-
13 DURES.—The applicant shall have rules and
14 procedures designed to allow for efficient, fair,
15 and safe management of events when members
16 or participants become insolvent or otherwise
17 default on their obligations to the derivatives
18 clearing organization.

19 “(H) RULE ENFORCEMENT.—The appli-
20 cant shall—

21 “(i) maintain adequate arrangements
22 and resources for the effective monitoring
23 and enforcement of compliance with rules
24 of the applicant and for resolution of dis-
25 putes; and

1 “(ii) have the authority and ability to
2 discipline, limit, suspend, or terminate a
3 member’s or participant’s activities for vio-
4 lations of rules of the applicant.

5 “(I) SYSTEM SAFEGUARDS.—The applicant
6 shall demonstrate that the applicant—

7 “(i) has established and will maintain
8 a program of oversight and risk analysis to
9 ensure that the automated systems of the
10 applicant function properly and have ade-
11 quate capacity and security; and

12 “(ii) has established and will maintain
13 emergency procedures and a plan for dis-
14 aster recovery, and will periodically test
15 backup facilities sufficient to ensure daily
16 processing, clearing, and settlement of
17 transactions.

18 “(J) REPORTING.—The applicant shall
19 provide to the Commission all information nec-
20 essary for the Commission to conduct the over-
21 sight function of the applicant with respect to
22 the activities of the derivatives clearing organi-
23 zation.

24 “(K) RECORDKEEPING.—The applicant
25 shall—

1 “(i) maintain full records of all activi-
2 ties related to the business of the applicant
3 as a derivatives clearing organization in a
4 form and manner acceptable to the Com-
5 mission for a period of at least 5 years;

6 “(ii) make the records readily avail-
7 able during at least the first 2 years of the
8 5-year period and provide the records to
9 the Commission at the expense of the per-
10 son required to maintain the records; and

11 “(iii) keep the records open to inspec-
12 tion by any representative of the Commis-
13 sion or the Department of Justice.

14 “(L) PUBLIC INFORMATION.—The appli-
15 cant shall make information concerning the
16 rules and operating procedures governing the
17 clearing and settlement systems (including de-
18 fault procedures) available to market partici-
19 pants.

20 “(M) INFORMATION SHARING.—The appli-
21 cant shall—

22 “(i) enter into and abide by the terms
23 of all appropriate and applicable domestic
24 and international information-sharing
25 agreements; and

1 “(ii) use relevant information obtained
2 from the agreements in carrying out the
3 clearing organization’s risk management
4 program.

5 “(N) ANTITRUST CONSIDERATIONS.—Un-
6 less appropriate to achieve the purposes of this
7 Act, the derivatives clearing organization shall
8 avoid—

9 “(i) adopting any rule or taking any
10 action that results in any unreasonable re-
11 straint of trade; or

12 “(ii) imposing any material anti-
13 competitive burden on trading on the con-
14 tract market.

15 “(3) ORDERS CONCERNING COMPETITION.—A
16 derivatives clearing organization may request the
17 Commission to issue an order concerning whether a
18 rule or practice of the applicant is the least anti-
19 competitive means of achieving the objectives, pur-
20 poses, and policies of this Act.

21 “(e) EXISTING DERIVATIVES CLEARING ORGANIZA-
22 TIONS.—A derivatives clearing organization shall be
23 deemed to be registered under this section to the extent
24 that—

1 “(1) the derivatives clearing organization clears
2 agreements, contracts, or transactions for a board of
3 trade that has been designated by the Commission
4 as a contract market for such agreements, contracts,
5 or transactions before the date of enactment of this
6 section; and

7 “(2) the Commission has reviewed and ap-
8 proved the rules of the derivatives clearing organiza-
9 tion before that date.

10 “(f) APPOINTMENT OF TRUSTEE.—

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

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

23 “(A) the court may take exclusive jurisdic-
24 tion over the derivatives clearing organization

1 and the records and assets of the derivatives
2 clearing organization, wherever located; and

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

12 “(g) LINKING OF REGULATED CLEARING FACILI-
13 TIES.—

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

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

1 **SEC. 14. COMMON PROVISIONS APPLICABLE TO REG-**
2 **ISTERED ENTITIES.**

3 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
4 is amended by inserting after section 5b (as added by sec-
5 tion 13) the following:

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

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

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

17 **“(2) TIMING.—**If any person submits to the
18 Commission a request for an interpretation or for
19 approval of an interpretation under paragraph (1),
20 the Commission shall issue the interpretation or
21 shall approve or disapprove the interpretation not
22 later than 45 days after receiving the request.

23 **“(3) EFFECT OF INTERPRETATION.—**An inter-
24 pretation issued under paragraph (1) shall not pro-
25 vide the exclusive means for complying with the core
26 principles.

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

3 “(1) IN GENERAL.—A registered entity may
4 comply with any applicable core principle through
5 delegation of any relevant function to a registered
6 futures association or another registered entity.

7 “(2) RESPONSIBILITY.—A registered entity that
8 delegates a function under paragraph (1) shall re-
9 main responsible for carrying out the function.

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

12 “(1) IN GENERAL.—Subject to paragraph (2), a
13 registered entity may elect to list for trading any
14 new contract or other instrument, or may elect to
15 approve and implement any new rule or rule amend-
16 ment, by providing to the Commission a written cer-
17 tification that the new contract, new rule, or rule
18 amendment complies with this Act (including regula-
19 tions under this Act).

20 “(2) PRIOR APPROVAL.—

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

1 “(B) DEADLINE.—If prior approval is re-
2 quested under subparagraph (A), the Commis-
3 sion shall take final action on the request not
4 later than 90 days after submission of the re-
5 quest, unless the person submitting the request
6 agrees to an extension of the time limitation es-
7 tablished under this subparagraph.

8 “(C) AGRICULTURAL CONTRACTS.—Not-
9 withstanding any other provision of this section,
10 a designated contract market shall submit for
11 prior approval by the Commission each rule
12 amendment that materially changes a term or
13 condition in any contract of sale of a com-
14 modity for future delivery or related option
15 traded through the facilities of the designated
16 contract market, if—

17 “(i) the commodity is specifically list-
18 ed in section 1a(3); and

19 “(ii) the rule amendment applies to
20 contracts and delivery months that have
21 previously been listed for trading and have
22 open interest.

23 “(3) APPROVAL.—The Commission shall ap-
24 prove any such new contract or instrument, new
25 rule, or rule amendment unless the Commission

1 finds that the new contract or instrument, new rule,
2 or rule amendment would violate this Act.

3 “(d) VIOLATION OF CORE PRINCIPLES.—

4 “(1) IN GENERAL.—If the Commission deter-
5 mines, on the basis of substantial evidence, that a
6 registered entity is violating any of the applicable
7 core principles specified in sections 5(d), 5a(d), and
8 5b(d)(2), the Commission shall—

9 “(A) notify the registered entity of the de-
10 termination; and

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

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

22 “(e) RESERVATION OF EMERGENCY AUTHORITY.—
23 Notwithstanding any other provision of this section, the
24 Commission shall retain the full scope of its emergency
25 powers under section 8a(9) to direct any contract market

1 to take emergency action in compliance with the provisions
2 and standards of section 8a(9).”.

3 **SEC. 15. EXEMPT BOARDS OF TRADE.**

4 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
5 is amended by inserting after section 5e (as added by sec-
6 tion 14) the following:

7 **“SEC. 5D. EXEMPT BOARDS OF TRADE.**

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

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

19 “(1) that have—

20 “(A) a nearly inexhaustible deliverable sup-
21 ply;

22 “(B) a deliverable supply that is suffi-
23 ciently large, and a cash market sufficiently liq-
24 uid, to render any contract traded on the com-

1 modity highly unlikely to be susceptible to ma-
2 nipulation; or

3 ~~“(C) no cash market; and~~

4 ~~“(2) that are entered into only between persons~~
5 ~~that—~~

6 ~~“(A) are eligible contract participants at~~
7 ~~the time at which the persons enter into the~~
8 ~~contract; or~~

9 ~~“(B) enter into the contract or option for~~
10 ~~the benefit only of eligible contract participants.~~

11 ~~“(e) ANTIMANIPULATION REQUIREMENTS.—A party~~
12 ~~to a futures contract or related option that is traded on~~
13 ~~an exempt board of trade shall be subject to sections 4b,~~
14 ~~4o, 6(e), and 9(a)(2), and the Commission shall enforce~~
15 ~~those provisions with respect to any such trading.~~

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

24 ~~“(e) JURISDICTION.—The Commission shall have ex-~~
25 ~~clusive jurisdiction over any account, agreement, or trans-~~

1 action involving a contract of sale of a commodity for fu-
2 ture delivery, or related option, to the extent that such
3 an account, agreement, or transaction is traded on an ex-
4 empt board of trade.

5 “(f) **SUBSIDIARIES.**—A board of trade that is des-
6 ignated as a contract market or registered as a derivatives
7 transaction execution facility may operate an exempt
8 board of trade by establishing a separate subsidiary or
9 other legal entity and otherwise satisfying the require-
10 ments of this section.”.

11 **SEC. 16. SUSPENSION OR REVOCATION OF DESIGNATION**
12 **AS CONTRACT MARKET.**

13 Section 5e of the Commodity Exchange Act (7 U.S.C.
14 7b) (as redesignated by section 11(1)) is amended to read
15 as follows:

16 **“SEC. 5E. SUSPENSION OR REVOCATION OF DESIGNATION**
17 **AS REGISTERED ENTITY.**

18 “The failure of a registered entity to comply with any
19 provision of this Act, or any regulation or order of the
20 Commission under this Act, shall be cause for the suspen-
21 sion of the registered entity for a period not to exceed 180
22 days, or revocation of designation as a registered entity
23 in accordance with the procedures and subject to the judi-
24 cial review provided in section 6(b).”.

1 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

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

5 **SEC. 18. PREEMPTION.**

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

9 “(2) the application of any Federal or State law
10 (including any regulation) to an agreement, contract,
11 or transaction in or involving any commodity, prod-
12 uct, right, service, or interest, except that this Act
13 shall supersede and preempt—

14 “(A) any Federal or State law (including
15 any regulation); in the case of any such agree-
16 ment, contract, or transaction—

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

20 “(ii) that is conducted on or subject
21 to the rules of any board of trade, ex-
22 change, or market located outside the
23 United States, or any territory or posses-
24 sion of the United States (in accordance
25 with any terms or conditions specified by
26 the Commission by regulation); and

1 “~~(iii)~~ that is subject to regulation by
2 the Commission under section ~~4e~~ or 19;
3 and

4 “~~(B)~~ any State or local law that prohibits
5 or regulates gaming or the operation of bucket
6 shops (other than antifraud provisions of gen-
7 eral applicability) in the case of—

8 “~~(i)~~ an excluded trading facility under
9 section ~~2(e)~~; or

10 “~~(ii)~~ an agreement, contract, or trans-
11 action that—

12 “~~(I)~~ is excluded under subsection
13 ~~(e)~~, ~~(d)~~, or ~~(f)~~ of section ~~2~~; or

14 “~~(II)~~ is covered by the terms of
15 an exemption granted by the Commis-
16 sion under section ~~4(e)~~ (regardless of
17 whether any such agreement, con-
18 tract, or transaction is otherwise sub-
19 ject to this Act); or”.

20 **SEC. 19. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
21 **STITUTIONAL CUSTOMERS.**

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

1 “(g) **PREDISPUTE RESOLUTION AGREEMENTS FOR**
 2 **INSTITUTIONAL CUSTOMERS.**—Nothing in this section
 3 prohibits a registered futures commission merchant from
 4 requiring a customer that is an eligible contract partici-
 5 pant, as a condition to the commission merchant’s con-
 6 ducting a transaction for the customer, to enter into an
 7 agreement waiving the right to file a claim under this sec-
 8 tion.”.

9 **SEC. 20. CONSIDERATION OF COSTS AND BENEFITS AND**
 10 **ANTITRUST LAWS.**

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

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

16 “(a) **COSTS AND BENEFITS.**—

17 “(1) **IN GENERAL.**—Before promulgating a reg-
 18 ulation under this Act or issuing an order (except as
 19 provided in paragraph (3)), the Commission shall
 20 consider the costs and benefits of the action of the
 21 Commission.

22 “(2) **CONSIDERATIONS.**—The costs and benefits
 23 of the proposed Commission action shall be evalu-
 24 ated in light of—

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

3 “(B) considerations of the efficiency, com-
4 petitiveness, and financial integrity of futures
5 markets;

6 “(C) considerations of price discovery;

7 “(D) considerations of sound risk manage-
8 ment practices; and

9 “(E) other public interest considerations.

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

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

15 “(B) An emergency action.

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

18 “(b) **ANTITRUST LAWS.**—The Commission”.

19 **SEC. 21. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
20 **COUNTERPARTIES.**

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

24 “(4) **CONTRACT ENFORCEMENT BETWEEN ELI-**
25 **GIBLE COUNTERPARTIES.**—No agreement, contract,

1 or transaction between eligible contract participants
2 shall be void, voidable, or unenforceable, and no
3 such eligible contract participant shall be entitled to
4 rescind, or recover any payment made with respect
5 to, such an agreement, contract, or transaction,
6 under this section based solely on the failure of the
7 agreement, contract, or transaction to comply with
8 the terms or conditions of an exemption or exclusion
9 from any provision of this Act or regulations of the
10 Commission.”.

11 **SEC. 22. LEGAL CERTAINTY FOR SWAP AGREEMENTS.**

12 (a) **DEFINITION OF SWAP AGREEMENT.**—In this sec-
13 tion, the term “swap agreement” has the meaning given
14 the term in section 5220 of the Revised Statutes.

15 (b) **LEGAL CERTAINTY.**—

16 (1) **IN GENERAL.**—Nothing in this Act or any
17 amendment made by this Act authorizes the Securi-
18 ties and Exchange Commission to regulate, super-
19 vise, or otherwise subject to oversight any activity,
20 agreement, instrument, transaction, or product over
21 which the Securities and Exchange Commission is
22 not granted specific jurisdiction under this Act, any
23 amendment made by this Act, or any other law.

24 (2) **SWAP AGREEMENTS.**—Nothing in this Act
25 or any amendment made by this Act grants the

1 Commodity Futures Trading Commission or the Se-
2 curities and Exchange Commission any jurisdiction
3 over any swap agreement, except that a registered
4 entity may voluntarily submit to the jurisdiction of
5 the Commodities Futures Trading Commission
6 under section 12 or 13 of the Commodities Ex-
7 change Act (7 U.S.C. 16, 13c).

8 (c) MORATORIUM ON RETAIL SWAP AGREEMENTS.—

9 (1) IN GENERAL.—During the 1-year period be-
10 ginning on the date of enactment of this Act, no fi-
11 nancial institution engaged in activities authorized
12 or permitted under section 4(k) of the Bank Holding
13 Company Act (12 U.S.C. 1843(k)) may initiate
14 through a widespread offering the opportunity for
15 individuals other than accredited investors to enter
16 into swap agreements. In the preceding sentence, the
17 term “accredited investor”² means an individual with
18 net worth of at least \$5,000,000.

19 (2) REPORT.—Not later than the date that is
20 1 year after the date of enactment of this Act, the
21 Federal banking agencies (as defined in section 3 of
22 the Federal Deposit Insurance Act (12 U.S.C.
23 1813)), the Department of the Treasury, the Com-
24 modity Futures Trading Commission, and the Secu-
25 rities and Exchange Commission shall submit to the

1 Committee on Agriculture, Nutrition, and Forestry
 2 and the Committee on Banking, Housing, and
 3 Urban Affairs of the Senate, and the Committee on
 4 Agriculture and the Committee on Banking and Fi-
 5 nancial Services of the House of Representatives a
 6 report on—

7 (A) the regulatory framework under which
 8 swap agreements identified in paragraph (1)
 9 should be supervised;

10 (B) the jurisdictional issues relating to
 11 swap agreements identified in paragraph (1);
 12 and

13 (C) investor protection concerns in connec-
 14 tion with swap agreements identified in para-
 15 graph (1).

16 **SEC. 23. TECHNICAL AND CONFORMING AMENDMENTS.**

17 (a) COMMODITY EXCHANGE ACT.—

18 (1) Section 1a of the Commodity Exchange Act
 19 (7 U.S.C. 1a) (as amended by section 3(1)) is
 20 amended—

21 (A) in paragraphs (4), (5), (17), (18),
 22 (21), and (24), by inserting “or derivatives
 23 transaction execution facility” after “contract
 24 market” each place it appears; and

25 (B) in paragraph (25)—

1 (i) in the paragraph heading, by strik-
 2 ing “CONTRACT MARKET” and inserting
 3 “REGISTERED ENTITY”; and

4 (ii) by striking “contract market”
 5 each place it appears and inserting “reg-
 6 istered entity”.

7 (2) Section 2 of the Commodity Exchange Act
 8 (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

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

11 **“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF**
 12 **PRINCIPAL FOR ACT OF AGENT; COMMODITY**
 13 **FUTURES TRADING COMMISSION; TRANS-**
 14 **ACTION IN INTERSTATE COMMERCE.**

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

17 **“(1) JURISDICTION OF COMMISSION.—**

18 **“(A) IN GENERAL.—The”;** and

19 **(B) in subsection (a)—**

20 (i) in paragraph (1) (as amended by
 21 subparagraph (A))—

22 (I) by striking subparagraph (B);

23 (II) by striking “subparagraph
 24 (B) of this subparagraph” and insert-

25 ing “subsection (g)”;

1 (III) by striking “contract mar-
 2 ket designated pursuant to section 5
 3 of this Act” and inserting “contract
 4 market designated or derivatives
 5 transaction execution facility reg-
 6 istered pursuant to section 5 or 5a”;

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

8 (V) in clause (iii), by striking
 9 “(iii) The” and inserting the fol-
 10 lowing:

11 “(B) LIABILITY OF PRINCIPAL FOR ACT OF
 12 AGENT.—The”;

13 (ii) in paragraph (7), by striking
 14 “contract market” and inserting “reg-
 15 istered entity”; and

16 (iii) in paragraph (8)(B)(ii)—

17 (I) in the first sentence, by strik-
 18 ing “designation as a contract mar-
 19 ket” and inserting “designation or
 20 registration as a contract market or
 21 derivatives transaction execution facil-
 22 ity”;

23 (II) in the second sentence, by
 24 striking “designate a board of trade
 25 as a contract market” and inserting

1 “designate or register a board of
 2 trade as a contract market or deriva-
 3 tives transaction execution facility”;
 4 and

5 (III) in the fourth sentence, by
 6 striking “designating, or refusing,
 7 suspending, or revoking the designa-
 8 tion of, a board of trade as a contract
 9 market” and inserting “designating,
 10 registering, or refusing, suspending,
 11 or revoking the designation or reg-
 12 istration of, a board of trade as a con-
 13 tract market or derivatives trans-
 14 action execution facility”.

15 (3) Section 4 of the Commodity Exchange Act
 16 (7 U.S.C. 6) is amended—

17 (A) in subsection (a)—

18 (i) by inserting “exempted by oper-
 19 ation of section 5d or unless” after “Un-
 20 less”;

21 (ii) in paragraph (1), by striking
 22 “designated by the Commission as a ‘con-
 23 tract market’ for” and inserting “des-
 24 igned or registered by the Commission as

1 a contract market or derivatives trans-
2 action execution facility for”;

3 (iii) in paragraph (2), by striking
4 “member of such”; and

5 (iv) in paragraph (3), by inserting “or
6 derivatives transaction execution facility”
7 after “contract market”; and

8 (B) in subsection (c)—

9 (i) in paragraph (1)—

10 (I) by striking “designated as a
11 contract market” and inserting “des-
12 ignated or registered as a contract
13 market or derivatives transaction exe-
14 cution facility”; and

15 (II) by striking “section
16 2(a)(1)(B)” and inserting “section
17 2(g)”; and

18 (ii) in paragraph (2)(B)(ii), by insert-
19 ing “or derivatives transaction execution
20 facility” after “contract market”.

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

23 (A) in subsection (a)—

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

4 (ii) in the second sentence, by insert-
5 ing “or derivatives transaction execution
6 facility” after “contract market”;

7 (B) in subsection (b), by inserting “or de-
8 rivatives transaction execution facility” after
9 “contract market” each place it appears; and

10 (C) in subsection (c)—

11 (i) by striking “contract market or”
12 each place it appears and inserting “con-
13 tract market, derivatives transaction execu-
14 tion facility, or”;

15 (ii) by striking “licensed or des-
16 igned” each place it appears and insert-
17 ing “licensed, designated, or registered”;
18 and

19 (iii) by striking “contract market, or”
20 and inserting “contract market or deriva-
21 tives transaction execution facility, or”.

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

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

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

8 (A) in subsection (b), by striking “clear-
9 inghouse and contract market” and inserting
10 “registered entity”; and

11 (B) in subsection (f), by striking “clearing-
12 houses, contract markets, and exchanges” and
13 inserting “registered entities”.

14 (8) Section 4h of the Commodity Exchange Act
15 (7 U.S.C. 6h) is amended by striking “contract mar-
16 ket” each place it appears and inserting “registered
17 entity”.

18 (9) Section 4i of the Commodity Exchange Act
19 (7 U.S.C. 6i) is amended in the first sentence by in-
20 serting “or derivatives transaction execution facility”
21 after “contract market”.

22 (10) Section 4j of the Commodity Exchange
23 Act (7 U.S.C. 6j) is repealed.

24 (11) Section 4l of the Commodity Exchange Act
25 (7 U.S.C. 6l) is amended by inserting “or derivatives

1 transaction execution facilities” after “contract mar-
2 kets” each place it appears.

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

5 (A) in the third sentence of subsection (a),
6 by striking “Act or contract markets” and in-
7 serting “Act, contract markets, or derivatives
8 transaction execution facilities”; and

9 (B) in subsection (b), by inserting “deriva-
10 tives transaction execution facility,” after “con-
11 tract market,”.

12 (13) The Commodity Exchange Act (as amend-
13 ed by paragraphs (10), (11), and (12)) is amended
14 by redesignating section 4k through 4p (7 U.S.C. 6k
15 through 6p) as sections 4j through 4o, respectively.

16 (14) Section 6 of the Commodity Exchange Act
17 (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

18 (A) in subsection (a)—

19 (i) in the first sentence—

20 (I) by striking “board of trade
21 desiring to be designated a ‘contract
22 market’ shall make application to the
23 Commission for such designation” and
24 inserting “person desiring to be des-
25 ignated or registered as a registered

1 entity shall make application to the
2 Commission for such designation or
3 registration”;

4 (H) by striking “above condi-
5 tions” and inserting “conditions set
6 forth in this Act”; and

7 (III) by striking “above require-
8 ments” and inserting “the require-
9 ments of this Act”;

10 (ii) in the second sentence, by striking
11 “designation as a contract market within
12 one year” and inserting “designation or
13 registration as a registered entity within
14 180 days”;

15 (iii) in the third sentence—

16 (I) by striking “board of trade”
17 and inserting “person”; and

18 (H) by striking “one-year period”
19 and inserting “180-day period”; and

20 (iv) in the last sentence, by striking
21 “designate as a ‘contract market’ any
22 board of trade that has made application
23 therefor, such board of trade” and insert-
24 ing “designate or register as a registered

1 entity any person that has made applica-
2 tion therefor, such person”;

3 ~~(B)~~ in subsection (b)—

4 (i) in the first sentence—

5 (I) by striking “designation of
6 any board of trade as a ‘contract mar-
7 ket’ upon” and inserting “designation
8 or registration of any registered entity
9 on”;

10 (II) by striking “board of trade”
11 each place it appears and inserting
12 “registered entity”; and

13 (III) by striking “designation as
14 set forth in section 5 of this Act” and
15 inserting “designation or registration
16 as set forth in sections 5 through 5c”;

17 (ii) in the second sentence—

18 (I) by striking “board of trade”
19 the first place it appears and inserting
20 “registered entity”; and

21 (II) by striking “board of trade”
22 the second and third places it appears
23 and inserting “person”; and

1 (iii) in the last sentence, by striking
2 “board of trade” each place it appears and
3 inserting “person”;

4 (C) in subsection (c)—

5 (i) by striking “contract market” each
6 place it appears and inserting “registered
7 entity”;

8 (ii) by striking “contract markets”
9 each place it appears and inserting “reg-
10 istered entities”; and

11 (iii) by striking “trading privileges”
12 each place it appears and inserting “privi-
13 leges”;

14 (D) in subsection (d), by striking “contract
15 market” each place it appears and inserting
16 “registered entity”; and

17 (E) in subsection (e), by striking “trading
18 on all contract markets” each place it appears
19 and inserting “the privileges of all registered
20 entities”.

21 (15) Section 6a of the Commodity Exchange
22 Act (7 U.S.C. 10a) is amended—

23 (A) in the first sentence of subsection (a),
24 by striking “designated as a ‘contract market’
25 shall” and inserting “designated or registered

1 as a contract market or a derivatives trans-
2 action execution facility”]; and

3 (B) in subsection (b), by striking “des-
4 ignated as a contract market” and inserting
5 “designated or registered as a contract market
6 or a derivatives transaction execution facility”.

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

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

12 (B) in the first sentence, by striking “des-
13 ignation as set forth in section 5 of this Act”
14 and inserting “designation or registration as set
15 forth in sections 5 through 5e”; and

16 (C) in the last sentence, by striking “the
17 contract market’s ability” and inserting “the
18 ability of the registered entity”.

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

22 (18) Section 6d(1) of the Commodity Exchange
23 Act (7 U.S.C. 13a-2(1)) is amended by inserting
24 “derivatives transaction execution facility,” after
25 “contract market.”

1 (19) Section 7 of the Commodity Exchange Act
2 (7 U.S.C. 11) is amended—

3 (A) in the first sentence—

4 (i) by striking “board of trade” and
5 inserting “person”;

6 (ii) by inserting “or registered” after
7 “designated”;

8 (iii) by inserting “or registration”
9 after “designation” each place it appears;
10 and

11 (iv) by striking “contract market”
12 each place it appears and inserting “reg-
13 istered entity”;

14 (B) in the second sentence—

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

19 (ii) by striking “contract markets”
20 and inserting “registered entities”; and

21 (C) in the last sentence—

22 (i) by striking “board of trade” and
23 inserting “person”; and

24 (ii) by striking “designated again a
25 contract market” and inserting “des-

1 ignated or registered again a registered en-
2 tity”.

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

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

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

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

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

18 (23) Section 8e of the Commodity Exchange
19 Act (7 U.S.C. 12e) is amended—

20 (A) by striking “contract market” each
21 place it appears and inserting “registered enti-
22 ty”;

23 (B) in subsection (a), by striking “section
24 5a(b)” and inserting “sections 5 through 5c”;

25 (C) in subsection (b)—

1 (i) in paragraph (1), by striking “a
 2 contract market’s trade monitoring system
 3 implemented pursuant to section 5a(b)”
 4 and inserting “the trade monitoring system
 5 of a registered entity implemented pursu-
 6 ant to sections 5 through 5e”;

7 (ii) by striking paragraph (3) and in-
 8 serting the following:

9 “(3) REMEDIES.—On becoming final, the Com-
 10 mission deficiency order may require the registered
 11 entity to—

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

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

17 “(C) upgrade or reconfigure existing sys-
 18 tems for collecting or processing relevant data
 19 on trading and trader or broker activity, includ-
 20 ing, where appropriate, the commitment of ad-
 21 ditional resources.”; and

22 (iii) in paragraph (5)—

23 (I) in the paragraph heading, by
 24 striking “DESIGNATION AS CONTRACT
 25 MARKET” and inserting “DESIGNA-

1 TION OR REGISTRATION AS REG-
2 ISTERED ENTITY”;

3 (H) by inserting “or registra-
4 tion” after “designation”; and

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

7 (D) in subsection (d)(2), by striking “sec-
8 tion 5b” and inserting “section 5e”; and

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

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

14 (A) by striking “contract market” each
15 place it appears and inserting “registered enti-
16 ty”; and

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

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

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

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

1 (26) Sections 15 and 17 of the Commodity Ex-
 2 change Act (7 U.S.C. 19, 21) are amended by strik-
 3 ing “contract market” each place it appears and in-
 4 serting “registered entity”.

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

7 (A) in subsection (a)—

8 (i) in paragraph (1)—

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

13 (II) in subparagraph (C)(i), by
 14 striking “contract market” and insert-
 15 ing “registered entity”;

16 (ii) in paragraph (2), by striking “sec-
 17 tions 5a(11),” and inserting “sections
 18 5(d)(13), 5b(d)(2)(H)(i),”; and

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

22 (B) in subsection (b)—

23 (i) in paragraph (1)—

24 (I) by striking “contract market
 25 or clearing organization of a contract

1 market” and inserting “registered en-
2 tity”;

3 (II) by striking “section 5a(8)
4 and section 5a(9) of this Act” and in-
5 serting “sections 5 through 5e”;

6 (III) by striking “contract mar-
7 ket, clearing organization of a con-
8 tract market, or licensed board of
9 trade” and inserting “registered enti-
10 ty”; and

11 (IV) by striking “contract market
12 or licensed board of trade” and insert-
13 ing “registered entity”;

14 (ii) in paragraph (3)—

15 (I) by striking “a contract mar-
16 ket, clearing organization, licensed
17 board of trade,” and inserting “reg-
18 istered entity”; and

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

22 (iii) in paragraph (4), by striking
23 “contract market, licensed board of trade,
24 clearing organization,” and inserting “reg-
25 istered entity”; and

1 (iv) in paragraph (5), by striking
 2 “contract market, licensed board of trade,
 3 clearing organization,” and inserting “reg-
 4 istered entity”.

5 (b) FEDERAL DEPOSIT INSURANCE CORPORATION
 6 IMPROVEMENT ACT OF 1991.—Section 402(2) of the Fed-
 7 eral Deposit Insurance Corporation Improvement Act of
 8 1991 (12 U.S.C. 4402(2)) is amended by striking sub-
 9 paragraph (B) and inserting the following:

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

13 (c) REVISED STATUTES.—Chapter three of title LXII
 14 of the Revised Statutes is amended by adding at the end
 15 the following:

16 **“SEC. 5220. SWAP AGREEMENTS.**

17 “(a) IN GENERAL.—The term ‘swap agreement’
 18 means—

19 “(1) an individually negotiated contract, agree-
 20 ment, warrant, note, option, or transaction that is
 21 based, in whole or in part, on the occurrence of any
 22 event, or on the value of, any interest in, or any
 23 quantitative measure relating to, 1 or more commod-
 24 ities, securities, currencies, interest rates, indices,
 25 other rates, or other assets;

1 “(2) any other agreement or combination of
2 agreements that is similar to a contract, agreement,
3 warrant, note, option, or transaction described in
4 paragraph (1); and

5 “(3) an option to enter into a contract, agree-
6 ment, warrant, note, or option described in para-
7 graph (1) or an agreement described in paragraph
8 (2).

9 “(b) INCLUSIONS.—The term ‘swap agreement’ in-
10 cludes a master swap agreement, and all supplements to
11 a master swap agreement, without regard to whether the
12 master swap agreement contains a contract, agreement,
13 warrant, note, option, or transaction that is not a swap
14 agreement described in subsection (a), but only to the ex-
15 tent that the master swap agreement contains such a con-
16 tract, agreement, warrant, note, option, or transaction.”.

17 (d) GRAMM-LEACH-BLILEY ACT.—Section 206 of the
18 Gramm-Leach-Bliley Act (15 U.S.C. 78e note; Public Law
19 106–102) is amended—

20 (1) in subsection (a), by striking paragraph (6)
21 and inserting the following:

22 “(6) a swap agreement (as defined in section
23 5220 of the Revised Statutes).”;

24 (2) by striking subsection (b); and

1 (3) by redesignating subsections (c) and (d) as
2 subsections (b) and (e), respectively.

3 (c) SECURITIES ACT OF 1933.—The Securities Act
4 of 1933 (15 U.S.C. 77a et seq.) is amended by inserting
5 after section 3 the following:

6 **“SEC. 3A. 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-
11 action, or product over which the Commission is not
12 explicitly granted jurisdiction or enforcement author-
13 ity under this Act; or

14 “(2) a swap agreement (as defined in section
15 5220 of the Revised Statutes), without regard to
16 whether the swap agreement is entered into or en-
17 gaged in by a depository institution (as defined in
18 section 3 of the Federal Deposit Insurance Act (12
19 U.S.C. 1813)).”.

20 (f) SECURITIES EXCHANGE ACT OF 1934.—The Se-
21 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
22 is amended by inserting after section 3 the following:

1 **“SEC. 3A. SWAP AGREEMENTS.**

2 “Nothing in this Act (including regulations under
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-
12 gaged in by a depository institution (as defined in
13 section 3 of the Federal Deposit Insurance Act (12
14 U.S.C. 1813)).”.

15 (g) TRUST INDENTURE ACT OF 1939.—The Trust
16 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
17 amended by inserting after section 304 the following:

18 **“SEC. 304A. SWAP AGREEMENTS.**

19 “Nothing in this Act (including regulations under
20 this Act) authorizes the Commission to regulate, super-
21 vise, or otherwise subject to oversight—

22 “(1) an activity, agreement, instrument, trans-
23 action, or product over which the Commission is not
24 explicitly granted jurisdiction or enforcement author-
25 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 (h) INVESTMENT COMPANY ACT OF 1940.—The In-
8 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
9 is amended by inserting after section 6 the following:

10 **“SEC. 6A. SWAP AGREEMENTS.**

11 “Nothing in this Act (including regulations under
12 this Act) authorizes the Commission to regulate, super-
13 vise, or otherwise subject to oversight—

14 “(1) an activity, agreement, instrument, trans-
15 action, or product over which the Commission is not
16 explicitly granted jurisdiction or enforcement author-
17 ity under this Act; or

18 “(2) a swap agreement (as defined in section
19 5220 of the Revised Statutes), without regard to
20 whether the swap agreement is entered into or en-
21 gaged in by a depository institution (as defined in
22 section 3 of the Federal Deposit Insurance Act (12
23 U.S.C. 1813)).”.

1 (i) INVESTMENT ADVISERS ACT OF 1940.—The In-
 2 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
 3 is amended by inserting after section 206A the following:

4 **“SEC. 206B. 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
 10 explicitly granted jurisdiction or enforcement author-
 11 ity under this Act; or

12 “(2) a swap agreement (as defined in section
 13 5220 of the Revised Statutes), without regard to
 14 whether the swap agreement is entered into or en-
 15 gaged in by a depository institution (as defined in
 16 section 3 of the Federal Deposit Insurance Act (12
 17 U.S.C. 1813)).”.

18 (j) PUBLIC UTILITY HOLDING COMPANY ACT OF
 19 1935.—The Public Utility Holding Company Act of 1935
 20 (15 U.S.C. 79 et seq.) is amended by inserting after sec-
 21 tion 34 the following:

22 **“SEC. 34A. SWAP AGREEMENTS.**

23 “Nothing in this Act (including regulations under
 24 this Act) authorizes the Commission to regulate, super-
 25 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 (k) SECURITIES INVESTOR PROTECTION ACT OF
12 1970.—The Securities Investor Protection Act of 1970
13 (15 U.S.C. 78aaa et seq.) is amended by adding at the
14 end the following:

15 **“SEC. 17. SWAP AGREEMENTS.**

16 “Nothing in this Act (including regulations under
17 this Act) authorizes the Commission to regulate, super-
18 vise, or otherwise subject to oversight—

19 “(1) an activity, agreement, instrument, trans-
20 action, or product over which the Commission is not
21 explicitly granted jurisdiction or enforcement author-
22 ity under this Act; or

23 “(2) a swap agreement (as defined in section
24 5220 of the Revised Statutes), without regard to
25 whether the swap agreement is entered into or en-

1 gaged in by a depository institution (as defined in
 2 section 3 of the Federal Deposit Insurance Act (12
 3 U.S.C. 1813)).”.

4 **SEC. 24. EFFECTIVE DATE.**

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

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

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

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

15 (b) *TABLE OF CONTENTS.*—The table of contents of this
 16 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. Exempted transactions.

Sec. 10. Finding and purposes.

Sec. 11. Prohibited transactions.

Sec. 12. Designation of boards of trade as contract markets.

Sec. 13. Derivatives transaction execution facilities.

Sec. 14. Derivatives clearing organizations.

Sec. 15. Common provisions applicable to registered entities.

Sec. 16. Exempt boards of trade.

Sec. 17. Suspension or revocation of designation as contract market.

Sec. 18. Authorization of appropriations.

Sec. 19. Preemption.

- Sec. 20. Predispute resolution agreements for institutional customers.*
Sec. 21. Consideration of costs and benefits and antitrust laws.
Sec. 22. Contract enforcement between eligible counterparties.
Sec. 23. Legal certainty for swap agreements.
Sec. 24. Commission oversight; deficiency orders.
Sec. 25. Technical and conforming amendments.
Sec. 26. 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 reg-*
 6 *ulation for the commodity futures exchanges and*
 7 *other entities regulated under the Commodity Ex-*
 8 *change Act;*

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

12 *(4) to provide a legislative and regulatory frame-*
 13 *work for allowing the trading of futures on non-*
 14 *exempted securities;*

15 *(5) to clarify the jurisdiction of the Commission*
 16 *over certain retail foreign exchange futures and op-*
 17 *tion transactions and bucket shops that are not other-*
 18 *wise regulated;*

19 *(6) to promote innovation for futures and de-*
 20 *rivatives and to reduce systemic risk by enhancing*
 21 *legal certainty in the markets for certain futures and*
 22 *derivatives;*

1 (7) to reduce systemic risk and provide greater
2 stability to markets during times of market disorder
3 by allowing the clearing of transactions in over-the-
4 counter derivatives through appropriately regulated
5 clearing organizations; and

6 (8) to enhance the competitive position of United
7 States financial institutions and financial markets.

8 **SEC. 3. DEFINITIONS.**

9 Section 1a of the Commodity Exchange Act (7 U.S.C.
10 1a) is amended—

11 (1) by redesignating paragraphs (8) through
12 (12), (13) through (15), and (16) as paragraphs (17)
13 through (21), (23) through (25), and (29), respec-
14 tively;

15 (2) by inserting after paragraph (7) the fol-
16 lowing:

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

18 “(A) *IN GENERAL.*—The term ‘derivatives
19 clearing organization’ means a clearinghouse,
20 clearing association, clearing corporation, or
21 similar entity, facility, system, or organization
22 that, with respect to a derivative agreement, con-
23 tract, or transaction (other than a security)—

24 “(i) enables each party to the deriva-
25 tive agreement, contract, or transaction to

1 *substitute, through novation or otherwise,*
2 *the credit of the derivatives clearing organi-*
3 *zation for the credit of the parties;*

4 “(ii) *arranges or provides, on a multi-*
5 *lateral basis, for the settlement or netting of*
6 *obligations resulting from such agreements,*
7 *contracts, or transactions executed by par-*
8 *ticipants in the derivatives clearing organi-*
9 *zation; or*

10 “(iii) *otherwise provides clearing serv-*
11 *ices or arrangements that mutualize or*
12 *transfer among participants in the deriva-*
13 *tives clearing organization the credit risk*
14 *arising from such agreements, contracts, or*
15 *transactions executed by the participants.*

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

20 “(i) *settlement, netting, or novation of*
21 *obligations resulting from agreements, con-*
22 *tracts, or transactions, on a bilateral basis*
23 *and without a centralized counterparty;*

1 “(ii) settlement or netting of cash pay-
2 ments through an interbank payment sys-
3 tem; or

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

8 “(9) *DESIGNATED FUTURE ON A SECURITY*.—The
9 term ‘designated future on a security’ means a con-
10 tract of sale (or option on such a contract) for future
11 delivery of—

12 “(A) a single nonexempted security;

13 “(B) an index based on fewer than 5 non-
14 exempted securities; or

15 “(C) an index in which during at least 3 of
16 the 4 calendar quarters preceding the date of any
17 transaction in the index, a single nonexempted
18 security accounted for a daily average of 30 per-
19 cent or more of the value of the index.

20 “(10) *ELECTRONIC TRADING FACILITY*.—The
21 term ‘electronic trading facility’ means a trading fa-
22 cility that—

23 “(A) operates by means of an electronic net-
24 work; and

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

4 “(11) *ELIGIBLE COMMERCIAL PARTICIPANT.*—
5 The term ‘eligible commercial participant’ means an
6 eligible contract participant described in clause (i),
7 (ii), (v), or (vii) of paragraph (12)(A) or in subpara-
8 graph (12)(C) that—

9 “(A) in connection with its business has a
10 demonstrable capacity or ability, directly or
11 through separate contractual agreements, to
12 make or take delivery of the underlying physical
13 commodity;

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

16 “(C) is a dealer that regularly provides
17 hedging, risk management, or market-making
18 services to such eligible contract participants.

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

21 “(A) acting for its own account—

22 “(i) a financial institution;

23 “(ii) an insurance company (as de-
24 fined in section 2 of the Bank Holding
25 Company Act of 1956 (12 U.S.C. 1841));

1 “(iii) an investment company subject
2 to regulation under the Investment Com-
3 pany Act of 1940 (15 U.S.C. 80a–1 et seq.)
4 or a foreign person performing a similar
5 role or function subject as such to foreign
6 regulation (regardless of whether each inves-
7 tor in the investment company or the for-
8 eign person is itself an eligible contract par-
9 ticipant);

10 “(iv) a commodity pool that—

11 “(I) has total assets exceeding
12 \$5,000,000; and

13 “(II) is formed and operated by a
14 person subject to regulation under this
15 Act or a foreign person performing a
16 similar role or function subject as such
17 to foreign regulation (regardless of
18 whether each investor in the com-
19 modity pool or the foreign person is
20 itself an eligible contract participant);

21 “(v) a corporation, partnership, pro-
22 prietorship, organization, trust, or other
23 entity—

24 “(I) that has total assets exceeding
25 \$10,000,000;

1 “(II) the obligations of which
2 under an agreement, contract, or
3 transaction are guaranteed or other-
4 wise supported by a letter of credit or
5 keepwell, support, or other agreement
6 by an entity described in subclause (I),
7 in clause (i), (ii), (iii), (iv), or (vii),
8 or in subparagraph (C); or

9 “(III) that—

10 “(aa) has a net worth exceed-
11 ing \$1,000,000; and

12 “(bb) enters into an agree-
13 ment, contract, or transaction in
14 connection with the conduct of the
15 entity’s business or to manage the
16 risk associated with an asset or li-
17 ability owned or incurred or rea-
18 sonably likely to be owned or in-
19 curred by the entity in the con-
20 duct of the entity’s business;

21 “(vi) an employee benefit plan subject
22 to the Employee Retirement Income Secu-
23 rity Act of 1974 (29 U.S.C. 1001 et seq.) or
24 a foreign person performing a similar role

1 *or function subject as such to foreign*
2 *regulation—*

3 “(I) *that has total assets exceeding*
4 *\$5,000,000; or*

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

7 “(aa) *an investment adviser*
8 *subject to regulation under the In-*
9 *vestment Advisers Act of 1940 (15*
10 *U.S.C. 80b–1 et seq.) or a com-*
11 *modity trading advisor subject to*
12 *regulation under this Act;*

13 “(bb) *a foreign person per-*
14 *forming a role or function similar*
15 *to that of such an investment ad-*
16 *viser or commodity trading advi-*
17 *sor subject to foreign regulation in*
18 *the performance of that role or*
19 *function;*

20 “(cc) *a financial institution;*
21 *or*

22 “(dd) *an insurance company*
23 *(as defined in section 2 of the*
24 *Bank Holding Company Act of*
25 *1956 (12 U.S.C. 1841));*

1 “(vii)(I) a governmental entity (in-
2 cluding the United States, a State, or a for-
3 eign government) or political subdivision of
4 a governmental entity;

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

7 “(III) an instrumentality, agency, or
8 department of an entity described in sub-
9 clause (I) or (II);

10 “(viii) a broker or dealer subject to reg-
11 ulation under the Securities Exchange Act
12 of 1934 (15 U.S.C. 78a et seq.) or a foreign
13 person performing a similar role or func-
14 tion subject as such to foreign regulation,
15 except that, if the broker or dealer or foreign
16 person is a natural person or proprietor-
17 ship, the broker or dealer or foreign person
18 shall not be considered to be an eligible con-
19 tract participant unless the broker or dealer
20 or foreign person also meets the require-
21 ments of clause (v) or (xi);

22 “(ix) a futures commission merchant
23 subject to regulation under this Act or a for-
24 eign person performing a similar role or
25 function subject as such to foreign regula-

1 tion, except that, if the futures commission
2 merchant or foreign person is a natural
3 person or proprietorship, the futures com-
4 mission merchant or foreign person shall
5 not be considered to be an eligible contract
6 participant unless the futures commission
7 merchant or foreign person also meets the
8 requirements of clause (v) or (xi);

9 “(x) a floor broker or floor trader sub-
10 ject to regulation under this Act, to the ex-
11 tent that the floor broker or floor trader
12 trades on or through the facilities of a reg-
13 istered entity or exempt board of trade or
14 any affiliate of a registered entity or exempt
15 board of trade; or

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

18 “(B)(i) a person described in any of clauses
19 (i) through (x) of subparagraph (A) or in sub-
20 paragraph (C), acting as broker or performing
21 an equivalent agency function on behalf of an-
22 other person described in subparagraph (A) or
23 (C); or

1 “(i)(I) an investment adviser subject to
2 regulation under the Investment Advisers Act of
3 1940 (15 U.S.C. 80b–1 et seq.);

4 “(II) a commodity trading advisor subject
5 to regulation under this Act;

6 “(III) a foreign person performing a role or
7 function similar to that of such an investment
8 adviser or commodity trading advisor subject to
9 foreign regulation in the performance of that role
10 or function; or

11 “(IV) a person described in any of clauses
12 (i) through (x) of subparagraph (A) or in sub-
13 paragraph (C), that is acting as an investment
14 manager or fiduciary (but excluding a person
15 acting as a broker or performing an equivalent
16 agency function) for another person described in
17 subparagraph (A) or (C) and that is authorized
18 by the other person to commit the other person
19 to the transaction; or

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

23 “(13) EXCLUSION-ELIGIBLE COMMODITY.—

24 “(A) IN GENERAL.—The term ‘exclusion-eli-
25 gible commodity’ means—

1 “(i) a financial commodity; and

2 “(ii) a commodity that has no cash
3 market.

4 “(B) *EXCLUSION.*—The term ‘exclusion-eli-
5 gible commodity’ does not include any com-
6 modity described in paragraph (3) that is an ag-
7 ricultural commodity.

8 “(14) *EXEMPTED SECURITY.*—

9 “(A) *IN GENERAL.*—The term ‘exempted se-
10 curity’ means a security that is an exempted se-
11 curity under section 3(a) of the Securities Act of
12 1933 (15 U.S.C. 77c(a)) or section 3(a) of the
13 Securities Exchange Act of 1934 (15 U.S.C.
14 78c(a)).

15 “(B) *EXCLUSION.*—The term ‘exempted se-
16 curity’ does not include a municipal security (as
17 defined in section 3(a) of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78c(a))).

19 “(15) *FINANCIAL COMMODITY.*—The term ‘finan-
20 cial commodity’ means—

21 “(A) an interest rate, exchange rate, cur-
22 rency, security, security index, credit risk, debt
23 or equity instrument, or index or measure of in-
24 flation; or

1 “(B) any other rate, differential, index, or
2 measure of economic risk, return, or value (ex-
3 cluding any rate, differential, index, or measure
4 based on a commodity not described in subpara-
5 graph (A) that has a finite supply).

6 “(16) *FINANCIAL INSTITUTION*.—The term ‘fi-
7 nancial institution’ means—

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

12 “(B) a corporation organized under section
13 25A of the Federal Reserve Act (12 U.S.C. 611
14 et seq.), commonly known as an ‘Edge Act cor-
15 poration’;

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

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

21 “(E) a depository institution (as defined in
22 section 3 of the Federal Deposit Insurance Act
23 (12 U.S.C. 1813));

24 “(F) a foreign bank or a branch or agency
25 of a foreign bank (each as defined in section 1(b)

1 *of the International Banking Act of 1978 (12*
2 *U.S.C. 3101(b))*);

3 “(G) *a trust company; or*

4 “(H) *a regulated subsidiary or affiliate of*
5 *an entity described in any of subparagraphs (A)*
6 *through (G).*”;

7 (3) *by inserting after paragraph (21) (as redес-*
8 *ignated by paragraph (1)) the following:*

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

15 (4) *by inserting after paragraph (25) (as redес-*
16 *ignated by paragraph (1)) the following:*

17 “(26) *NATIONAL SECURITIES EXCHANGE.—The*
18 *term ‘national securities exchange’ means—*

19 “(A) *an exchange that is registered as a na-*
20 *tional securities exchange under section 6 of the*
21 *Securities Exchange Act of 1934 (15 U.S.C. 78f);*

22 *or*

23 “(B) *an association that is registered as a*
24 *national securities association under section 15A*

1 *of the Securities Exchange Act of 1934 (15*
2 *U.S.C. 78o-3).*

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

8 “(28) *ORGANIZED EXCHANGE.*—*The term ‘orga-*
9 *nized exchange’ means a trading facility that—*

10 “(A) *permits—*

11 “(i) *trading by or on behalf of a person*
12 *that is not an eligible contract participant;*
13 *or*

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

16 “(B) *has adopted (directly or through an-*
17 *other nongovernmental entity) rules that—*

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

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

25 (5) *by adding at the end the following:*

1 “(30) *REGISTERED ENTITY*.—The term ‘reg-
2 *istered entity*’ means—

3 “(A) *a board of trade designated as a con-*
4 *tract market under section 5;*

5 “(B) *a derivatives transaction execution fa-*
6 *cility registered under section 5a; or*

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

9 “(31) *SECURITY*.—The term ‘*security*’ has the
10 *meaning given the term in section 3(a) of the Securi-*
11 *ties Exchange Act of 1934 (15 U.S.C. 78c(a)).*

12 “(32) *TRADING FACILITY*.—

13 “(A) *IN GENERAL*.—The term ‘*trading facil-*
14 *ity*’ means *a person or group of persons that*
15 *constitutes, maintains, or provides a physical or*
16 *electronic facility or system in which multiple*
17 *participants have the ability to execute or trade*
18 *agreements, contracts, or transactions by accept-*
19 *ing bids and offers made by other participants*
20 *that are open to multiple participants in the fa-*
21 *cility or system.*

22 “(B) *EXCLUSIONS*.—The term ‘*trading fa-*
23 *cility*’ does not include—

24 “(i) *a person or group of persons solely*
25 *because the person or group of 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 communications
7 exchanged between the participants
8 and not from interaction of multiple
9 orders within a centralized, predeter-
10 mined, nondiscretionary, automated
11 trade matching algorithm; or

12 “(II)(aa) is a derivatives clearing
13 organization; or

14 “(bb) permits participants to sub-
15 mit agreements, contracts, or trans-
16 actions to a derivatives clearing orga-
17 nization;

18 “(ii) a government securities dealer or
19 government securities broker, to the extent
20 that the dealer or broker executes or trades
21 agreements, contracts, or transactions in
22 government securities, or assists persons in
23 communicating about, negotiating, entering
24 into, executing, or trading an agreement,
25 contract, or transaction in government secu-

1 *rities (as the terms ‘government securities*
 2 *dealer’, ‘government securities broker’, and*
 3 *‘government securities’ are defined in sec-*
 4 *tion 3(a) of the Securities Exchange Act of*
 5 *1934 (15 U.S.C. 78c(a)); or*

6 *“(iii) a facility on which bids and of-*
 7 *fers and acceptances of bids and offers ef-*
 8 *fecting on the facility are not binding.”.*

9 **SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN**
 10 **FOREIGN CURRENCY, GOVERNMENT SECURI-**
 11 **TIES, AND CERTAIN OTHER COMMODITIES.**

12 *Section 2 of the Commodity Exchange Act (7 U.S.C.*
 13 *2, 2a, 3, 4, 4a) is amended by adding at the end the fol-*
 14 *lowing:*

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

18 *“(1) IN GENERAL.—Except as provided in para-*
 19 *graph (2), nothing in this Act (other than section 5b*
 20 *or 12(e)(2)(B)) governs or applies to an agreement,*
 21 *contract, or transaction in—*

22 *“(A) foreign currency;*

23 *“(B) government securities;*

24 *“(C) security warrants;*

25 *“(D) security rights;*

1 “(E) sales and resales of installment loan
2 contracts;

3 “(F) purchase transactions and repurchase
4 transactions in a financial commodity; or

5 “(G) mortgages or mortgage purchase or
6 sale commitments.

7 “(2) COMMISSION JURISDICTION.—

8 “(A) AGREEMENTS, CONTRACTS, AND
9 TRANSACTIONS THAT ARE FUTURES TRADED ON
10 AN ORGANIZED EXCHANGE.—This Act applies to,
11 and the Commission shall have jurisdiction over,
12 an agreement, contract, or transaction described
13 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 orga-
18 nized 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 orga-
2 nized exchange that is not a national secu-
3 rities exchange.

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

9 “(i) is—

10 “(I) a contract of sale for future
11 delivery (or an option on such a con-
12 tract); or

13 “(II) an option (other than an op-
14 tion executed or traded on a national
15 securities exchange); and

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

21 “(I) a financial institution;

22 “(II) a broker or dealer registered
23 under section 15(b) or 15C of the Secu-
24 rities Exchange Act of 1934 (15 U.S.C.

1 780(b), 780-5) or a futures commission
2 merchant registered under this Act;

3 “(III) an associated person of a
4 broker or dealer registered under sec-
5 tion 15(b) or 15C of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 780(b),
7 780-5), or an affiliated person of a fu-
8 tures commission merchant registered
9 under this Act, concerning the finan-
10 cial or securities activities of which the
11 registered person makes and keeps
12 records under section 15C(b) or 17(h)
13 of the Securities Exchange Act of 1934
14 (15 U.S.C. 780-5(b), 78q(h)) or section
15 4f(c)(2)(B) of this Act;

16 “(IV) an insurance company (as
17 defined in section 2 of the Bank Hold-
18 ing Company Act of 1956 (12 U.S.C.
19 1841));

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

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

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

3 **SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**
4 **TRANSACTIONS.**

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

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

9 “(1) *IN GENERAL.—Nothing in this Act (other*
10 *than section 5b or 12(e)(2)(B)) governs or applies to*
11 *an agreement, contract, or transaction in an exclu-*
12 *sion-eligible commodity if—*

13 “(A) *the agreement, contract, or transaction*
14 *is entered into only between persons that are eli-*
15 *gible contract participants at the time at which*
16 *the persons enter into the agreement, contract, or*
17 *transaction; and*

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

20 “(2) *ELECTRONIC TRADING FACILITY EXCLU-*
21 *SION.—Nothing in this Act (other than section 5b or*
22 *12(e)(2)(B)) governs or applies to an agreement, con-*
23 *tract, or transaction in an exclusion-eligible com-*
24 *modity if—*

1 “(A) the agreement, contract, or transaction
2 is entered into on a principal-to-principal basis
3 between parties trading for their own accounts
4 or as described in section 1a(12)(B)(ii);

5 “(B) the agreement, contract, or transaction
6 is entered into only between persons that are eli-
7 gible contract participants (as defined in sub-
8 paragraph (A), (B)(ii), or (C) of section 1a(12))
9 at the time at which the persons enter into the
10 agreement, contract, or transaction; and

11 “(C) the agreement, contract, or transaction
12 is executed or traded on an electronic trading fa-
13 cility.”.

14 **SEC. 6. ELECTRONIC TRADING FACILITIES.**

15 Section 2 of the Commodity Exchange Act (7 U.S.C.
16 2, 2a, 3, 4, 4a) (as amended by section 5) is amended by
17 adding at the end the following:

18 “(e) **ELECTRONIC TRADING FACILITIES.**—

19 “(1) **IN GENERAL.**—Nothing in this Act (other
20 than section 12(e)(2)(B)) governs or is applicable to
21 an electronic trading facility that limits transactions
22 authorized to be conducted on the facility to trans-
23 actions that satisfy the requirements of subsection
24 (d)(2).

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

8 **SEC. 7. HYBRID INSTRUMENTS.**

9 *Section 2 of the Commodity Exchange Act (7 U.S.C.*
 10 *2, 2a, 3, 4, 4a) (as amended by section 6) is amended by*
 11 *adding at the end the following:*

12 “(f) *EXCLUSION FOR QUALIFYING HYBRID INSTRU-*
 13 *MENTS.*—

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

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

21 “(A) *the issuer of the hybrid instrument re-*
 22 *ceives payment in full of the purchase price of*
 23 *the hybrid instrument, substantially contempora-*
 24 *neously with delivery of the hybrid instrument;*

1 “(B) the purchaser or holder of the hybrid
2 instrument is not required to make any payment
3 to the issuer in addition to the purchase price
4 paid under subparagraph (A), whether as mar-
5 gin, settlement payment, or otherwise, during the
6 life of the hybrid instrument or at maturity;

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

10 “(D) the hybrid instrument is not marketed
11 as a contract of sale for future delivery of a com-
12 modity (or option on such a contract) subject to
13 this Act.

14 “(3) *MARK-TO-MARKET MARGINING REQUIRE-*
15 *MENTS.—For the purposes of paragraph (2)(C),*
16 *mark-to-market margining requirements do not in-*
17 *clude the obligation of an issuer of a secured debt in-*
18 *strument to increase the amount of collateral held in*
19 *pledge for the benefit of the purchaser of the secured*
20 *debt instrument to secure the repayment obligations of*
21 *the issuer under the secured debt instrument.”.*

22 **SEC. 8. FUTURES ON SECURITIES.**

23 (a) *IN GENERAL.—Section 2 of the Commodity Ex-*
24 *change Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section*
25 *7) is amended by adding at the end the following:*

1 “(g) *FUTURES ON SECURITIES.*—

2 “(1) *EXCLUSIONS.*—

3 “(A) *EXCLUSION OF OVER-THE-COUNTER*
4 *EQUITY INSTRUMENTS.*—*Nothing in this sub-*
5 *section governs or applies to—*

6 “(i) *an agreement, contract, or trans-*
7 *action that is excluded under subsection (c)*
8 *or (d);*

9 “(ii) *an electronic trading facility that*
10 *is excluded under subsection (e); or*

11 “(iii) *a hybrid instrument that is cov-*
12 *ered by an exclusion under subsection (f) or*
13 *an exemption granted by the Commission*
14 *under section 4(c) (whether or not the hy-*
15 *brid instrument is otherwise subject to this*
16 *Act).*

17 “(B) *EXCLUSION OF SECURITY OPTIONS.*—

18 *This Act does not apply to, and the Commission*
19 *shall have no jurisdiction to designate a board of*
20 *trade as a contract market or register a deriva-*
21 *tives transaction execution facility for, any*
22 *transaction under which a party to the trans-*
23 *action acquires an option on 1 or more securi-*
24 *ties, group or index of securities, or interest in,*

1 *or interest that is based on the value of, 1 or*
2 *more securities.*

3 “(2) *INCLUSION OF TRADING OF NONDESIGNATED*
4 *FUTURES ON SECURITIES ON A CONTRACT MARKET.—*

5 “(A) *IN GENERAL.—This Act applies to,*
6 *and the Commission shall have exclusive juris-*
7 *isdiction with respect to and may designate a*
8 *board of trade as a contract market in, accounts,*
9 *agreements, and transactions involving a con-*
10 *tract of sale (or option on such a contract) for*
11 *future delivery of a group or index of non-*
12 *exempted securities (or an interest in, or interest*
13 *that is based on the value of, such securities),*
14 *none of which is a designated future on a secu-*
15 *rity.*

16 “(B) *REQUIREMENTS FOR DESIGNATION.—*

17 “(i) *IN GENERAL.—No board of trade*
18 *shall be designated as a contract market*
19 *with respect to any contract of sale (or op-*
20 *tion on such a contract) for future delivery*
21 *under subparagraph (A) unless—*

22 “(I) *the board of trade files with*
23 *the Commission an application for des-*
24 *ignation; and*

1 “(II) the board of trade dem-
2 onstrates and the Commission ex-
3 pressly finds that the specific contract
4 (or option on such a contract) with re-
5 spect to which the application is made
6 meets the minimum requirements of
7 clauses (ii) and (iii).

8 “(ii) MEANS OF EFFECTUATION OF
9 SETTLEMENT OR DELIVERY.—Settlement of
10 or delivery on a contract (or option on such
11 a contract) described in subparagraph (A)
12 shall be effected in cash or by means other
13 than the transfer or receipt of a security
14 other than an exempted security.

15 “(iii) SUSCEPTIBILITY TO PRICE MA-
16 NIPULATION.—Trading in a contract (or
17 option on such a contract) described in sub-
18 paragraph (A) shall not be readily suscep-
19 tible to—

20 “(I) manipulation of the price of
21 the contract (or option on such a con-
22 tract); or

23 “(II) causing or being used in the
24 manipulation of the price of any un-
25 derlying security, option on a security,

1 or option on a group or index that in-
2 cludes a security.

3 “(3) *TRADING OF DESIGNATED FUTURES ON SE-*
4 *CURITIES ON A CONTRACT MARKET OR NATIONAL SE-*
5 *CURITIES EXCHANGE.*—No person shall offer to enter
6 into, enter into, or confirm the execution of a des-
7 ignated future on a security, or an interest in or in-
8 terest that is based on the value of a designated future
9 on a security, unless the contract—

10 “(A) is transacted on or subject to the rules
11 of—

12 “(i) a board of trade that has been des-
13 ignated by the Commission as a contract
14 market for the commodity that is the subject
15 of the contract; or

16 “(ii) a securities exchange that is reg-
17 istered with the Securities and Exchange
18 Commission as a national securities ex-
19 change; and

20 “(B) meets the requirements of clauses (ii)
21 through (vii) of paragraph (4)(B).

22 “(4) *MINIMUM REQUIREMENTS FOR DESIGNATED*
23 *FUTURES ON SECURITIES TRADED ON A CONTRACT*
24 *MARKET.*—

1 “(A) *IN GENERAL.*—Subject to paragraph
2 (5), this Act applies to, and the Commission
3 shall have jurisdiction with respect to and may
4 designate a board of trade as a contract market
5 in, accounts, agreements, and transactions in-
6 volving a designated future on a security.

7 “(B) *REQUIREMENTS FOR DESIGNATION.*—

8 “(i) *IN GENERAL.*—No board of trade
9 shall be designated as a contract market
10 with respect to any contract of sale (or op-
11 tion on such a contract) under subpara-
12 graph (A) unless—

13 “(I) the board of trade files with
14 the Commission an application for des-
15 ignation; and

16 “(II) the board of trade dem-
17 onstrates and the Commission ex-
18 pressly finds that the specific contract
19 (or option on such a contract) with re-
20 spect to which the application is made
21 meets the minimum requirements of
22 clauses (ii) through (viii).

23 “(ii) *MEANS OF EFFECTUATION OF*
24 *SETTLEMENT OR DELIVERY.*—Settlement of
25 or delivery on a contract (or option on such

1 *a contract) described in subparagraph (A)*
2 *shall be effected in cash or by means other*
3 *than the transfer or receipt of a security*
4 *other than an exempted security.*

5 “(iii) *REAL-TIME AUDIT TRAIL.—*
6 *Trading in a contract (or option on such a*
7 *contract) described in subparagraph (A)*
8 *shall occur on a contract market that exe-*
9 *cutes trades by means of a system that pro-*
10 *vides a real-time audit trail.*

11 “(iv) *SUSCEPTIBILITY TO PRICE MA-*
12 *NIPULATION.—Trading in a contract (or*
13 *option on such a contract) described in sub-*
14 *paragraph (A) shall not be readily suscep-*
15 *tible to—*

16 “(I) *manipulation of the price of*
17 *the contract (or option on such a con-*
18 *tract); or*

19 “(II) *causing or being used in the*
20 *manipulation of the price of any un-*
21 *derlying security, option on a security,*
22 *or option on a group or index that in-*
23 *cludes a security.*

24 “(v) *UNDERLYING SECURITY APPROVED*
25 *FOR LISTING ON NATIONAL SECURITIES EX-*

1 *CHANGE.—Each security that underlies a*
 2 *designated future on a security shall—*

3 *“(I) meet all requirements for the*
 4 *listing of an option on that security on*
 5 *a national securities exchange: or*

6 *“(II) be the subject of options*
 7 *trading on a national securities ex-*
 8 *change.*

9 *“(vi) MARGINS FOR FUTURES CON-*
 10 *TRACTS.—*

11 *“(I) IN GENERAL.—The contract*
 12 *described in subparagraph (A) shall be*
 13 *traded on a board of trade that estab-*
 14 *lishes and maintains margin levels for*
 15 *designated futures on securities that*
 16 *are consistent with the margin levels*
 17 *established and maintained on an op-*
 18 *tion contract on the same underlying*
 19 *security that is listed on any national*
 20 *securities exchange.*

21 *“(II) CONSISTENCY.—For the*
 22 *purposes of subclause (I), a margin for*
 23 *designated futures on securities and*
 24 *options on securities shall be consid-*
 25 *ered to be consistent if the margin pro-*

1 *vides a similar level of protection*
2 *against defaults by counterparties, tak-*
3 *ing into account any differences in—*

4 *“(aa) the price volatility of*
5 *the contracts;*

6 *“(bb) the frequency with*
7 *which compliance with margin re-*
8 *quirements is assessed;*

9 *“(cc) the length of time per-*
10 *mitted to cure any margin defi-*
11 *ciency; and*

12 *“(dd) the degree of leverage*
13 *permitted by the margin.*

14 *“(vii) CONFLICTS OF INTEREST.—The*
15 *contract described in subparagraph (A)*
16 *shall be traded on a board of trade that es-*
17 *tablishes and enforces rules that protect the*
18 *customer from conflicts of interest and re-*
19 *lated trading abuses on the part of brokers*
20 *or any other person performing similar*
21 *roles or functions.*

22 *“(viii) PROVISION OF INFORMATION*
23 *NECESSARY FOR ENFORCEMENT.—The con-*
24 *tract described in subparagraph (A) shall be*
25 *traded on a board of trade that, in accord-*

1 *ance with regulations promulgated by the*
2 *Commission, collects, maintains, and*
3 *promptly provides to the Securities and Ex-*
4 *change Commission on request such infor-*
5 *mation as the Commission and the Securi-*
6 *ties and Exchange Commission jointly de-*
7 *termine to be appropriate for the perform-*
8 *ance of the enforcement responsibilities de-*
9 *scribed in paragraph (5).*

10 *“(5) SEC ENFORCEMENT AUTHORITY FOR DES-*
11 *IGNATED FUTURES ON SECURITIES CONTRACTS LIST-*
12 *ED ON A CONTRACT MARKET.—*

13 *“(A) IN GENERAL.—On notice to the Com-*
14 *mission, the Securities and Exchange Commis-*
15 *sion may enforce the provisions of the securities*
16 *laws specified in subparagraph (B) against any*
17 *person that purchases or sells a designated future*
18 *on a security to the same extent as if the person*
19 *had purchased or sold an option on a security.*

20 *“(B) PROVISIONS OF THE SECURITIES*
21 *LAWS.—The provisions of the securities laws re-*
22 *ferred to in subparagraph (A) are—*

23 *“(i) section 16 of the Securities Ex-*
24 *change Act of 1934 (15 U.S.C. 78p); and*

1 “(ii) section 10(b) of the Securities Ex-
2 change Act of 1934 (15 U.S.C. 78j(b)).

3 “(C) *AUTHORITY OF SEC.*—Nothing in this
4 paragraph expands the authority of the Securi-
5 ties and Exchange Commission with respect to
6 registered entities or contracts of sale of a com-
7 modity for future delivery (or options on such
8 contracts) except as specifically provided in this
9 paragraph.

10 “(D) *REPORT.*—Not earlier than the date
11 that is 3 years after the date of enactment of this
12 subsection, the Commission and the Securities
13 and Exchange Commission shall begin to com-
14 pile, and not later than the date that is 4 years
15 after the date of enactment of this subsection, the
16 Commission and the Securities and Exchange
17 Commission shall submit to Congress, a report
18 on the implementation of this subsection.

19 “(6) *CFTC ENFORCEMENT AUTHORITY FOR DES-*
20 *IGNATED FUTURES ON SECURITIES LISTED ON A NA-*
21 *TIONAL SECURITIES EXCHANGE.*—

22 “(A) *IN GENERAL.*—Except as provided in
23 subparagraph (B), the Securities and Exchange
24 Commission shall have jurisdiction over a des-
25 ignated future on a security to the extent that

1 *the designated future on a security is traded on*
2 *a national securities exchange.*

3 “(B) *LARGE TRADER REPORTING, ANTI-*
4 *FRAUD, AND ANTIMANIPULATION AUTHORITY.—*
5 *On notice to the Securities and Exchange Com-*
6 *mission, the Commission shall enforce sections*
7 *4b, 4i, 4o, 6(c), and 9(a)(2) against any person*
8 *that purchases or sells a designated future on a*
9 *security on a national securities exchange.*

10 “(C) *PROVISION OF INFORMATION NEC-*
11 *CESSARY FOR ENFORCEMENT.—A designated fu-*
12 *ture on a security shall be traded on a national*
13 *securities exchange that, in accordance with reg-*
14 *ulations promulgated by the Securities and Ex-*
15 *change Commission, collects, maintains, and*
16 *promptly provides to the Commission on request*
17 *such information as the Securities and Exchange*
18 *Commission and the Commission jointly deter-*
19 *mine to be appropriate for the performance of*
20 *the enforcement responsibilities described in sub-*
21 *paragraph (B).*

22 “(7) *PROCESS FOR LISTING FUTURES ON A SE-*
23 *CURITY.—*

24 “(A) *CONTRACT MARKET PROCESS.—*

1 “(i) *IN GENERAL.*—*The Commission*
2 *shall transmit to the Securities and Ex-*
3 *change Commission a copy of any applica-*
4 *tion that is submitted by a board of trade*
5 *for designation as a contract market with*
6 *respect to a contract of sale (or option on*
7 *such a contract) for future delivery of a*
8 *nonexempted security or a group or index of*
9 *nonexempted securities.*

10 “(ii) *HEARING.*—

11 “(I) *OBJECTION BY SEC.*—*If, not*
12 *later than 15 days following trans-*
13 *mittal of an application under clause*
14 *(i), the Securities and Exchange Com-*
15 *mission submits to the Commission an*
16 *objection to designation of the board of*
17 *trade as a contract market in the con-*
18 *tract (or option on such a contract)*
19 *based on evidence (including an eco-*
20 *nomie analysis of relevant factors in-*
21 *cluding benefits and costs) that any*
22 *minimum requirement under para-*
23 *graph (2)(B) or (4)(B) is not met, the*
24 *Commission shall afford the Securities*
25 *and Exchange Commission an oppor-*

1 *tunity for a hearing on the record be-*
2 *fore the Commission.*

3 “(II) *TIMING.*—*A hearing under*
4 *subclause (I) shall be held before the*
5 *Commission takes action on the appli-*
6 *cation, and not less than 30 nor more*
7 *than 45 days after the Securities and*
8 *Exchange Commission submits the ob-*
9 *jection.*

10 “(B) *NATIONAL SECURITIES EXCHANGE*
11 *PROCESS.*—

12 “(i) *IN GENERAL.*—*The Securities and*
13 *Exchange Commission shall transmit to the*
14 *Commission a copy of any application that*
15 *is submitted by a person for listing of a des-*
16 *ignated future on a security on a national*
17 *securities exchange.*

18 “(ii) *OBJECTION BY THE COMMIS-*
19 *SION.*—*If, not later than 15 days following*
20 *transmittal of an application under clause*
21 *(i), the Commission submits to the Securi-*
22 *ties and Exchange Commission an objection*
23 *to listing of a designated future on a secu-*
24 *rity on a national securities exchange based*
25 *on evidence (including an economic anal-*

1 *ysis of relevant factors including benefits*
2 *and costs) that any minimum requirement*
3 *under paragraph (4)(B) is not met, the Se-*
4 *curities and Exchange Commission shall af-*
5 *ford the Commission an opportunity for a*
6 *hearing on the record before the Securities*
7 *and Exchange Commission.*

8 “(8) *MARGIN.*—

9 “(A) *IN GENERAL.*—*Notwithstanding any*
10 *other provision of this Act, any designated con-*
11 *tract market in a contract for sale of future de-*
12 *livery of a nonexempted security or nonexempted*
13 *securities index (or option on such a contract)*
14 *shall file with the Board of Governors of the Fed-*
15 *eral Reserve System any rule establishing or*
16 *changing the level of initial margin or mainte-*
17 *nance margin for the nonexempted security or*
18 *nonexempted securities index futures contract (or*
19 *option on such a contract).*

20 “(B) *REQUEST TO SET MARGIN.*—

21 “(i) *IN GENERAL.*—*The Board may at*
22 *any time request a contract market to set*
23 *the margin for a nonexempted security or*
24 *nonexempted securities index futures con-*
25 *tract (or option on a nonexempted security*

1 or nonexempted securities index futures con-
2 tract) at a level that the Board determines
3 is appropriate to—

4 “(I) preserve the financial integ-
5 rity of the contract market or of the
6 clearing system of the contract market;

7 “(II) prevent competitive distor-
8 tions between markets offering similar
9 products; or

10 “(III) prevent systemic risk.

11 “(ii) *FAILURE TO SET MARGIN.*—If the
12 contract market fails to comply with a re-
13 quest under clause (i) within the time speci-
14 fied by the Board in the request, the Board
15 may direct the contract market to alter or
16 supplement the rules of the contract market
17 as specified in the request.

18 “(C) *DELEGATION OF AUTHORITY TO THE*
19 *COMMISSION.*—Subject to such conditions as the
20 Board may determine, the Board may delegate
21 any or all of its authority with respect to mar-
22 gin levels—

23 “(i) in the case of a designated future
24 on a security or other stock index futures
25 contract or related option, to the Commis-

1 *sion, if the contract or option is traded on*
2 *a designated contract market or derivatives*
3 *transaction execution facility; or*

4 *“(i) in the case of a designated future*
5 *on a security—*

6 *“(I) to the Securities and Ex-*
7 *change Commission, if the designated*
8 *future on a security is listed on a na-*
9 *tional securities exchange; or*

10 *“(II) to the intermarket margin*
11 *board established under subparagraph*
12 *(D).*

13 *“(D) INTERMARKET MARGIN BOARD.—*

14 *“(i) ESTABLISHMENT.—With the con-*
15 *currence of the Securities and Exchange*
16 *Commission and the Commission, the Board*
17 *may establish an intermarket margin board*
18 *consisting of the Chairman of the Board,*
19 *the Chairman of the Commission, and the*
20 *Chairman of the Securities and Exchange*
21 *Commission, or their designees.*

22 *“(ii) DUTIES.—The intermarket mar-*
23 *gin board established under clause (i) may*
24 *set and maintain margin levels and rules*
25 *pertaining to margin for a designated fu-*

1 *ture on a security listed on a contract mar-*
2 *ket or on a national securities exchange.*

3 “(iii) *REQUIREMENT AS TO DES-*
4 *IGNEES.—An individual may not be des-*
5 *ignated as a member of the intermarket*
6 *margin board unless the individual is an*
7 *officer of the United States appointed by the*
8 *President with the advice and consent of the*
9 *Senate.*

10 “(E) *RELATIONSHIP TO OTHER AUTHOR-*
11 *ITY.—Nothing in this section supersedes or limits*
12 *the authority of the Commission under section*
13 *8a(9).*

14 “(F) *JUDICIAL REVIEW.—*

15 “(i) *IN GENERAL.—Any action taken*
16 *by the Board (or by the Commission acting*
17 *under the delegation of authority under sub-*
18 *paragraph (C) or by the intermarket mar-*
19 *gin board established under subparagraph*
20 *(D)) under this paragraph directing a con-*
21 *tract market to alter or supplement a con-*
22 *tract market rule shall be subject to review*
23 *only in the United States Court of Appeals*
24 *for the judicial circuit in which the party*
25 *seeking review resides or has its principal*

1 *place of business, or in the United States*
2 *Court of Appeals for the District of Colum-*
3 *bia Circuit.*

4 “(ii) *BASIS FOR REVIEW.*—*Review*
5 *under clause (i) shall be based on the exam-*
6 *ination of all information before the Board*
7 *(or the Commission, Securities and Ex-*
8 *change Commission, or intermarket margin*
9 *board) at the time at which the action was*
10 *taken.*

11 “(iii) *STANDARD OF REVIEW.*—*The*
12 *court reviewing an action of the Board (or*
13 *the Commission, Securities and Exchange*
14 *Commission, or intermarket margin board)*
15 *shall not enter a stay or order of mandamus*
16 *unless the court determines, after notice and*
17 *hearing, that the action was arbitrary, ca-*
18 *pricious, an abuse of discretion, or other-*
19 *wise not in accordance with law.*

20 “(9) *FUTURES ON SECURITIES LISTED ON FOR-*
21 *EIGN EXCHANGES.*—*Nothing in this Act requires or*
22 *authorizes the Commission to review or approve any*
23 *contract, rule, regulation, or action adopted by a for-*
24 *foreign board of trade, exchange, or market, or a clear-*
25 *inghouse for such a board of trade, exchange, or mar-*

1 *ket, relating to any transaction involving a contract*
2 *of sale for future delivery (or option on such a con-*
3 *tract) in any security, including any foreign govern-*
4 *ment debt security, or group or index of such securi-*
5 *ties, if—*

6 *“(A)(i) in the case of a contract of sale for*
7 *future delivery (or option on such a contract) in*
8 *a single equity security, the United States is not*
9 *the primary trading market for the underlying*
10 *security; or*

11 *“(ii) in the case of a contract of sale for fu-*
12 *ture delivery (or option on such a contract) in*
13 *or involving a group or index of equity securi-*
14 *ties, less than 25 percent of the weighting of the*
15 *group or index is derived from securities for*
16 *which the United States is the primary trading*
17 *market for the securities underlying the contract*
18 *for future delivery (or option on the contract);*
19 *and*

20 *“(B) settlement of or delivery on the con-*
21 *tract for future delivery (or option on such a*
22 *contract) is to be effected in cash or by means*
23 *other than the transfer or receipt of a security in*
24 *the United States other than an exempted secu-*
25 *rity.*

1 “(10) *SUITABILITY STANDARDS.*—

2 “(A) *RULES.*—

3 “(i) *IN GENERAL.*—Not later than 270
4 days after the date of enactment of this sub-
5 section, a registered futures association shall
6 adopt rules requiring a futures commission
7 merchant, a commodity trading advisor, or
8 an introducing broker that recommends to
9 any customer the purchase or sale of a des-
10 ignated future on a security to ascertain
11 through reasonable due diligence that the
12 recommendation is suitable for that cus-
13 tomer in light of the customer’s financial
14 position and trading goals.

15 “(ii) *PROCEDURE.*—Before adopting a
16 rule under clause (i), a registered futures
17 association shall—

18 “(I) consult with the Commission
19 and the Securities and Exchange Com-
20 mission; and

21 “(II) submit the proposed rule to
22 the Commission for approval in ac-
23 cordance with section 17(j).

24 “(iii) *TIMING.*—If the Commission
25 fails to disapprove a proposed rule within

1 90 days after the date on which the rule is
2 submitted for approval, the rule shall be-
3 come effective on the day after that date.

4 “(B) COMPLIANCE.—No futures commission
5 merchant, commodity trading advisor, or intro-
6 ducing broker shall recommend to any customer
7 the purchase or sale of a designated future on a
8 security unless the futures commission merchant,
9 commodity advisor, or introducing broker com-
10 plies with the rules, adopted under subparagraph
11 (A), of a registered futures association of which
12 such merchant, advisor, or broker is a member.”.

13 (b) SENSE OF THE SENATE.—It is the sense of the Sen-
14 ate that, not later than the date on which the amendment
15 made by subsection (a) takes effect, Congress should take
16 such action as is necessary to harmonize—

17 (1) the tax treatment of equity options and des-
18 ignated futures on securities; and

19 (2) the transaction fees for equity options and
20 designated futures on securities.

21 **SEC. 9. EXEMPTED TRANSACTIONS.**

22 Section 2 of the Commodity Exchange Act (7 U.S.C.
23 2, 2a, 3, 4, 4a) (as amended by section 8(a)) is amended
24 by adding at the end the following:

25 “(h) EXEMPTED TRANSACTIONS.—

1 “(1) *EXEMPTION.*—*Except as provided in para-*
2 *graph (2) and except with respect to a contract,*
3 *agreement, or transaction in an agricultural com-*
4 *modity specified in section 1a(3), nothing in this Act*
5 *applies to a contract, agreement, or transaction—*

6 “(A) *that is entered into only between per-*
7 *sons that are eligible contract participants at the*
8 *time at which the persons enter into the contract,*
9 *agreement, or transaction;*

10 “(B) *that is not executed or traded on a*
11 *trading facility; and*

12 “(C) *except for a contract, agreement, or*
13 *transaction submitted for clearance or settlement*
14 *to a derivatives clearing organization as pro-*
15 *vided under section 5b, in which the credit-*
16 *worthiness of any party having an actual or po-*
17 *tential obligation under the contract, agreement,*
18 *or transaction would be a material consideration*
19 *in entering into or determining the terms of the*
20 *contract, agreement, or transaction (including*
21 *pricing, cost, and credit enhancement terms).*

22 “(2) *RESERVATION OF AUTHORITY.*—*A contract,*
23 *agreement, or transaction described in paragraph (1)*
24 *shall be subject to—*

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

1 “(B) sections 4b and 4n, to the extent that
2 the contract, agreement, or transaction would be
3 subject to those sections but for paragraph (1);

4 “(C) any antifraud regulation promulgated
5 by the Commission under section 4c(b), to the ex-
6 tent that the contract, agreement, or transaction
7 would be subject to that regulation but for para-
8 graph (1); and

9 “(D) sections 6(c) and 9(a)(2), to the extent
10 that those provisions prohibit manipulation of
11 the market price of any commodity in interstate
12 commerce or for future delivery and to the extent
13 the contract, agreement, or transaction would be
14 subject to those provisions but for paragraph
15 (1).”.

16 **SEC. 10. FINDING AND PURPOSES.**

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

19 **“SEC. 3. FINDING AND PURPOSES.**

20 “(a) *FINDING.—Congress finds that the futures con-*
21 *tracts and options contracts that are subject to this Act are*
22 *entered into regularly in interstate and international com-*
23 *merce and are affected with a national public interest, in*
24 *that such futures contracts and options contracts provide*
25 *a means for managing and assuming price risks, discov-*

1 *ering prices, and disseminating pricing information*
2 *through trading in liquid, fair, and financially secure trad-*
3 *ing facilities.*

4 “(b) *PURPOSES.—The purposes of this Act are—*

5 “(1) *to serve the public interest described in sub-*
6 *section (a) through a system of effective self-regulation*
7 *of trading facilities, clearing systems, market partici-*
8 *pants, and market professionals under the oversight of*
9 *the Commission; and*

10 “(2) *to authorize the Commission—*

11 “(A) *to deter and prevent price manipula-*
12 *tion or any other disruptions to market integ-*
13 *riety;*

14 “(B) *to ensure the financial integrity of all*
15 *transactions subject to this Act and the avoid-*
16 *ance of systemic risk;*

17 “(C) *to protect all market participants from*
18 *fraudulent or other abusive sales practices and*
19 *misuse of customer assets; and*

20 “(D) *to promote responsible innovation and*
21 *fair competition among boards of trade, other*
22 *markets, and market participants.”.*

1 **SEC. 11. PROHIBITED TRANSACTIONS.**

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

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

6 *“(a) IN GENERAL.—*

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

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

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

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

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

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

4 “(ii) is a fictitious sale; or

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

8 **SEC. 12. DESIGNATION OF BOARDS OF TRADE AS CON-**
9 **TRACT MARKETS.**

10 *The Commodity Exchange Act is amended—*

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

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

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

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

22 “(b) *CRITERIA FOR DESIGNATION.—*

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

1 *the Commission that the board of trade meets the cri-*
2 *teria specified in this subsection.*

3 “(2) *PREVENTION OF MARKET MANIPULATION.—*
4 *The board of trade shall have the capacity to prevent*
5 *market manipulation through market surveillance,*
6 *compliance, and enforcement practices and proce-*
7 *dures, including methods for conducting real-time*
8 *monitoring of trading and comprehensive and accu-*
9 *rate trade reconstructions.*

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

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

18 “(A) *establish and enforce rules defining, or*
19 *specifications detailing, the manner of operation*
20 *of the trade execution facility maintained by the*
21 *board of trade, including rules or specifications*
22 *describing the operation of any electronic match-*
23 *ing platform; and*

1 “(B) demonstrate that the trading facility
2 operates in accordance with the rules or speci-
3 fications.

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

9 “(6) *DISCIPLINARY PROCEDURES.*—*The board of*
10 *trade shall establish and enforce disciplinary proce-*
11 *dures that authorize the board of trade to discipline,*
12 *suspend, or expel members or market participants*
13 *that violate the rules of the board of trade, or similar*
14 *methods for performing the same functions, including*
15 *delegation of the functions to third parties.*

16 “(7) *PUBLIC ACCESS.*—*The board of trade shall*
17 *provide the public with access to the rules, regula-*
18 *tions, and contract specifications of the board of*
19 *trade.*

20 “(8) *ABILITY TO OBTAIN INFORMATION.*—*The*
21 *board of trade shall establish and enforce rules that*
22 *will allow the board of trade to obtain any necessary*
23 *information to perform any of the functions described*
24 *in this subsection, including the capacity to carry out*

1 *such international information-sharing agreements as*
2 *the Commission may require.*

3 “(c) *EXISTING CONTRACT MARKETS.*—*A designated*
4 *contract market on the effective date of the Commodity Fu-*
5 *tures Modernization Act of 2000 shall be considered to be*
6 *a designated contract market under this section.*

7 “(d) *CORE PRINCIPLES FOR CONTRACT MARKETS.*—

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

12 “(2) *COMPLIANCE WITH RULES.*—*The board of*
13 *trade shall monitor and enforce compliance with the*
14 *rules of the contract market, including the terms and*
15 *conditions of any contracts to be traded and any lim-*
16 *itations on access to the contract market.*

17 “(3) *CONTRACTS NOT READILY SUBJECT TO MA-*
18 *NIPULATION.*—*The board of trade shall list on the*
19 *contract market only contracts that are not readily*
20 *susceptible to manipulation.*

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

1 “(5) *POSITION LIMITATIONS OR ACCOUNT-*
2 *ABILITY.—To reduce the potential threat of market*
3 *manipulation or congestion, especially during trading*
4 *in the delivery month, the board of trade shall adopt*
5 *position limitations or position accountability for*
6 *speculators, where necessary and appropriate.*

7 “(6) *EMERGENCY AUTHORITY.—The board of*
8 *trade shall adopt rules to provide for the exercise of*
9 *emergency authority, in consultation or cooperation*
10 *with the Commission, where necessary and appro-*
11 *priate, including the authority to—*

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

14 “(B) *suspend or curtail trading in any con-*
15 *tract; and*

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

18 “(7) *AVAILABILITY OF GENERAL INFORMATION.—*
19 *The board of trade shall make available to market au-*
20 *thorities, market participants, and the public infor-*
21 *mation concerning—*

22 “(A) *the terms and conditions of the con-*
23 *tracts of the contract market; and*

1 “(B) *the mechanisms for executing trans-*
2 *actions on or through the facilities of the con-*
3 *tract market.*

4 “(8) *DAILY PUBLICATION OF TRADING INFORMA-*
5 *TION.—The board of trade shall make public daily in-*
6 *formation on settlement prices, volume, open interest,*
7 *and opening and closing ranges for actively traded*
8 *contracts on the contract market.*

9 “(9) *EXECUTION OF TRANSACTIONS.—The board*
10 *of trade shall provide a competitive, open, and effi-*
11 *cient market and mechanism for executing trans-*
12 *actions.*

13 “(10) *TRADE INFORMATION.—The board of trade*
14 *shall maintain rules and procedures to provide for the*
15 *recording and safe storage of all identifying data*
16 *entry and trade information in a manner that en-*
17 *ables the contract market to use the information for*
18 *purposes of assisting in the prevention of customer*
19 *and market abuses and providing evidence of any vio-*
20 *lations of the rules of the contract market.*

21 “(11) *FINANCIAL INTEGRITY OF CONTRACTS.—*
22 *The board of trade shall establish and enforce rules*
23 *providing for the financial integrity of any contracts*
24 *traded on the contract market, including rules to en-*
25 *sure the financial integrity of any futures commission*

1 *merchants and introducing brokers and the protection*
2 *of customer funds.*

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

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

13 “(14) *GOVERNANCE FITNESS STANDARDS.*—*The*
14 *board of trade shall establish and enforce appropriate*
15 *fitness standards for directors, members of any dis-*
16 *ciplinary committee, members of the board of trade,*
17 *and any other persons with direct access to the facil-*
18 *ity (including any parties affiliated with any of the*
19 *persons described in this paragraph).*

20 “(15) *CONFLICTS OF INTEREST.*—*The board of*
21 *trade shall establish and enforce rules to minimize*
22 *conflicts of interest in the decisionmaking process of*
23 *the contract market and establish a process for resolv-*
24 *ing such conflicts of interest.*

1 “(16) *COMPOSITION OF BOARDS OF MUTUALLY*
2 *OWNED CONTRACT MARKETS.*—*In the case of a mutu-*
3 *ally owned contract market, the board of trade shall*
4 *provide for meaningful representation on its gov-*
5 *erning board of the diversity of interests that trade on*
6 *that contract market.*

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

9 “(A) *maintain full records of all activities*
10 *related to the business of the contract market in*
11 *a form and manner acceptable to the Commis-*
12 *sion for a period of 5 years;*

13 “(B) *make the records readily available*
14 *during at least the first 2-years of the 5-year pe-*
15 *riod and provide the records to the Commission*
16 *during that 2-year period at the expense of the*
17 *person required to maintain the records; and*

18 “(C) *keep the records open to inspection by*
19 *any representative of the Commission or the De-*
20 *partment of Justice.*

21 “(18) *ANTITRUST CONSIDERATIONS.*—*Unless ap-*
22 *propriate to achieve the purposes of this Act, the*
23 *board of trade shall avoid—*

1 “(A) adopting any rule or taking any ac-
2 tion that results in any unreasonable restraint of
3 trade; or

4 “(B) imposing any material anticompeti-
5 tive burden on trading on the contract market.”.

6 **SEC. 13. DERIVATIVES TRANSACTION EXECUTION FACILI-**
7 **TIES.**

8 *The Commodity Exchange Act (7 U.S.C. 1 et seq.) is*
9 *amended by inserting after section 5 (as amended by section*
10 *12(2)) the following:*

11 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**
12 **TIES.**

13 “(a) *IN GENERAL.*—*In lieu of compliance with the*
14 *contract market designation requirements of section 5, a*
15 *board of trade may elect to operate as a registered deriva-*
16 *tives transaction execution facility if the facility is—*

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

19 “(2) *registered as a derivatives transaction exe-*
20 *cution facility under subsection (c).*

21 “(b) *REQUIREMENTS FOR TRADING FUTURES CON-*
22 *TRACTS OR OTHER DERIVATIVES TRANSACTIONS.*—

23 “(1) *IN GENERAL.*—*A registered derivatives*
24 *transaction execution facility under subsection (a)*
25 *may trade any futures contract (or option on such a*

1 *contract) that is not a designated future on a security*
2 *on or through the facility only by satisfying the re-*
3 *quirements of this section.*

4 “(2) *REQUIREMENTS FOR UNDERLYING COMMOD-*
5 *ITIES.—A registered derivatives transaction execution*
6 *facility may trade any futures contract only if—*

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

9 “(B) *the underlying commodity has a deliv-*
10 *erable supply that is sufficiently large that the*
11 *contract is highly unlikely to be susceptible to*
12 *manipulation;*

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

15 “(D)(i) *the underlying commodity is not an*
16 *agricultural commodity specified in section*
17 *1a(3); and*

18 “(ii) *trading access to the derivatives trans-*
19 *action execution facility is limited to eligible*
20 *commercial participants trading for their own*
21 *account; or*

22 “(E) *the Commission determines, based on*
23 *the market characteristics, surveillance history,*
24 *self-regulatory record, and capacity of the facil-*

1 *ity that trading in the futures contract is un-*
2 *likely to be susceptible to manipulation.*

3 “(3) *ELIGIBLE TRADERS.—To trade on a reg-*
4 *istered derivatives transaction execution facility, a*
5 *person shall—*

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

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

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

12 “(I) *is registered with the Commission;*

13 “(II) *is a member of a futures self-reg-*
14 *ulatory organization;*

15 “(III) *is a clearing member of a de-*
16 *rivatives clearing organization; and*

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

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

23 “(A) *provide a physical location for the*
24 *contract market trading of the board of trade*
25 *that is separate from trading on the derivatives*

1 *transaction execution facility of the board of*
2 *trade; or*

3 “(B) *if the board of trade uses the same*
4 *electronic trading system for trading on the con-*
5 *tract market and derivatives transaction execu-*
6 *tion facility of the board of trade, identify*
7 *whether the electronic trading is taking place on*
8 *the contract market or the derivatives trans-*
9 *action execution facility.*

10 “(c) *CRITERIA FOR REGISTRATION.—*

11 “(1) *IN GENERAL.—To be registered as a reg-*
12 *istered derivatives transaction execution facility, the*
13 *board of trade shall demonstrate to the Commission*
14 *that the board of trade meets the criteria specified in*
15 *this paragraph.*

16 “(2) *DETERRENCE OF ABUSES.—The board of*
17 *trade shall establish and enforce trading rules that*
18 *will deter abuses and has the capacity to detect, inves-*
19 *tigate, and enforce those rules, including means to—*

20 “(A) *obtain information necessary to per-*
21 *form the functions required under this section; 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 trade
5 shall establish and enforce rules or terms and condi-
6 tions defining, or specifications detailing, trading
7 procedures to be used in entering and executing orders
8 traded on the facilities of the board of trade.

9 “(4) *FINANCIAL INTEGRITY OF TRANSACTIONS.*—
10 The board of trade shall establish and enforce rules or
11 terms and conditions providing for the financial in-
12 tegrity of transactions entered on or through the fa-
13 cilities of the board of trade, including rules or terms
14 and conditions to ensure the financial integrity of
15 any futures commission merchants and introducing
16 brokers and the protection of customer funds.

17 “(d) *CORE PRINCIPLES FOR REGISTERED DERIVA-*
18 *TIVES TRANSACTION EXECUTION FACILITIES.*—

19 “(1) *IN GENERAL.*—To maintain the registration
20 of a board of trade as a derivatives transaction execu-
21 tion facility, a board of trade shall comply with the
22 core principles specified in this subsection.

23 “(2) *COMPLIANCE WITH RULES.*—The board of
24 trade shall monitor and enforce the rules of the facil-
25 ity, including any terms and conditions of any con-

1 *tracts traded on or through the facility and any limi-*
2 *tations on access to the facility.*

3 “(3) *MONITORING OF TRADING.*—*The board of*
4 *trade shall monitor trading in the contracts of the fa-*
5 *cility to ensure orderly trading in the contract and*
6 *to maintain an orderly market while providing any*
7 *necessary trading information to the Commission to*
8 *allow the Commission to discharge the responsibilities*
9 *of the Commission under the Act.*

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

13 “(A) *contract terms and conditions;*

14 “(B) *trading conventions, mechanisms, and*
15 *practices;*

16 “(C) *financial integrity protections; and*

17 “(D) *other information relevant to partici-*
18 *ipation in trading on the facility.*

19 “(5) *DAILY PUBLICATION OF TRADING INFORMA-*
20 *TION.*—*The board of trade shall make public daily in-*
21 *formation on settlement prices, volume, open interest,*
22 *and opening and closing ranges for actively traded*
23 *contracts on the derivatives transaction execution fa-*
24 *cility.*

1 “(6) *FITNESS STANDARDS.*—*The board of trade*
2 *shall establish and enforce appropriate fitness stand-*
3 *ards for directors, members of any disciplinary com-*
4 *mittee, members, and any other persons with direct*
5 *access to the facility, including any parties affiliated*
6 *with any of the persons described in this paragraph.*

7 “(7) *CONFLICTS OF INTEREST.*—*The board of*
8 *trade shall establish and enforce rules to minimize*
9 *conflicts of interest in the decisionmaking process of*
10 *the derivatives transaction execution facility and es-*
11 *tablish a process for resolving such conflicts of inter-*
12 *est.*

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

15 “(A) *maintain full records of all activities*
16 *related to the business of the derivatives trans-*
17 *action execution facility in a form and manner*
18 *acceptable to the Commission for a period of at*
19 *least 5 years;*

20 “(B) *make the records readily available*
21 *during at least the first 2 years of the 5-year pe-*
22 *riod and provide the records to the Commission*
23 *at the expense of the person required to maintain*
24 *the records; and*

1 “(C) *keep the records open to inspection by*
2 *any representative of the Commission or the De-*
3 *partment of Justice.*

4 “(9) *ANTITRUST CONSIDERATIONS.—Unless ap-*
5 *propriate to achieve the purposes of this Act, the*
6 *board of trade shall avoid—*

7 “(A) *adopting any rule or taking any ac-*
8 *tion that results in any unreasonable restraint of*
9 *trade; or*

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

13 “(e) *USE OF BROKER-DEALERS AND DEPOSITORY IN-*
14 *STITUTIONS AND FARM CREDIT SYSTEM INSTITUTIONS AS*
15 *INTERMEDIARIES.—*

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

21 “(A) *act as an intermediary in transactions*
22 *executed on the facility on behalf of customers of*
23 *the broker-dealer, depository institution or insti-*
24 *tution of the Farm Credit System; 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 or institution of the
8 Farm Credit System be in good standing, as de-
9 termined by the appropriate Federal banking
10 agency (as defined in section 3 of the Federal
11 Deposit Insurance Act (12 U.S.C. 1813)) (in-
12 cluding the Farm Credit Administration), as ap-
13 plicable; and

14 “(B) if a broker-dealer, depository institu-
15 tion, or institution of the Farm Credit System
16 carries or holds customer accounts or funds for
17 transactions on the derivatives transaction exe-
18 cution facility for more than 1 business day, the
19 broker-dealer, depository institution, or institu-
20 tion of the Farm Credit System is registered as
21 a futures commission merchant and is a member
22 of a registered futures association.

23 “(3) IMPLEMENTATION.—The Commission shall
24 cooperate and coordinate with the Securities and Ex-
25 change Commission, the Secretary of the Treasury,

1 *and Federal banking regulatory agencies (including*
2 *the Farm Credit Administration) in adopting rules*
3 *and taking any other appropriate action to facilitate*
4 *the implementation of this subsection.*

5 “(f) *SEGREGATION OF CUSTOMER FUNDS.—Not later*
6 *than 180 days after the effective date of the Commodity Fu-*
7 *tures Modernization Act of 2000, consistent with regula-*
8 *tions adopted by the Commission, a registered derivatives*
9 *transaction execution facility may authorize a futures com-*
10 *mission merchant to offer any customer of the futures com-*
11 *mission merchant that is an eligible contract participant*
12 *the right to not segregate the customer funds of the futures*
13 *commission merchant for purposes of trading on or through*
14 *the facilities of the registered derivatives transaction execu-*
15 *tion facility.*

16 “(g) *ELECTION TO TRADE EXCLUDED TRANS-*
17 *ACTIONS.—*

18 “(1) *IN GENERAL.—A board of trade that is a*
19 *registered derivatives transaction execution facility*
20 *may trade on the facility any agreements, contracts,*
21 *or transactions that are excluded from this Act under*
22 *subsection (c) or (d) of section 2.*

23 “(2) *EXCLUSIVE JURISDICTION OF THE COMMIS-*
24 *SION.—The Commission shall have exclusive jurisdic-*
25 *tion over agreements, contracts, or transactions de-*

1 scribed in paragraph (1) to the extent that the agree-
 2 ments, contracts, or transactions are traded on a de-
 3 rivatives transaction execution facility.”.

4 **SEC. 14. DERIVATIVES CLEARING ORGANIZATIONS.**

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

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

9 “(a) *REGISTRATION REQUIREMENT.—Except as pro-*
 10 *vided in subsection (b), it shall be unlawful for a derivatives*
 11 *clearing organization, unless registered with the Commis-*
 12 *sion, directly or indirectly to make use of the mails or any*
 13 *means or instrumentality of interstate commerce to perform*
 14 *the functions of a derivatives clearing organization de-*
 15 *scribed in section 1a(8).*

16 “(b) *EXCLUSION OF DERIVATIVES CLEARING ORGANI-*
 17 *ZATIONS SUBJECT TO OTHER REGULATORY AUTHORI-*
 18 *TIES.—A derivatives clearing organization shall not be re-*
 19 *quired to register with the Commission, and the Commis-*
 20 *sion shall have no jurisdiction with respect to the deriva-*
 21 *tives clearing organization, if the derivatives clearing*
 22 *organization—*

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

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

5 “(C) is subject to the supervisory jurisdiction of
6 a foreign regulatory authority that is recognized by
7 the Securities and Exchange Commission, the Board
8 of Governors of the Federal Reserve System, the
9 Comptroller of the Currency, or the Commission as
10 overseeing a system of consolidated supervision com-
11 parable to that provided under applicable United
12 States law; and

13 “(2) does not clear a contract of sale for future
14 delivery, option on a contract of sale for future deliv-
15 ery, or option on a commodity that is not a security
16 (unless the contract or option is excluded under sub-
17 section (c) or (d) of section 2).

18 “(c) *VOLUNTARY REGISTRATION.*—A derivatives clear-
19 ing organization that is exempt from registration under
20 subsection (b) may register with the Commission as a de-
21 rivatives clearing organization.

22 “(d) *REGISTRATION OF DERIVATIVES CLEARING OR-*
23 *GANIZATIONS.*—

24 “(1) *APPLICATION.*—A person desiring to reg-
25 ister as a derivatives clearing organization shall sub-

1 *mit to the Commission an application in such form*
2 *and containing such information as the Commission*
3 *may require for the purpose of making the determina-*
4 *tions required for approval under paragraph (2).*

5 *“(2) CORE PRINCIPLES.—*

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

11 *“(B) FINANCIAL RESOURCES.—The appli-*
12 *cant shall demonstrate that the applicant has*
13 *adequate financial, operational, and managerial*
14 *resources to discharge the responsibilities of a de-*
15 *rivatives clearing organization without interrup-*
16 *tion in various market conditions.*

17 *“(C) PARTICIPANT AND PRODUCT ELIGI-*
18 *BILITY.—The applicant shall establish—*

19 *“(i) appropriate admission and con-*
20 *tinuing eligibility standards (including ap-*
21 *propriate minimum financial requirements)*
22 *for members of and participants in the or-*
23 *ganization; and*

1 “(i) appropriate standards for deter-
2 mining eligibility of agreements, contracts,
3 or transactions submitted to the applicant.

4 “(D) *RISK MANAGEMENT.*—The applicant
5 shall have the ability to manage the risks associ-
6 ated with discharging the responsibilities of a de-
7 rivatives clearing organization through the use of
8 appropriate tools and procedures.

9 “(E) *SETTLEMENT PROCEDURES.*—The ap-
10 plicant shall have the ability to—

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

13 “(ii) maintain an adequate record of
14 the flow of funds associated with each trans-
15 action that the applicant clears; and

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

20 “(F) *TREATMENT OF FUNDS.*—The appli-
21 cant shall have standards and procedures de-
22 signed to protect and ensure the safety of member
23 and participant funds.

24 “(G) *DEFAULT RULES AND PROCEDURES.*—
25 The applicant shall have rules and procedures

1 *designed to allow for efficient, fair, and safe*
2 *management of events when members or partici-*
3 *pants become insolvent or otherwise default on*
4 *their obligations to the derivatives clearing orga-*
5 *nization.*

6 “(H) *RULE ENFORCEMENT.*—*The applicant*
7 *shall—*

8 “(i) *maintain adequate arrangements*
9 *and resources for the effective monitoring*
10 *and enforcement of compliance with rules of*
11 *the applicant and for resolution of disputes;*
12 *and*

13 “(ii) *have the authority and ability to*
14 *discipline, limit, suspend, or terminate a*
15 *member’s or participant’s activities for vio-*
16 *lations of rules of the applicant.*

17 “(I) *SYSTEM SAFEGUARDS.*—*The applicant*
18 *shall demonstrate that the applicant—*

19 “(i) *has established and will maintain*
20 *a program of oversight and risk analysis to*
21 *ensure that the automated systems of the*
22 *applicant function properly and have ade-*
23 *quate capacity and security; and*

24 “(ii) *has established and will maintain*
25 *emergency procedures and a plan for dis-*

1 *aster recovery, and will periodically test*
2 *backup facilities sufficient to ensure daily*
3 *processing, clearing, and settlement of*
4 *transactions.*

5 *“(J) REPORTING.—The applicant shall pro-*
6 *vide to the Commission all information nec-*
7 *essary for the Commission to conduct the over-*
8 *sight function of the applicant with respect to*
9 *the activities of the derivatives clearing organi-*
10 *zation.*

11 *“(K) RECORDKEEPING.—The applicant*
12 *shall—*

13 *“(i) maintain full records of all activi-*
14 *ties related to the business of the applicant*
15 *as a derivatives clearing organization in a*
16 *form and manner acceptable to the Commis-*
17 *sion for a period of at least 5 years;*

18 *“(ii) make the records readily available*
19 *during at least the first 2 years of the 5-*
20 *year period and provide the records to the*
21 *Commission at the expense of the person re-*
22 *quired to maintain the records; and*

23 *“(iii) keep the records open to inspec-*
24 *tion by any representative of the Commis-*
25 *sion or the Department of Justice.*

1 “(L) *PUBLIC INFORMATION.*—*The applicant*
2 *shall make information concerning the rules and*
3 *operating procedures governing the clearing and*
4 *settlement systems (including default procedures)*
5 *available to market participants.*

6 “(M) *INFORMATION SHARING.*—*The appli-*
7 *cant shall—*

8 “(i) *enter into and abide by the terms*
9 *of all appropriate and applicable domestic*
10 *and international information-sharing*
11 *agreements; and*

12 “(ii) *use relevant information obtained*
13 *from the agreements in carrying out the*
14 *clearing organization’s risk management*
15 *program.*

16 “(N) *ANTITRUST CONSIDERATIONS.*—*Unless*
17 *appropriate to achieve the purposes of this Act,*
18 *the derivatives clearing organization shall*
19 *avoid—*

20 “(i) *adopting any rule or taking any*
21 *action that results in any unreasonable re-*
22 *straint of trade; or*

23 “(ii) *imposing any material anti-*
24 *competitive burden on trading on the con-*
25 *tract market.*

1 “(3) *ORDERS CONCERNING COMPETITION.*—A de-
2 *derivatives clearing organization may request the Com-*
3 *mission to issue an order concerning whether a rule*
4 *or practice of the applicant is the least anticompeti-*
5 *tive means of achieving the objectives, purposes, and*
6 *policies of this Act.*

7 “(e) *EXISTING DERIVATIVES CLEARING ORGANIZA-*
8 *TIONS.*—A derivatives clearing organization shall be
9 *deemed to be registered under this section to the extent*
10 *that—*

11 “(1) *the derivatives clearing organization clears*
12 *agreements, contracts, or transactions for a board of*
13 *trade that has been designated by the Commission as*
14 *a contract market for such agreements, contracts, or*
15 *transactions before the date of enactment of this sec-*
16 *tion; and*

17 “(2) *the Commission has reviewed and approved*
18 *the rules of the derivatives clearing organization be-*
19 *fore that date.*

20 “(f) *APPOINTMENT OF TRUSTEE.*—

21 “(1) *IN GENERAL.*—If a proceeding under section
22 *5e results in the suspension or revocation of the reg-*
23 *istration of a derivatives clearing organization, or if*
24 *a derivatives clearing organization withdraws from*
25 *registration, the Commission, on notice to the deriva-*

1 *tives clearing organization, may apply to the appro-*
2 *prate United States district court where the deriva-*
3 *tives clearing organization is located for the appoint-*
4 *ment of a trustee.*

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

8 “(A) *the court may take exclusive jurisdic-*
9 *tion over the derivatives clearing organization*
10 *and the records and assets of the derivatives*
11 *clearing organization, wherever located; and*

12 “(B) *if the court takes jurisdiction under*
13 *subparagraph (A), the court shall appoint the*
14 *Commission, or a person designated by the Com-*
15 *mission, as trustee with power to take possession*
16 *and continue to operate or terminate the oper-*
17 *ations of the derivatives clearing organization in*
18 *an orderly manner for the protection of partici-*
19 *pants, subject to such terms and conditions as*
20 *the court may prescribe.*

21 “(g) *LINKING OF REGULATED CLEARING FACILI-*
22 *TIES.*—

23 “(1) *IN GENERAL.*—*The Commission shall facili-*
24 *tate the linking or coordination of derivatives clearing*
25 *organizations registered under this Act with other reg-*

1 *ulated clearance facilities for the coordinated settle-*
2 *ment of cleared transactions.*

3 “(2) *COORDINATION.*—*In carrying out para-*
4 *graph (1), the Commission shall coordinate with the*
5 *Federal banking agencies and the Securities and Ex-*
6 *change Commission.”.*

7 **SEC. 15. COMMON PROVISIONS APPLICABLE TO REG-**
8 **ISTERED ENTITIES.**

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

12 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**
13 **ISTERED ENTITIES.**

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

16 “(1) *IN GENERAL.*—*Consistent with the purposes*
17 *of this Act, the Commission may issue interpreta-*
18 *tions, or approve interpretations submitted to the*
19 *Commission, of the core principles for registered enti-*
20 *ties specified in sections 5(d), 5a(d), and 5b(d)(2) to*
21 *describe what would constitute an acceptable business*
22 *practice under the core principles.*

23 “(2) *TIMING.*—*If any person submits to the*
24 *Commission a request for an interpretation or for ap-*
25 *proval of an interpretation under paragraph (1), the*

1 *Commission shall issue the interpretation or shall ap-*
2 *prove or disapprove the interpretation not later than*
3 *45 days after receiving the request.*

4 “(3) *EFFECT OF INTERPRETATION.—An inter-*
5 *pretation issued under paragraph (1) shall not pro-*
6 *vide the exclusive means for complying with the core*
7 *principles.*

8 “(b) *DELEGATION OF FUNCTIONS UNDER CORE PRIN-*
9 *CIPLES.—*

10 “(1) *IN GENERAL.—A registered entity may com-*
11 *ply with any applicable core principle through dele-*
12 *gation of any relevant function to a registered futures*
13 *association or another registered entity.*

14 “(2) *RESPONSIBILITY.—A registered entity that*
15 *delegates a function under paragraph (1) shall re-*
16 *main responsible for carrying out the function.*

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

19 “(1) *IN GENERAL.—Subject to paragraph (2), a*
20 *registered entity may elect to list for trading or ac-*
21 *cept for clearing any new contract or other instru-*
22 *ment, or may elect to approve and implement any*
23 *new rule or rule amendment, by providing to the*
24 *Commission (and the Secretary of the Treasury, in*
25 *the case of a contract, rule, or rule amendment that*

1 *relates to or affects a government security) a written*
2 *certification that the new contract, new rule, or rule*
3 *amendment complies with this Act (including regula-*
4 *tions under this Act).*

5 *“(2) PRIOR APPROVAL.—*

6 *“(A) IN GENERAL.—A registered entity may*
7 *request that the Commission grant prior ap-*
8 *proval to any new contract or other instrument,*
9 *new rule, or rule amendment.*

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

17 *“(C) AGRICULTURAL CONTRACTS.—Notwith-*
18 *standing any other provision of this section, a*
19 *designated contract market shall submit for prior*
20 *approval by the Commission each rule amend-*
21 *ment that materially changes a term or condi-*
22 *tion in any contract of sale of a commodity for*
23 *future delivery or related option traded through*
24 *the facilities of the designated contract market,*
25 *if—*

1 “(i) the commodity is specifically listed
2 in section 1a(3); and

3 “(ii) the rule amendment applies to
4 contracts and delivery months that have
5 previously been listed for trading and have
6 open interest.

7 “(3) APPROVAL.—The Commission shall approve
8 any such new contract or instrument, new rule, or
9 rule amendment unless the Commission finds that the
10 new contract or instrument, new rule, or rule amend-
11 ment would violate this Act.

12 “(d) VIOLATION OF CORE PRINCIPLES.—

13 “(1) IN GENERAL.—If the Commission deter-
14 mines, on the basis of substantial evidence, that a reg-
15 istered entity is violating any of the applicable core
16 principles specified in sections 5(d), 5a(d), and
17 5b(d)(2), the Commission shall—

18 “(A) notify the registered entity of the deter-
19 mination; and

20 “(B) afford the registered entity an oppor-
21 tunity to make appropriate changes to bring the
22 registered entity into compliance with the core
23 principles.

24 “(2) FAILURE TO MAKE CHANGES.—If, not later
25 than 30 days after receiving a notification under

1 *paragraph (1), a registered entity fails to make*
2 *changes that, in the opinion of the Commission, are*
3 *necessary to accomplish the objectives of the core prin-*
4 *ciples, the Commission may take further action in ac-*
5 *cordance with this Act.*

6 “(e) *RESERVATION OF EMERGENCY AUTHORITY.—Not-*
7 *withstanding any other provision of this section, the Com-*
8 *mission shall retain the full scope of its emergency powers*
9 *under section 8a(9) to direct any contract market to take*
10 *emergency action in compliance with the provisions and*
11 *standards of section 8a(9).*

12 “(f) *CORE PRINCIPLES FOR INTERMEDIARIES.—The*
13 *Commission shall—*

14 “(1) *review the provisions of this Act relating to*
15 *registered entities and intermediaries (including the*
16 *regulations and interpretations applying those provi-*
17 *sions); and*

18 “(2) *to the extent appropriate and consistent*
19 *with this Act, administer those provisions in a man-*
20 *ner that is consistent with core principles and inter-*
21 *pretations of acceptable business practices for inter-*
22 *mediaries as described in this section.*

23 “(g) *EFFECT OF ACT.—Nothing in this Act—*

24 “(1) *prohibits an exchange of—*

1 “(A) futures in connection with a cash com-
2 modity transaction;

3 “(B) futures for cash commodities; or

4 “(C) futures for swaps;

5 “(2) prohibits transfer trades or office trades; or

6 “(3) prohibits a futures commission merchant,
7 acting as a principal or agent, from entering into or
8 confirming the execution of a contract for the pur-
9 chase or sale of a commodity for future delivery if the
10 contract is reported, recorded, and cleared in accord-
11 ance with the rules of the contract market.”.

12 **SEC. 16. EXEMPT BOARDS OF TRADE.**

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

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

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

22 “(b) *CRITERIA FOR EXEMPTION.*—*To qualify for an*
23 *exemption under subsection (a), a board of trade shall limit*
24 *trading on or through the facilities of the board of trade*

1 *to contracts of sale of a commodity for future delivery (or*
2 *options on such contracts)—*

3 *“(1) for which the underlying commodity has—*

4 *“(A) a nearly inexhaustible deliverable sup-*
5 *ply;*

6 *“(B) a deliverable supply that is sufficiently*
7 *large, and a cash market that is sufficiently liq-*
8 *uid, to render any contract traded on the com-*
9 *modity highly unlikely to be susceptible to ma-*
10 *nipulation; or*

11 *“(C) no cash market;*

12 *“(2) that are entered into only between persons*
13 *that—*

14 *“(A) are eligible contract participants at*
15 *the time at which the persons enter into the con-*
16 *tract; or*

17 *“(B) enter into the contract or option for*
18 *the benefit only of eligible contract participants;*
19 *and*

20 *“(3) that are not contracts of sale (or options on*
21 *the contract) for future delivery of any security, in-*
22 *cluding any group or index of securities or any inter-*
23 *est in, or interest that is based on the value of, 1 or*
24 *more securities.*

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

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

14 “(e) *JURISDICTION.*—The Commission shall have ex-
15 clusive jurisdiction over any account, agreement, or trans-
16 action involving a contract of sale of a commodity for future
17 delivery, or related option, to the extent that such an ac-
18 count, agreement, or transaction is traded on an exempt
19 board of trade.

20 “(f) *SUBSIDIARIES.*—A board of trade that is des-
21 ignated as a contract market or registered as a derivatives
22 transaction execution facility may operate an exempt board
23 of trade by establishing a separate subsidiary or other legal
24 entity and otherwise satisfying the requirements of this sec-
25 tion.”.

1 **SEC. 17. SUSPENSION OR REVOCATION OF DESIGNATION AS**
2 **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 Com-*
10 *mission under this Act, shall be cause for the suspension*
11 *of the registered entity for a period not to exceed 180 days,*
12 *or revocation of designation as a registered entity in accord-*
13 *ance with the procedures and subject to the judicial review*
14 *provided in section 6(b).”.*

15 **SEC. 18. 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 inserting*
18 *“2005”.*

19 **SEC. 19. 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 to*
10 *the rules of any board of trade, exchange, or*
11 *market located outside the United States, or*
12 *any territory or possession of the United*
13 *States (in accordance with any terms or*
14 *conditions specified by the Commission by*
15 *regulation); and*

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

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

22 *“(i) an excluded trading facility under*
23 *section 2(e); or*

24 *“(ii) an agreement, contract, or trans-*
25 *action that—*

1 “(I) is excluded or exempt under
2 subsection (c), (d), (f), or (h) of section
3 2; or

4 “(II) is covered by the terms of an
5 exemption granted by the Commission
6 under section 4(c) (regardless of wheth-
7 er any such agreement, contract, or
8 transaction is otherwise subject to this
9 Act); or”.

10 **SEC. 20. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
11 **STITUTIONAL CUSTOMERS.**

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

15 “(g) **PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
16 **STITUTIONAL CUSTOMERS.**—Nothing in this Act prohibits
17 a registered futures commission merchant from requiring
18 a customer that is an eligible contract participant, as a
19 condition to the commission merchant’s conducting a trans-
20 action for the customer, to enter into an agreement—

21 “(1) waiving the right to file a claim under this
22 section; and

23 “(2) otherwise agreeing to submit any claim the
24 customer may have against the futures commission
25 merchant to binding arbitration pursuant to the rules

1 *and procedures of a registered entity or registered fu-*
 2 *tures association or any other forum authorized to*
 3 *hear such claims.”.*

4 **SEC. 21. CONSIDERATION OF COSTS AND BENEFITS AND**
 5 **ANTITRUST LAWS.**

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

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

11 *“(a) COSTS AND BENEFITS.—*

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

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

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

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

25 *“(C) considerations of price discovery;*

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

3 “(E) other public interest considerations.

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

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

9 “(B) An emergency action.

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

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

13 **SEC. 22. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
14 **COUNTERPARTIES.**

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

18 “(4) *CONTRACT ENFORCEMENT BETWEEN ELIGI-*
19 *BLE COUNTERPARTIES.*—No agreement, contract, or
20 transaction between eligible contract participants
21 shall be void, voidable, or unenforceable, and no such
22 eligible contract participant shall be entitled to re-
23 scind, or recover any payment made with respect to,
24 such an agreement, contract, or transaction, under
25 this section based solely on the failure of the agree-

1 *ment, contract, or transaction to comply with the*
2 *terms or conditions of an exemption or exclusion from*
3 *any provision of this Act or regulations of the Com-*
4 *mission.”.*

5 **SEC. 23. LEGAL CERTAINTY FOR SWAP AGREEMENTS.**

6 *(a) LEGAL CERTAINTY.—*

7 *(1) IN GENERAL.—Nothing in this Act or any*
8 *amendment made by this Act authorizes the Securi-*
9 *ties and Exchange Commission to regulate, supervise,*
10 *or otherwise subject to oversight any activity, agree-*
11 *ment, instrument, transaction, or product over which*
12 *the Securities and Exchange Commission is not*
13 *granted specific jurisdiction under this Act, any*
14 *amendment made by this Act, or any other law.*

15 *(2) SWAP AGREEMENTS.—Nothing in this Act or*
16 *any amendment made by this Act grants the Com-*
17 *modity Futures Trading Commission or the Securi-*
18 *ties and Exchange Commission any jurisdiction over*
19 *any swap agreement, except that a registered entity*
20 *may voluntarily submit to the jurisdiction of the*
21 *Commodities Futures Trading Commission under sec-*
22 *tion 12 or 13 of the Commodities Exchange Act (7*
23 *U.S.C. 16, 13c).*

24 *(b) REPORT ON SWAP AGREEMENTS.—Not later than*
25 *the date that is 1 year after the date of enactment of this*

1 *Act, the Federal banking agencies (as defined in section 3*
2 *of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the*
3 *Department of the Treasury, the Commodity Futures Trad-*
4 *ing Commission, and the Securities and Exchange Commis-*
5 *sion shall submit to the Committee on Agriculture, Nutri-*
6 *tion, and Forestry and the Committee on Banking, Hous-*
7 *ing, and Urban Affairs of the Senate, and the Committee*
8 *on Agriculture and the Committee on Banking and Finan-*
9 *cial Services of the House of Representatives a report on—*

10 (1) *potential issues of legal uncertainty under*
11 *the securities laws that affect swap agreements; and*

12 (2) *the extent to which exclusions or exemptions*
13 *from the Federal securities laws are warranted to en-*
14 *hance legal certainty for swap agreements.*

15 **SEC. 24. COMMISSION OVERSIGHT; DEFICIENCY ORDERS.**

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

18 **SEC. 25. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) *COMMODITY EXCHANGE ACT.—*

20 (1) *Section 1a of the Commodity Exchange Act*
21 *(7 U.S.C. 1a) (as amended by section 3(1)) is*
22 *amended—*

23 (A) *in paragraphs (4), (5), (17), (18), (21),*
24 *and (24), by inserting “or derivatives trans-*

1 *action execution facility*” after “*contract mar-*
2 *ket*” each place it appears; and

3 (B) in paragraph (25)—

4 (i) in the paragraph heading, by strik-
5 ing “*CONTRACT MARKET*” and inserting
6 “*REGISTERED ENTITY*”; and

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

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

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

14 **“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF**
15 **PRINCIPAL FOR ACT OF AGENT; COMMODITY**
16 **FUTURES TRADING COMMISSION; TRANS-**
17 **ACTION IN INTERSTATE COMMERCE.**

18 “*(a) JURISDICTION OF COMMISSION; COMMODITY FU-*
19 *TURES TRADING COMMISSION.*—

20 “*(1) JURISDICTION OF COMMISSION.*—

21 “*(A) IN GENERAL.—The*”; and

22 (B) in subsection (a)—

23 (i) in paragraph (1) (as amended by
24 subparagraph (A))—

25 (I) by striking subparagraph (B);

1 (II) by striking “subparagraph
2 (B) of this paragraph” and inserting
3 “subsection (g)”;

4 (III) by striking “contract market
5 designated pursuant to section 5 of this
6 Act” and inserting “contract market
7 designated or derivatives transaction
8 execution facility registered pursuant
9 to section 5 or 5a”;

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

11 (V) in clause (iii), by striking
12 “(iii) The” and inserting the following:

13 “(B) LIABILITY OF PRINCIPAL FOR ACT OF
14 AGENT.—The”;

15 (ii) in paragraph (7), by striking
16 “contract market” and inserting “registered
17 entity”; and

18 (iii) in paragraph (8)(B)(ii)—

19 (I) in the first sentence, by strik-
20 ing “designation as a contract market”
21 and inserting “designation or registra-
22 tion as a contract market or deriva-
23 tives transaction execution facility”;

24 (II) in the second sentence, by
25 striking “designate a board of trade as

1 *a contract market” and inserting “des-*
2 *ignate or register a board of trade as*
3 *a contract market or derivatives trans-*
4 *action execution facility”;*

5 *(III) in the fourth sentence—*

6 *(aa) by striking “desig-*
7 *nating, or refusing, suspending, or*
8 *revoking the designation of, a*
9 *board of trade as a contract mar-*
10 *ket involving transactions for fu-*
11 *ture delivery referred to in this*
12 *clause or in considering possible*
13 *emergency action under section*
14 *8a(9) of this Act” and inserting*
15 *“designating, registering, or refus-*
16 *ing, suspending, or revoking the*
17 *designation or registration of, a*
18 *board of trade as a contract mar-*
19 *ket or derivatives transaction exe-*
20 *cution facility involving trans-*
21 *actions for future delivery referred*
22 *to in this clause or in considering*
23 *any action under this Act (includ-*
24 *ing emergency action under sec-*
25 *tion 8a(9))”;* and

1 (bb) by striking “designation,
2 suspension, revocation, or emer-
3 gency action” and inserting “des-
4 ignation, registration, suspension,
5 revocation, or other action”.

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

8 (A) in subsection (a)—

9 (i) by inserting “exempted by oper-
10 ation of section 2(h) or 5d or unless” after
11 “Unless”;

12 (ii) in paragraph (1), by striking “des-
13 ignated by the Commission as a ‘contract
14 market’ for” and inserting “designated or
15 registered by the Commission as a contract
16 market or derivatives transaction execution
17 facility for”;

18 (iii) in paragraph (2), by striking
19 “member of such”; and

20 (iv) in paragraph (3), by inserting “or
21 derivatives transaction execution facility”
22 after “contract market”; and

23 (B) in subsection (c)—

24 (i) in paragraph (1)—

1 (I) by striking “any board of
2 trade designated as a contract market
3 for transactions for future delivery in
4 any commodity” and inserting “any
5 registered entity”;

6 (II) by striking “section 5 of this
7 Act” and inserting “section 5, 5a, or
8 5b”; and

9 (III) by striking “section
10 2(a)(1)(B)” and inserting “section
11 2(g)”; and

12 (ii) in paragraph (2)(B)(ii), by insert-
13 ing “or derivatives transaction execution fa-
14 cility” after “contract market”.

15 (4) Section 4a of the Commodity Exchange Act
16 (7 U.S.C. 6a) is amended—

17 (A) in subsection (a)—

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

21 (ii) in the second sentence, by inserting
22 “or derivatives transaction execution facil-
23 ity” after “contract market”;

1 (B) in subsection (b), by inserting “or de-
2 derivatives transaction execution facility” after
3 “contract market” each place it appears; and

4 (C) in subsection (e)—

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

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

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

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

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

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

3 (A) in subsection (b), by striking “clearing-
4 house and contract market” and inserting “reg-
5 istered entity”; and

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

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

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

17 (10) *Section 4j of the Commodity Exchange Act*
18 (7 U.S.C. 6j) is repealed.

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

23 (12) *Section 4p of the Commodity Exchange Act*
24 (7 U.S.C. 6p) is amended—

1 (A) *in the third sentence of subsection (a),*
2 *by striking “Act or contract markets” and in-*
3 *serting “Act, contract markets, or derivatives*
4 *transaction execution facilities”;* and

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

8 (13) *The Commodity Exchange Act (as amended*
9 *by paragraphs (10), (11), and (12)) is amended by*
10 *redesignating sections 4k through 4p (7 U.S.C. 6k*
11 *through 6p) as sections 4j through 4o, respectively.*

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

14 (A) *in subsection (a)—*

15 (i) *in the first sentence—*

16 (I) *by striking “board of trade de-*
17 *siring to be designated a ‘contract*
18 *market’ shall make application to the*
19 *Commission for such designation” and*
20 *inserting “person desiring to be des-*
21 *ignated or registered as a registered en-*
22 *tity shall make application to the*
23 *Commission for such designation or*
24 *registration”;*

1 (II) by striking “above condi-
2 tions” and inserting “conditions set
3 forth in this Act”; and

4 (III) by striking “above require-
5 ments” and inserting “the require-
6 ments of this Act”;

7 (ii) in the second sentence, by striking
8 “designation as a contract market within
9 one year” and inserting “designation or
10 registration as a registered entity within
11 180 days”;

12 (iii) in the third sentence—

13 (I) by striking “board of trade”
14 and inserting “person”; and

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

17 (iv) in the last sentence, by striking
18 “designate as a ‘contract market’ any board
19 of trade that has made application therefor,
20 such board of trade” and inserting “des-
21 ignate or register as a registered entity any
22 person that has made application therefor,
23 such person”;

24 (B) in subsection (b)—

25 (i) in the first sentence—

1 (I) by striking “designation of
2 any board of trade as a ‘contract mar-
3 ket’ upon” and inserting “designation
4 or registration of any registered entity
5 on”;

6 (II) by striking “board of trade”
7 each place it appears and inserting
8 “registered entity”; and

9 (III) by striking “designation as
10 set forth in section 5 of this Act” and
11 inserting “designation or registration
12 as set forth in sections 5 through 5c”;
13 (ii) in the second sentence—

14 (I) by striking “board of trade”
15 the first place it appears and inserting
16 “registered entity”; and

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

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

23 (C) in subsection (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (18) *Section 6d(1) of the Commodity Exchange*
19 *Act (7 U.S.C. 13a–2(1)) is amended by striking*
20 *“clearinghouse,” and inserting “derivatives trans-*
21 *action execution facility, derivatives clearing organi-*
22 *zation,”.*

23 (19) *Section 7 of the Commodity Exchange Act*
24 *(7 U.S.C. 11) is amended—*

25 (A) *in the first sentence—*

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

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

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

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

11 (B) in the second sentence—

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

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

18 (C) in the last sentence—

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

21 (ii) by striking “designated again a
22 contract market” and inserting “designated
23 or registered again a registered entity”.

24 (20) Section 8(c) of the Commodity Exchange
25 Act (7 U.S.C. 12(c)) is amended in the first sentence

1 *by striking “board of trade” and inserting “registered*
2 *entity”.*

3 *(21) Section 8a of the Commodity Exchange Act*
4 *(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) Section 8b of the Commodity Exchange Act*
11 *(7 U.S.C. 12b) is amended by striking “any contract*
12 *market, to make or cause to be made in contravention*
13 *of such order, any contract for future delivery of any*
14 *commodity, on or subject to the rules of any contract*
15 *market” and inserting “, or exercising any clearing*
16 *privileges on, any registered entity, to make or cause*
17 *to be made, or clear or cause to be cleared, in con-*
18 *travention of the order, any contract for future deliv-*
19 *ery of any commodity on or subject to the rules of*
20 *any registered entity”.*

21 *(23) Section 8c(e) of the Commodity Exchange*
22 *Act (7 U.S.C. 12b, 12c(e)) are amended by striking*
23 *“contract market” each place it appears and insert-*
24 *ing “registered entity”.*

1 (24) *Section 9 of the Commodity Exchange Act*
2 *(7 U.S.C. 13) is amended—*

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

6 (B) *in subsection (a)(2), by striking “sec-*
7 *tion 4o(1),” and inserting “section 4n(1),”.*

8 (25) *Section 14 of the Commodity Exchange Act*
9 *(7 U.S.C. 18) is amended—*

10 (A) *in subsection (a)(1)(B), by striking*
11 *“contract market” and inserting “registered enti-*
12 *ty”;* and

13 (B) *in subsection (f)—*

14 (i) *by inserting “or clearing” after*
15 *“trading” each place it appears; and*

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

18 (26) *Sections 15 and 17 of the Commodity Ex-*
19 *change Act (7 U.S.C. 19, 21) are amended by striking*
20 *“contract market” each place it appears and insert-*
21 *ing “registered entity”.*

22 (27) *Section 22 of the Commodity Exchange Act*
23 *(7 U.S.C. 25) is amended—*

24 (A) *in subsection (a)—*

25 (i) *in paragraph (1)—*

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

5 (II) in subparagraph (C)(i), by
6 inserting “, derivatives transaction
7 execution facility,” after “contract
8 market”;

9 (i) in paragraph (2), by striking “sec-
10 tions 5a(11),” and inserting “sections
11 5(d)(13), 5b(d)(2)(H)(i),”; and

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

15 (B) in subsection (b)—

16 (i) in paragraph (1)—

17 (I) by striking “contract market
18 or clearing organization of a contract
19 market” and inserting “registered enti-
20 ty”;

21 (II) by striking “section 5a(8)
22 and section 5a(9) of this Act” and in-
23 serting “sections 5 through 5c”;

24 (III) by striking “contract mar-
25 ket, clearing organization of a contract

1 *market, or licensed board of trade” and*
 2 *inserting “registered entity”; and*

3 *(IV) by striking “contract market*
 4 *or licensed board of trade” and insert-*
 5 *ing “registered entity”;*

6 *(ii) in paragraph (3)—*

7 *(I) by striking “a contract mar-*
 8 *ket, clearing organization, licensed*
 9 *board of trade,” and inserting “reg-*
 10 *istered entity”; and*

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

14 *(iii) in paragraph (4), by striking*
 15 *“contract market, licensed board of trade,*
 16 *clearing organization,” and inserting “reg-*
 17 *istered entity”; and*

18 *(iv) in paragraph (5), by striking*
 19 *“contract market, licensed board of trade,*
 20 *clearing organization,” and inserting “reg-*
 21 *istered entity”.*

22 *(b) FEDERAL DEPOSIT INSURANCE CORPORATION IM-*
 23 *PROVEMENT ACT OF 1991.—Section 402(2) of the Federal*
 24 *Deposit Insurance Corporation Improvement Act of 1991*

1 *(12 U.S.C. 4402(2)) is amended by striking subparagraph*
2 *(B) and inserting the following:*

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

6 **SEC. 26. EFFECTIVE DATE.**

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

10 *(b) JURISDICTION OF COMMODITIES FUTURES TRAD-*
11 *ING COMMISSION.—Section 8, and the amendments made*
12 *by that section, take effect 1 year after the date of enactment*
13 *of this Act.*

Calendar No. 766

106TH CONGRESS
2D SESSION

S. 2697

[Report No. 106-390]

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.

AUGUST 25, 2000

Reported with an amendment