

106TH CONGRESS
2D SESSION

S. 3283

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

DECEMBER 15 (legislative day, SEPTEMBER 22), 2000

Mr. LUGAR (for himself, Mr. GRAMM, Mr. HARKIN, Mr. FITZGERALD, Mr. HAGEL, and Mr. JOHNSON) introduced the following bill; which was read the first time

A BILL

To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

TITLE I—COMMODITY FUTURES MODERNIZATION

- Sec. 101. Definitions.
- Sec. 102. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
- Sec. 103. Legal certainty for excluded derivative transactions.
- Sec. 104. Excluded electronic trading facilities.
- Sec. 105. Hybrid instruments; swap transactions.
- Sec. 106. Transactions in exempt commodities.
- Sec. 107. Application of commodity futures laws.
- Sec. 108. Protection of the public interest.
- Sec. 109. Prohibited transactions.
- Sec. 110. Designation of boards of trade as contract markets.
- Sec. 111. Derivatives transaction execution facilities.
- Sec. 112. Derivatives clearing.
- Sec. 113. Common provisions applicable to registered entities.
- Sec. 114. Exempt boards of trade.
- Sec. 115. Suspension or revocation of designation as contract market.
- Sec. 116. Authorization of appropriations.
- Sec. 117. Preemption.
- Sec. 118. Predispute resolution agreements for institutional customers.
- Sec. 119. Consideration of costs and benefits and antitrust laws.
- Sec. 120. Contract enforcement between eligible counterparties.
- Sec. 121. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.
- Sec. 122. Rule of construction.
- Sec. 123. Technical and conforming amendments.
- Sec. 124. Privacy.
- Sec. 125. Report to Congress.
- Sec. 126. International activities of the Commodity Futures Trading Commission.

TITLE II—COORDINATED REGULATION OF SECURITY FUTURES PRODUCTS

SUBTITLE A—SECURITIES LAW AMENDMENTS

- Sec. 201. Definitions under the Securities Exchange Act of 1934.
- Sec. 202. Regulatory relief for markets trading security futures products.
- Sec. 203. Regulatory relief for intermediaries trading security futures products.
- Sec. 204. Special provisions for interagency cooperation.
- Sec. 205. Maintenance of market integrity for security futures products.
- Sec. 206. Special provisions for the trading of security futures products.
- Sec. 207. Clearance and settlement.
- Sec. 208. Amendments relating to registration and disclosure issues under the Securities Act of 1933 and the Securities Exchange Act of 1934.
- Sec. 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940.
- Sec. 210. Preemption of State laws.

SUBTITLE B—AMENDMENTS TO THE COMMODITY EXCHANGE ACT

- Sec. 251. Jurisdiction of Securities and Exchange Commission; other provisions.

Sec. 252. Application of the Commodity Exchange Act to national securities exchanges and national securities associations that trade security futures.

Sec. 253. Notification of investigations and enforcement actions.

TITLE III—LEGAL CERTAINTY FOR SWAP AGREEMENTS

Sec. 301. Swap agreement.

Sec. 302. Amendments to the Securities Act of 1933.

Sec. 303. Amendments to the Securities Exchange Act of 1934.

Sec. 304. Savings provision.

TITLE IV—REGULATORY RESPONSIBILITY FOR BANK PRODUCTS

Sec. 401. Short title.

Sec. 402. Definitions.

Sec. 403. Exclusion of identified banking products commonly offered on or before December 5, 2000.

Sec. 404. Exclusion of certain identified banking products offered by banks after December 5, 2000.

Sec. 405. Exclusion of certain other identified banking products.

Sec. 406. Administration of the predominance test.

Sec. 407. Exclusion of covered swap agreements.

Sec. 408. Contract enforcement.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

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

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

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

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

1 (5) to clarify the jurisdiction of the Commodity
2 Futures Trading Commission over certain retail for-
3 eign exchange transactions and bucket shops that
4 may not be otherwise regulated;

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

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

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

17 **TITLE I—COMMODITY FUTURES**
18 **MODERNIZATION**

19 **SEC. 101. DEFINITIONS.**

20 Section 1a of the Commodity Exchange Act (7 U.S.C.
21 1a) is amended—

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

1 (2) by inserting before paragraph (2) (as redesi-
2 gnated by paragraph (1)) the following:

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

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

10 “(B) performs the functions commonly
11 performed by an exchange (as defined in section
12 3(a)(1) of the Securities Exchange Act of
13 1934);

14 “(C) does not—

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

19 “(ii) discipline subscribers other than
20 by exclusion from trading; and

21 “(D) is exempt from the definition of the
22 term ‘exchange’ under such section 3(a)(1) by
23 rule or regulation of the Securities and Ex-
24 change Commission on terms that require com-

1 pliance with regulations of its trading func-
2 tions.”;

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

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

8 (4) by inserting after paragraph (8) (as redesign-
9 nated by paragraph (1)) the following:

10 “(9) DERIVATIVES CLEARING ORGANIZATION.—

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

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

22 “(ii) arranges or provides, on a multi-
23 lateral basis, for the settlement or netting
24 of obligations resulting from such agree-
25 ments, contracts, or transactions executed

1 by participants in the derivatives clearing
2 organization; or

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

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

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

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

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

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

4 “(A) operates by means of an electronic or
5 telecommunications network; and

6 “(B) maintains an automated audit trail of
7 bids, offers, and the matching of orders or the
8 execution of transactions on the facility.

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

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

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

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

23 “(iii) is a dealer that regularly pro-
24 vides risk management or hedging services
25 to, or engages in market-making activities

1 with, the foregoing entities involving trans-
2 actions to purchase or sell the commodity
3 or derivative agreements, contracts, or
4 transactions in the commodity;

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

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

13 “(ii) either—

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

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

20 “(bb) accredited investors,
21 as defined in Regulation D of the
22 Securities and Exchange Com-
23 mission under the Securities Act
24 of 1933 (17 C.F.R. 230.501(a)),

1 with total assets of \$2,000,000;

2 or

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

7 in each case as in effect on the date
8 of the enactment of the Commodity
9 Futures Modernization Act of 2000,
10 has, or is one of a group of vehicles
11 under common control or management
12 having in the aggregate,
13 \$1,000,000,000 in total assets; or

14 “(II) in the case of other per-
15 sons, has, or is one of a group of per-
16 sons under common control or man-
17 agement having in the aggregate,
18 \$100,000,000 in total assets; or

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

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

24 “(A) acting for its own account—

25 “(i) a financial institution;

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

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

17 “(iv) a commodity pool that—

18 “(I) has total assets exceeding
19 \$5,000,000; and

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

1 the commodity pool or the foreign per-
2 son is itself an eligible contract partic-
3 ipant);

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

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

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

17 “(III) that—

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

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

1 curred or reasonably likely to be
2 owned or incurred by the entity
3 in the conduct of the entity’s
4 business;

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

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

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

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

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

1 “(cc) a financial institution;

2 or

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(I) \$10,000,000; or

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

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

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

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

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

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

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

13 “(B) any other rate, differential, index, or
14 measure of economic or commercial risk, re-
15 turn, or value that is—

16 “(i) not based in substantial part on
17 the value of a narrow group of commod-
18 ities not described in clause (A); or

19 “(ii) based solely on 1 or more com-
20 modities that have no cash market;

21 “(C) any economic or commercial index
22 based on prices, rates, values, or levels that are
23 not within the control of any party to the rel-
24 evant contract, agreement, or transaction; or

1 “(D) an occurrence, extent of an occur-
2 rence, or contingency (other than a change in
3 the price, rate, value, or level of a commodity
4 not described in clause (A)) that is—

5 “(i) beyond the control of the parties
6 to the relevant contract, agreement, or
7 transaction; and

8 “(ii) associated with a financial, com-
9 mercial, or economic consequence.

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

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

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

19 “(B) a corporation organized under section
20 25A of the Federal Reserve Act (12 U.S.C. 611
21 et seq.), commonly known as an ‘Edge Act cor-
22 poration’;

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

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

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

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

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

14 “(H) a trust company; or

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

18 (5) by inserting after paragraph (20) (as reded-
19 ignated by paragraph (1)) the following:

20 “(21) HYBRID INSTRUMENT.—The term ‘hybrid
21 instrument’ means a security having 1 or more pay-
22 ments indexed to the value, level, or rate of, or pro-
23 viding for the delivery of, 1 or more commodities.”;

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

1 “(24) MEMBER OF A CONTRACT MARKET; MEM-
2 BER OF A DERIVATIVES TRANSACTION EXECUTION
3 FACILITY.—The term ‘member’ means, with respect
4 to a contract market or derivatives transaction exe-
5 cution facility, an individual, association, partner-
6 ship, corporation, or trust—

7 “(A) owning or holding membership in, or
8 admitted to membership representation on, the
9 contract market or derivatives transaction exe-
10 cution facility; or

11 “(B) having trading privileges on the con-
12 tract market or derivatives transaction execu-
13 tion facility.

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

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

17 “(i) that has 9 or fewer component se-
18 curities;

19 “(ii) in which a component security
20 comprises more than 30 percent of the
21 index’s weighting;

22 “(iii) in which the 5 highest weighted
23 component securities in the aggregate com-
24 prise more than 60 percent of the index’s
25 weighting; or

1 “(iv) in which the lowest weighted
2 component securities comprising, in the ag-
3 gregate, 25 percent of the index’s
4 weighting have an aggregate dollar value
5 of average daily trading volume of less
6 than \$50,000,000 (or in the case of an
7 index with 15 or more component securi-
8 ties, \$30,000,000), except that if there are
9 two or more securities with equal
10 weighting that could be included in the cal-
11 culation of the lowest weighted component
12 securities comprising, in the aggregate, 25
13 percent of the index’s weighting, such se-
14 curities shall be ranked from lowest to
15 highest dollar value of average daily trad-
16 ing volume and shall be included in the
17 calculation based on their ranking starting
18 with the lowest ranked security.

19 “(B) Notwithstanding subparagraph (A),
20 an index is not a narrow-based security index
21 if—

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

1 “(II) no component security comprises
2 more than 30 percent of the index’s
3 weighting; and

4 “(III) each component security is—

5 “(aa) registered pursuant to sec-
6 tion 12 of the Securities Exchange
7 Act of 1934;

8 “(bb) 1 of 750 securities with the
9 largest market capitalization; and

10 “(cc) 1 of 675 securities with the
11 largest dollar value of average daily
12 trading volume;

13 “(ii) a board of trade was designated
14 as a contract market by the Commodity
15 Futures Trading Commission with respect
16 to a contract of sale for future delivery on
17 the index, before the date of enactment of
18 the Commodity Futures Modernization Act
19 of 2000;

20 “(iii)(I) a contract of sale for future
21 delivery on the index traded on a des-
22 ignated contract market or registered de-
23 rivatives transaction execution facility for
24 at least 30 days as a contract of sale for

1 future delivery on an index that was not a
2 narrow-based security index; and

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

6 “(iv) a contract of sale for future de-
7 livery on the index is traded on or subject
8 to the rules of a foreign board of trade and
9 meets such requirements as are jointly es-
10 tablished by rule or regulation by the Com-
11 mission and the Securities and Exchange
12 Commission;

13 “(v) no more than 18 months have
14 passed since the date of enactment of the
15 Commodity Futures Modernization Act of
16 2000 and—

17 “(I) it is traded on or subject to
18 the rules of a foreign board of trade;

19 “(II) the offer and sale in the
20 United States of a contract of sale for
21 future delivery on the index was au-
22 thorized before the date of the enact-
23 ment of the Commodity Futures Mod-
24 ernization Act of 2000; and

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

3 “(vi) a contract of sale for future de-
4 livery on the index is traded on or subject
5 to the rules of a board of trade and meets
6 such requirements as are jointly estab-
7 lished by rule, regulation, or order by the
8 Commission and the Securities and Ex-
9 change Commission.

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

16 “(D) An index that is a narrow-based se-
17 curity index solely because it was a narrow-
18 based security index for more than 45 business
19 days over 3 consecutive calendar months pursu-
20 ant to clause (iii) of subparagraph (B) shall not
21 be a narrow-based security index for the 3 fol-
22 lowing calendar months.

23 “(E) For purposes of subparagraphs (A)
24 and (B)—

1 “(i) the dollar value of average daily
2 trading volume and the market capitaliza-
3 tion shall be calculated as of the preceding
4 6 full calendar months; and

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

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

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

19 “(A) permits trading—

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

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

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

1 “(i) govern the conduct of partici-
2 pants, other than rules that govern the
3 submission of orders or execution of trans-
4 actions on the trading facility; and

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

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

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

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

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

15 “(C) a derivatives clearing organization
16 registered under section 5b; and

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

19 “(30) SECURITY.—The term ‘security’ means a
20 security as defined in section 2(a)(1) of the Securi-
21 ties Act of 1933 (15 U.S.C. 77b(a)(1)) or section
22 3(a)(10) of the Securities Exchange Act of 1934 (15
23 U.S.C. 78c(a)(10)).

24 “(31) SECURITY FUTURE.—The term ‘security
25 future’ means a contract of sale for future delivery

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

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

21 “(33) TRADING FACILITY.—

22 “(A) IN GENERAL.—The term ‘trading fa-
23 cility’ means a person or group of persons that
24 constitutes, maintains, or provides a physical or
25 electronic facility or system in which multiple

1 participants have the ability to execute or trade
2 agreements, contracts, or transactions by ac-
3 cepting bids and offers made by other partici-
4 pants that are open to multiple participants in
5 the facility or system.

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

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

19 “(ii) a government securities dealer or
20 government securities broker, to the extent
21 that the dealer or broker executes or
22 trades agreements, contracts, or trans-
23 actions in government securities, or assists
24 persons in communicating about, negoti-
25 ating, entering into, executing, or trading

1 an agreement, contract, or transaction in
2 government securities (as the terms ‘gov-
3 ernment securities dealer’, ‘government se-
4 curities broker’, and ‘government securi-
5 ties’ are defined in section 3(a) of the Se-
6 curities Exchange Act of 1934 (15 U.S.C.
7 78c(a))); or

8 “(iii) facilities on which bids and of-
9 fers, and acceptances of bids and offers ef-
10 fected on the facility, are not binding.

11 Any person, group of persons, dealer, broker, or
12 facility described in clause (i) or (ii) is excluded
13 from the meaning of the term ‘trading facility’
14 for the purposes of this Act without any prior
15 specific approval, certification, or other action
16 by the Commission.

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

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

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

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

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

15 “(A) foreign currency;

16 “(B) government securities;

17 “(C) security warrants;

18 “(D) security rights;

19 “(E) resales of installment loan contracts;

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

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

24 “(2) COMMISSION JURISDICTION.—

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

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

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

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

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

23 “(i) is a contract of sale of a com-
24 modity for future delivery (or an option on
25 such a contract) or an option (other than

1 an option executed or traded on a national
2 securities exchange registered pursuant to
3 section 6(a) of the Securities Exchange Act
4 of 1934); and

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

10 “(I) a financial institution;

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

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

1 and keeps records under section
2 15C(b) or 17(h) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78o-
4 5(b), 78q(h)) or section 4f(e)(2)(B) of
5 this Act;

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

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

13 “(VI) an investment bank hold-
14 ing company (as defined in section
15 17(i) of the Securities Exchange Act
16 of 1934).

17 “(C) Notwithstanding subclauses (II) and
18 (III) of subparagraph (B)(ii), agreements, con-
19 tracts, or transactions described in subpara-
20 graph (B) shall be subject to sections 4b, 4c(b),
21 6(c) and 6(d) (to the extent that sections 6(c)
22 and 6(d) prohibit manipulation of the market
23 price of any commodity, in interstate commerce,
24 or for future delivery on or subject to the rules
25 of any market), 6c, 6d, and 8(a) if they are en-

1 12(e)(2)(B)) governs or applies to an agreement,
2 contract, or transaction in an excluded commodity
3 if—

4 “(A) the agreement, contract, or trans-
5 action is entered into on a principal-to-principal
6 basis between parties trading for their own ac-
7 counts or as described in section 1a(12)(B)(ii);

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

15 “(C) the agreement, contract, or trans-
16 action is executed or traded on an electronic
17 trading facility.”.

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

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

22 “(e) EXCLUDED ELECTRONIC TRADING FACILI-
23 TIES.—

24 “(1) IN GENERAL.—Nothing in this Act (other
25 than section 12(e)(2)(B)) governs or is applicable to

1 an electronic trading facility that limits transactions
2 authorized to be conducted on its facilities to those
3 satisfying the requirements of section 2(d)(2), 2(g),
4 or 2(h)(3).

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

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

21 “(4) SPECIAL RULE.—A person or group of
22 persons that would not otherwise constitute a trad-
23 ing facility shall not be considered to be a trading
24 facility solely as a result of the submission to a de-
25 rivatives clearing organization of transactions exe-

1 cuted on or through the person or group of per-
2 sons.”.

3 **SEC. 105. HYBRID INSTRUMENTS; SWAP TRANSACTIONS.**

4 (a) HYBRID INSTRUMENTS.—Section 2 of the Com-
5 modity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further
6 amended by adding at the end the following:

7 “(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-
8 MENTS.—

9 “(1) IN GENERAL.—Nothing in this Act (other
10 than section 12(e)(2)(B)) governs or is applicable to
11 a hybrid instrument that is predominantly a secu-
12 rity.

13 “(2) PREDOMINANCE.—A hybrid instrument
14 shall be considered to be predominantly a security
15 if—

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

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

1 ing the life of the hybrid instrument or at ma-
2 turity;

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

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

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

19 (b) SWAP TRANSACTIONS.—Section 2 of the Com-
20 modity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further
21 amended by adding at the end the following:

22 “(g) EXCLUDED SWAP TRANSACTIONS.—No provi-
23 sion of this Act (other than section 5a (to the extent pro-
24 vided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply
25 to or govern any agreement, contract, or transaction in

1 a commodity other than an agricultural commodity if the
2 agreement, contract, or transaction is—

3 “(1) entered into only between persons that are
4 eligible contract participants at the time they enter
5 into the agreement, contract, or transaction;

6 “(2) subject to individual negotiation by the
7 parties; and

8 “(3) not executed or traded on a trading facil-
9 ity.”.

10 (c) STUDY REGARDING RETAIL SWAPS.—

11 (1) IN GENERAL.—The Board of Governors of
12 the Federal Reserve System, the Secretary of the
13 Treasury, the Commodity Futures Trading Commis-
14 sion, and the Securities and Exchange Commission
15 shall conduct a study of issues involving the offering
16 of swap agreements to persons other than eligible
17 contract participants (as defined in section 1a of the
18 Commodity Exchange Act).

19 (2) MATTERS TO BE ADDRESSED.—The study
20 shall address—

21 (A) the potential uses of swap agreements
22 by persons other than eligible contract partici-
23 pants;

24 (B) the extent to which financial institu-
25 tions are willing to offer swap agreements to

1 persons other than eligible contract partici-
2 pants;

3 (C) the appropriate regulatory structure to
4 address customer protection issues that may
5 arise in connection with the offer of swap agree-
6 ments to persons other than eligible contract
7 participants; and

8 (D) such other relevant matters deemed
9 necessary or appropriate to address.

10 (3) REPORT.—Before the end of the 1-year pe-
11 riod beginning on the date of enactment of this Act,
12 a report on the findings and conclusions of the study
13 required by paragraph (1) shall be submitted to
14 Congress, together with such recommendations for
15 legislative action as are deemed necessary and ap-
16 propriate.

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

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

21 “(h) **LEGAL CERTAINTY FOR CERTAIN TRANS-**
22 **ACTIONS IN EXEMPT COMMODITIES.**—

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

1 “(A) is entered into solely between persons
2 that are eligible contract participants at the
3 time the persons enter into the agreement, con-
4 tract, or transaction; and

5 “(B) is not entered into on a trading facil-
6 ity.

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

10 “(A) sections 5b and 12(e)(2)(B);

11 “(B) sections 4b, 4o, 6(c), 6(d), 6c, 6d,
12 and 8a, and the regulations of the Commission
13 pursuant to section 4c(b) proscribing fraud in
14 connection with commodity option transactions,
15 to the extent the agreement, contract, or trans-
16 action is not between eligible commercial enti-
17 ties (unless 1 of the entities is an instrumen-
18 tality, department, or agency of a State or local
19 governmental entity) and would otherwise be
20 subject to such sections and regulations; and

21 “(C) sections 6(c), 6(d), 6c, 6d, 8a, and
22 9(a)(2), to the extent such sections prohibit ma-
23 nipulation of the market price of any com-
24 modity in interstate commerce and the agree-

1 ment, contract, or transaction would otherwise
2 be subject to such sections.

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

6 “(A) entered into on a principal-to-prin-
7 cipal basis solely between persons that are eligi-
8 ble commercial entities at the time the persons
9 enter into the agreement, contract, or trans-
10 action; and

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

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

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

18 “(B) sections 4b and 4o and the regula-
19 tions of the Commission pursuant to section
20 4c(b) proscribing fraud in connection with com-
21 modity option transactions to the extent the
22 agreement, contract, or transaction would oth-
23 erwise be subject to such sections and regula-
24 tions;

1 “(C) sections 6(c) and 9(a)(2), to the ex-
2 tent such sections prohibit manipulation of the
3 market price of any commodity in interstate
4 commerce and to the extent the agreement, con-
5 tract, or transaction would otherwise be subject
6 to such sections; and

7 “(D) such rules and regulations as the
8 Commission may prescribe if necessary to en-
9 sure timely dissemination by the electronic trad-
10 ing facility of price, trading volume, and other
11 trading data to the extent appropriate, if the
12 Commission determines that the electronic trad-
13 ing facility performs a significant price dis-
14 covery function for transactions in the cash
15 market for the commodity underlying any
16 agreement, contract, or transaction executed or
17 traded on the electronic trading facility.

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

20 “(A) notify the Commission of its intention
21 to operate an electronic trading facility in reli-
22 ance on the exemption set forth in paragraph
23 (3), which notice shall include—

1 “(i) the name and address of the facil-
2 ity and a person designated to receive com-
3 munications from the Commission;

4 “(ii) the commodity categories that
5 the facility intends to list or otherwise
6 make available for trading on the facility
7 in reliance on the exemption set forth in
8 paragraph (3);

9 “(iii) certifications that—

10 “(I) no executive officer or mem-
11 ber of the governing board of, or any
12 holder of a 10 percent or greater eq-
13 uity interest in, the facility is a person
14 described in any of subparagraphs (A)
15 through (H) of section 8a(2);

16 “(II) the facility will comply with
17 the conditions for exemption under
18 this paragraph; and

19 “(III) the facility will notify the
20 Commission of any material change in
21 the information previously provided by
22 the facility to the Commission pursu-
23 ant to this paragraph; and

24 “(iv) the identity of any derivatives
25 clearing organization to which the facility

1 transmits or intends to transmit trans-
2 action data for the purpose of facilitating
3 the clearance and settlement of trans-
4 actions conducted on the facility in reliance
5 on the exemption set forth in paragraph
6 (3);

7 “(B)(i)(I) provide the Commission with ac-
8 cess to the facility’s trading protocols and elec-
9 tronic access to the facility with respect to
10 transactions conducted in reliance on the ex-
11 emption set forth in paragraph (3); or

12 “(II) provide such reports to the Commis-
13 sion regarding transactions executed on the fa-
14 cility in reliance on the exemption set forth in
15 paragraph (3) as the Commission may from
16 time to time request to enable the Commission
17 to satisfy its obligations under this Act;

18 “(ii) maintain for 5 years, and make avail-
19 able for inspection by the Commission upon re-
20 quest, records of activities related to its busi-
21 ness as an electronic trading facility exempt
22 under paragraph (3), including—

23 “(I) information relating to data entry
24 and transaction details sufficient to enable
25 the Commission to reconstruct trading ac-

1 tivity on the facility conducted in reliance
2 on the exemption set forth in paragraph
3 (3); and

4 “(II) the name and address of each
5 participant on the facility authorized to
6 enter into transactions in reliance on the
7 exemption set forth in paragraph (3); and

8 “(iii) upon special call by the Commission,
9 provide to the Commission, in a form and man-
10 ner and within the period specified in the spe-
11 cial call, such information related to its busi-
12 ness as an electronic trading facility exempt
13 under paragraph (3), including information re-
14 lating to data entry and transaction details in
15 respect of transactions entered into in reliance
16 on the exemption set forth in paragraph (3), as
17 the Commission may determine appropriate—

18 “(I) to enforce the provisions specified
19 in subparagraphs (B) and (C) of para-
20 graph (4);

21 “(II) to evaluate a systemic market
22 event; or

23 “(III) to obtain information requested
24 by a Federal financial regulatory authority
25 in order to enable the regulator to fulfill

1 its regulatory or supervisory responsibil-
2 ities;

3 “(C)(i) upon receipt of any subpoena
4 issued by or on behalf of the Commission to any
5 foreign person who the Commission believes is
6 conducting or has conducted transactions in re-
7 liance on the exemption set forth in paragraph
8 (3) on or through the electronic trading facility
9 relating to the transactions, promptly notify the
10 foreign person of, and transmit to the foreign
11 person, the subpoena in a manner reasonable
12 under the circumstances, or as specified by the
13 Commission; and

14 “(ii) if the Commission has reason to be-
15 lieve that a person has not timely complied with
16 a subpoena issued by or on behalf of the Com-
17 mission pursuant to clause (i), and the Commis-
18 sion in writing has directed that a facility rely-
19 ing on the exemption set forth in paragraph (3)
20 deny or limit further transactions by the per-
21 son, the facility shall deny that person further
22 trading access to the facility or, as applicable,
23 limit that person’s access to the facility for liq-
24 uidation trading only;

1 “(D) comply with the requirements of this
2 paragraph applicable to the facility and require
3 that each participant, as a condition of trading
4 on the facility in reliance on the exemption set
5 forth in paragraph (3), agree to comply with all
6 applicable law;

7 “(E) have a reasonable basis for believing
8 that participants authorized to conduct trans-
9 actions on the facility in reliance on the exemp-
10 tion set forth in paragraph (3) are eligible com-
11 mercial entities; and

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

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

22 **SEC. 107. APPLICATION OF COMMODITY FUTURES LAWS.**

23 Section 2 of the Commodity Exchange Act (7 U.S.C.
24 2, 2a, 3, 4, 4a) is further amended by adding at the end
25 the following:

1 “(i) APPLICATION OF COMMODITY FUTURES
2 LAWS.—

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

5 “(A) any agreement, contract, or trans-
6 action that is excluded from this Act under sec-
7 tion 2(c), 2(d), 2(e), 2(f), or 2(g) of this Act or
8 title IV of the Commodity Futures Moderniza-
9 tion Act of 2000, or exempted under section
10 2(h) or 4(c) of this Act; or

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

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

23 **SEC. 108. PROTECTION OF THE PUBLIC INTEREST.**

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

1 **“SEC. 3. FINDINGS AND PURPOSE.**

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

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

23 **SEC. 109. PROHIBITED TRANSACTIONS.**

24 Section 4c of the Commodity Exchange Act (7 U.S.C.
25 6c) is amended by striking “SEC. 4c.” and all that follows
26 through subsection (a) and inserting the following:

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

2 “(a) IN GENERAL.—

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

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

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

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

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

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

24 “(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 **SEC. 110. DESIGNATION OF BOARDS OF TRADE AS CON-**
5 **TRACT MARKETS.**

6 The Commodity Exchange Act is amended—

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

9 (2) by striking sections 5 and 5a (7 U.S.C. 7,
10 7a) and inserting the following:

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

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

18 “(b) CRITERIA FOR DESIGNATION.—

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

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

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

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

11 “(A) transfer trades or office trades;

12 “(B) an exchange of—

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

15 “(ii) futures for cash commodities; or

16 “(iii) futures for swaps; or

17 “(C) a futures commission merchant, act-
18 ing as principal or agent, to enter into or con-
19 firm the execution of a contract for the pur-
20 chase or sale of a commodity for future delivery
21 if the contract is reported, recorded, or cleared
22 in accordance with the rules of the contract
23 market or a derivatives clearing organization.

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

1 “(A) establish and enforce rules defining,
2 or specifications detailing, the manner of oper-
3 ation of the trade execution facility maintained
4 by the board of trade, including rules or speci-
5 fications describing the operation of any elec-
6 tronic matching platform; and

7 “(B) demonstrate that the trade execution
8 facility operates in accordance with the rules or
9 specifications.

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

17 “(6) DISCIPLINARY PROCEDURES.—The board
18 of trade shall establish and enforce disciplinary pro-
19 cedures that authorize the board of trade to dis-
20 cipline, suspend, or expel members or market par-
21 ticipants that violate the rules of the board of trade,
22 or similar methods for performing the same func-
23 tions, including delegation of the functions to third
24 parties.

1 “(7) PUBLIC ACCESS.—The board of trade shall
2 provide the public with access to the rules, regula-
3 tions, and contract specifications of the board of
4 trade.

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

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

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

18 “(1) IN GENERAL.—To maintain the designa-
19 tion of a board of trade as a contract market, the
20 board of trade shall comply with the core principles
21 specified in this subsection. The board of trade shall
22 have reasonable discretion in establishing the man-
23 ner in which it complies with the core principles.

24 “(2) COMPLIANCE WITH RULES.—The board of
25 trade shall monitor and enforce compliance with the

1 rules of the contract market, including the terms
2 and conditions of any contracts to be traded and any
3 limitations on access to the contract market.

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

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

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

18 “(6) EMERGENCY AUTHORITY.—The board of
19 trade shall adopt rules to provide for the exercise of
20 emergency authority, in consultation or cooperation
21 with the Commission, where necessary and appro-
22 priate, including the authority to—

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

1 “(B) suspend or curtail trading in any con-
2 tract; and

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

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

9 “(A) the terms and conditions of the con-
10 tracts of the contract market; and

11 “(B) the mechanisms for executing trans-
12 actions on or through the facilities of the con-
13 tract market.

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

19 “(9) EXECUTION OF TRANSACTIONS.—The
20 board of trade shall provide a competitive, open, and
21 efficient market and mechanism for executing trans-
22 actions.

23 “(10) TRADE INFORMATION.—The board of
24 trade shall maintain rules and procedures to provide
25 for the recording and safe storage of all identifying

1 trade information in a manner that enables the con-
2 tract market to use the information for purposes of
3 assisting in the prevention of customer and market
4 abuses and providing evidence of any violations of
5 the rules of the contract market.

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

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

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

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

8 “(15) CONFLICTS OF INTEREST.—The board of
9 trade shall establish and enforce rules to minimize
10 conflicts of interest in the decisionmaking process of
11 the contract market and establish a process for re-
12 solving such conflicts of interest.

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

18 “(17) RECORDKEEPING.—The board of trade
19 shall maintain records of all activities related to the
20 business of the contract market in a form and man-
21 ner acceptable to the Commission for a period of 5
22 years.

23 “(18) ANTITRUST CONSIDERATIONS.—Unless
24 necessary or appropriate to achieve the purposes of

1 this Act, the board of trade shall endeavor to
2 avoid—

3 “(A) adopting any rules or taking any ac-
4 tions that result in any unreasonable restraints
5 of trade; or

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

8 “(e) CURRENT AGRICULTURAL COMMODITIES.—

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

16 “(2) In order to promote responsible economic
17 or financial innovation and fair competition, the
18 Commission, on application by any person, after no-
19 tice and public comment and opportunity for hear-
20 ing, may prescribe rules and regulations to provide
21 for the offer and sale of contracts for future delivery
22 or options on such contracts to be conducted on a
23 derivatives transaction execution facility.”.

1 **SEC. 111. DERIVATIVES TRANSACTION EXECUTION FACILI-**
2 **TIES.**

3 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
4 is amended by inserting after section 5 (as amended by
5 section 110(2)) the following:

6 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**
7 **TIES.**

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

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

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

17 “(b) REQUIREMENTS FOR TRADING.—

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

24 “(2) REQUIREMENTS FOR UNDERLYING COM-
25 MODITIES.—A registered derivatives transaction exe-
26 cution facility may trade any contract of sale of a

1 commodity for future delivery (or option on such a
2 contract) only if—

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

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

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

11 “(D)(i) the contract is a security futures
12 product, and (ii) the registered derivatives
13 transaction execution facility is a national secu-
14 rities exchange registered under the Securities
15 Exchange Act of 1934;

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

22 “(F) except as provided in section 5(e)(2),
23 the underlying commodity is a commodity other
24 than an agricultural commodity enumerated in
25 section 1a(4), and trading access to the facility

1 is limited to eligible commercial entities trading
2 for their own account.

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

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

7 “(B) be a person trading through a futures
8 commission merchant that—

9 “(i) is registered with the Commis-
10 sion;

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

17 “(iii) is a clearing member of a de-
18 rivatives clearing organization; and

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

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

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

6 “(B) if the board of trade uses the same
7 electronic trading system for trading on the
8 contract market and derivatives transaction
9 execution facility of the board of trade, identify
10 whether the electronic trading is taking place
11 on the contract market or the derivatives trans-
12 action execution facility.

13 “(c) CRITERIA FOR REGISTRATION.—

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

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

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

3 or

4 “(B) use technological means to—

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

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

10 “(3) TRADING PROCEDURES.—The board of
11 trade shall establish and enforce rules or terms and
12 conditions defining, or specifications detailing, trad-
13 ing procedures to be used in entering and executing
14 orders traded on the facilities of the board of trade.

15 The rules may authorize—

16 “(A) transfer trades or office trades;

17 “(B) an exchange of—

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

20 “(ii) futures for cash commodities; or

21 “(iii) futures for swaps; or

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

1 if the contract is reported, recorded, or cleared
2 in accordance with the rules of the registered
3 derivatives transaction execution facility or a
4 derivatives clearing organization.

5 “(4) FINANCIAL INTEGRITY OF TRANS-
6 ACTIONS.—The board of trade shall establish and
7 enforce rules or terms and conditions providing for
8 the financial integrity of transactions entered on or
9 through the facilities of the board of trade, and rules
10 or terms and conditions to ensure the financial in-
11 tegrity of any futures commission merchants and in-
12 troducing brokers and the protection of customer
13 funds.

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

16 “(1) IN GENERAL.—To maintain the registra-
17 tion of a board of trade as a derivatives transaction
18 execution facility, a board of trade shall comply with
19 the core principles specified in this subsection. The
20 board of trade shall have reasonable discretion in es-
21 tablishing the manner in which the board of trade
22 complies with the core principles.

23 “(2) COMPLIANCE WITH RULES.—The board of
24 trade shall monitor and enforce the rules of the fa-
25 cility, including any terms and conditions of any

1 contracts traded on or through the facility and any
2 limitations on access to the facility.

3 “(3) MONITORING OF TRADING.—The board of
4 trade shall monitor trading in the contracts of the
5 facility 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 responsibil-
9 ities of the Commission under the Act.

10 “(4) DISCLOSURE OF GENERAL INFORMA-
11 TION.—The board of trade shall disclose publicly
12 and to the 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 pation in trading on the facility.

19 “(5) 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 con-
23 tracts traded on the facility if the Commission deter-
24 mines that the contracts perform a significant price

1 discovery function for transactions in the cash mar-
2 ket for the commodity underlying the contracts.

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

9 “(7) CONFLICTS OF INTEREST.—The board of
10 trade shall establish and enforce rules to minimize
11 conflicts of interest in the decision making process
12 of the derivatives transaction execution facility and
13 establish a process for resolving such conflicts of in-
14 terest.

15 “(8) RECORDKEEPING.—The board of trade
16 shall maintain records of all activities related to the
17 business of the derivatives transaction execution fa-
18 cility in a form and manner acceptable to the Com-
19 mission for a period of 5 years.

20 “(9) ANTITRUST CONSIDERATIONS.—Unless
21 necessary or appropriate to achieve the purposes of
22 this Act, the board of trade shall endeavor to
23 avoid—

1 “(A) adopting any rules or taking any ac-
 2 tions that result in any unreasonable restraint
 3 of trade; or

4 “(B) imposing any material anticompeti-
 5 tive burden on trading on the derivatives trans-
 6 action execution facility.

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

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

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

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

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

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

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

17 “(3) IMPLEMENTATION.—The Commission shall
18 cooperate and coordinate with the Securities and Ex-
19 change Commission, the Secretary of the Treasury,
20 and Federal banking regulatory agencies (including
21 the Farm Credit Administration) in adopting rules
22 and taking any other appropriate action to facilitate
23 the implementation of this subsection.

24 “(f) SEGREGATION OF CUSTOMER FUNDS.—Not
25 later than 180 days after the date of the enactment of

1 the Commodity Futures Modernization Act of 2000, con-
2 sistent with regulations adopted by the Commission, a reg-
3 istered derivatives transaction execution facility may au-
4 thorize a futures commission merchant to offer any cus-
5 tomer of the futures commission merchant that is an eligi-
6 ble contract participant the right to not segregate the cus-
7 tomer funds of the customer that are carried with the fu-
8 tures commission merchant for purposes of trading on or
9 through the facilities of the registered derivatives trans-
10 action execution facility.

11 “(g) ELECTION TO TRADE EXCLUDED AND EXEMPT
12 COMMODITIES.—

13 “(1) IN GENERAL.—Notwithstanding subsection
14 (b)(2) of this section, a board of trade that is or
15 elects to become a registered derivatives transaction
16 execution facility may trade on the facility any
17 agreements, contracts, or transactions involving ex-
18 cluded or exempt commodities other than securities,
19 except contracts of sale for future delivery of exempt
20 securities under section 3(a)(12) of the Securities
21 Exchange Act of 1934 as in effect on the date of en-
22 actment of the Futures Trading Act of 1982, that
23 are otherwise excluded from this Act under section
24 2(c), 2(d), or 2(g) of this Act, or exempt under sec-
25 tion 2(h) of this Act.

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

7 **SEC. 112. DERIVATIVES CLEARING.**

8 (a) IN GENERAL.—Subtitle A of title IV of the Fed-
 9 eral Deposit Insurance Corporation Improvement Act of
 10 1991 is amended—

11 (1) by inserting before the section heading for
 12 section 401, the following new heading:

13 **“CHAPTER 1—BILATERAL AND CLEARING**
 14 **ORGANIZATION NETTING”;**

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

17 (3) by inserting after section 407, the following
 18 new chapter:

19 **“CHAPTER 2—MULTILATERAL CLEARING**
 20 **ORGANIZATIONS**

21 **“SEC. 408. DEFINITIONS.**

22 For purposes of this chapter, the following definitions
 23 shall apply:

24 “(1) MULTILATERAL CLEARING ORGANIZA-
 25 TION.—The term ‘multilateral clearing organization’

1 means a system utilized by more than 2 participants
2 in which the bilateral credit exposures of partici-
3 pants arising from the transactions cleared are effec-
4 tively eliminated and replaced by a system of guar-
5 antees, insurance, or mutualized risk of loss.

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

9 “(A) any agreement, contract, or trans-
10 action, including the terms and conditions in-
11 corporated by reference in any such agreement,
12 contract, or transaction, which is an interest
13 rate swap, option, or forward agreement, in-
14 cluding a rate floor, rate cap, rate collar, cross-
15 currency rate swap, basis swap, and forward
16 rate agreement; a same day-tomorrow, tomor-
17 row-next, forward, or other foreign exchange or
18 precious metals agreement; a currency swap,
19 option, or forward agreement; an equity index
20 or equity swap, option, or forward agreement; a
21 debt index or debt swap, option, or forward
22 agreement; a credit spread or credit swap, op-
23 tion, or forward agreement; a commodity index
24 or commodity swap, option, or forward agree-

1 ment; and a weather swap, weather derivative,
2 or weather option;

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

16 “(C) any agreement, contract, or trans-
17 action excluded from the Commodity Exchange
18 Act under section 2(e), 2(d), 2(f), or 2(g) of
19 such Act, or exempted under section 2(h) or
20 4(e) of such Act; and

21 “(D) any option to enter into any, or any
22 combination of, agreements, contracts or trans-
23 actions referred to in this subparagraph.

24 “(3) OTHER DEFINITIONS.—The terms ‘insured
25 State nonmember bank’, ‘State member bank’, and

1 ‘affiliate’ have the same meanings as in section 3 of
2 the Federal Deposit Insurance Act.

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

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

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

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

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

20 “(3) is supervised by a foreign financial regu-
21 lator that the Comptroller of the Currency, the
22 Board of Governors of the Federal Reserve System,
23 the Federal Deposit Insurance Corporation, the Se-
24 curities and Exchange Commission, or the Com-

1 modity Futures Trading Commission, as applicable,
2 has determined satisfies appropriate standards.”.

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

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

7 “**(a) CONSERVATORSHIP OR RECEIVERSHIP.**—

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

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

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

1 been appointed, as the Comptroller of the Currency has
2 with respect to a conservator or receiver for a national
3 bank and the national bank for which the conservator or
4 receiver has been appointed.

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

13 (c) TECHNICAL AND CONFORMING AMENDMENTS TO
14 TITLE 11, UNITED STATES CODE.—

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

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

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

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

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

17 “(A) means—

18 “(i) a Federal reserve bank or an en-
19 tity (domestic or foreign) that is a com-
20 mercial or savings bank, industrial savings
21 bank, savings and loan association, trust
22 company, or receiver or conservator for
23 such entity and, when any such Federal re-
24 serve bank, receiver, conservator, or entity
25 is acting as agent or custodian for a cus-

1 tomor in connection with a securities con-
 2 tract, as defined in section 741 of this
 3 title, the customer; or

4 “(ii) in connection with a securities
 5 contract, as defined in section 741 of this
 6 title, an investment company registered
 7 under the Investment Company Act of
 8 1940; and

9 “(B) includes any person described in sub-
 10 paragraph (A) which operates, or operates as, a
 11 multilateral clearing organization pursuant to
 12 section 409 of the Federal Deposit Insurance
 13 Corporation Improvement Act of 1991;”.

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

18 “(54A) the term ‘uninsured State member bank’
 19 means a State member bank (as defined in section 3 of
 20 the Federal Deposit Insurance Act) the deposits of which
 21 are not insured by the Federal Deposit Insurance Cor-
 22 poration; and”.

23 (5) SUBCHAPTER V OF CHAPTER 7.—

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

1 (i) by redesignating subsections (e)
 2 through (i) as subsections (f) through (j),
 3 respectively; and

4 (ii) by inserting after subsection (d)
 5 the following new subsection:

6 “(e) SCOPE OF APPLICATION.—Subchapter V of
 7 chapter 7 of this title shall apply only in a case under
 8 such chapter concerning the liquidation of an uninsured
 9 State member bank, or a corporation organized under sec-
 10 tion 25A of the Federal Reserve Act, which operates, or
 11 operates as, a multilateral clearing organization pursuant
 12 to section 409 of the Federal Deposit Insurance Corpora-
 13 tion Improvement Act of 1991.”.

14 (B) CLEARING BANK LIQUIDATION.—
 15 Chapter 7 of title 11, United States Code, is
 16 amended by adding at the end the following
 17 new subchapter:

18 “SUBCHAPTER V—CLEARING BANK
 19 LIQUIDATION

20 “§ 781. Definitions

21 “For purposes of this subchapter, the following defi-
 22 nitions shall apply:

23 “(1) BOARD.—The term ‘Board’ means the
 24 Board of Governors of the Federal Reserve System.

1 “(2) DEPOSITORY INSTITUTION.—The term ‘de-
2 pository institution’ has the same meaning as in sec-
3 tion 3 of the Federal Deposit Insurance Act.

4 “(3) CLEARING BANK.—The term ‘clearing
5 bank’ means an uninsured State member bank, or a
6 corporation organized under section 25A of the Fed-
7 eral Reserve Act, which operates, or operates as, a
8 multilateral clearing organization pursuant to sec-
9 tion 409 of the Federal Deposit Insurance Corpora-
10 tion Improvement Act of 1991.

11 **“§ 782. Selection of trustee**

12 “(a) IN GENERAL.—

13 “(1) APPOINTMENT.—Notwithstanding any
14 other provision of this title, the conservator or re-
15 ceiver who files the petition shall be the trustee
16 under this chapter, unless the Board designates an
17 alternative trustee.

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

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

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

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

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

9 “(1) sell the clearing bank to a depository insti-
10 tution or consortium of depository institutions
11 (which consortium may agree on the allocation of
12 the clearing bank among the consortium);

13 “(2) merge the clearing bank with a depository
14 institution;

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

19 “(4) transfer assets or liabilities to a depository
20 institution;

21 “(5) transfer assets and liabilities to a bridge
22 bank as provided in paragraphs (1), (3)(A), (5), (6),
23 of section 11(n) of the Federal Deposit Insurance
24 Act, paragraphs (9) through (13) of such section,
25 and subparagraphs (A) through (H) and subpara-

1 graph (K) of paragraph (4) of such section 11(n),
 2 except that—

3 “(A) the bridge bank to which such assets
 4 or liabilities are transferred shall be treated as
 5 a clearing bank for the purpose of this sub-
 6 section; and

7 “(B) any references in any such provision
 8 of law to the Federal Deposit Insurance Cor-
 9 poration shall be construed to be references to
 10 the appointing agency and that references to
 11 deposit insurance shall be omitted.

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

15 **“§ 784. Right to be heard**

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

20 (6) DEFINITIONS OF CLEARING ORGANIZATION,
 21 CONTRACT MARKET, AND RELATED DEFINITIONS.—

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

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

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

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

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

7 “(8) ‘contract of sale’, ‘commodity’, ‘derivatives
8 clearing organization’, ‘future delivery’, ‘board of
9 trade’, ‘registered entity’, and ‘futures commission
10 merchant’ have the meanings assigned to those
11 terms in the Act;”.

12 (d) CLERICAL AMENDMENT.—The table of sections
13 for chapter 7 of title 11, United States Code, is amended
14 by adding at the end the following new items:

15 “SUBCHAPTER V—CLEARING BANK
16 LIQUIDATION

“Sec.

“781. Definitions.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.”.

17 (e) RESOLUTION OF EDGE ACT CORPORATIONS.—
18 The 16th undesignated paragraph of section 25A of the
19 Federal Reserve Act (12 U.S.C. 624) is amended to read
20 as follows:

21 “(16) APPOINTMENT OF RECEIVER OR CONSER-
22 VATOR.—

1 “(A) IN GENERAL.—The Board may ap-
2 point a conservator or receiver for a corporation
3 organized under the provisions of this section to
4 the same extent and in the same manner as the
5 Comptroller of the Currency may appoint a con-
6 servator or receiver for a national bank, and the
7 conservator or receiver for such corporation
8 shall exercise the same powers, functions, and
9 duties, subject to the same limitations, as a
10 conservator or receiver for a national bank.

11 “(B) EQUIVALENT AUTHORITY.—The
12 Board shall have the same authority with re-
13 spect to any conservator or receiver appointed
14 for a corporation organized under the provisions
15 of this section under this paragraph and any
16 such corporation as the Comptroller of the Cur-
17 rency has with respect to a conservator or re-
18 ceiver of a national bank and the national bank
19 for which a conservator or receiver has been ap-
20 pointed.

21 “(C) TITLE 11 PETITIONS.—The Board
22 may direct the conservator or receiver of a cor-
23 poration organized under the provisions of this
24 section to file a petition pursuant to title 11,
25 United States Code, in which case, title 11,

1 United States Code, shall apply to the corpora-
2 tion in lieu of otherwise applicable Federal or
3 State insolvency law.”.

4 (f) DERIVATIVES CLEARING ORGANIZATIONS.—The
5 Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended
6 by inserting after section 5a, as added by section 111 of
7 this Act, the following:

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

9 “(a) REGISTRATION REQUIREMENT.—It shall be un-
10 lawful for a derivatives clearing organization, unless reg-
11 istered with the Commission, directly or indirectly to make
12 use of the mails or any means or instrumentality of inter-
13 state commerce to perform the functions of a derivatives
14 clearing organization described in section 1a(9) of this Act
15 with respect to a contract of sale of a commodity for fu-
16 ture delivery (or option on such a contract) or option on
17 a commodity, in each case unless the contract or option—

18 “(1) is excluded from this Act by section
19 2(a)(1)(C)(i), 2(c), 2(d), 2(f), or 2(g) of this Act or
20 title IV of the Commodity Futures Modernization
21 Act of 2000, or exempted under section 2(h) or 4(c)
22 of this Act; or

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

1 “(b) VOLUNTARY REGISTRATION.—A derivatives
2 clearing organization that clears agreements, contracts, or
3 transactions excluded from this Act by section 2(c), 2(d),
4 2(f) or 2(g) of this Act or title IV of the Commodity Fu-
5 tures Modernization Act of 2000, or exempted under sec-
6 tion 2(h) or 4(c) of this Act, or other over-the-counter de-
7 rivative instruments (as defined in the Federal Deposit In-
8 surance Corporation Improvement Act of 1991) may reg-
9 ister with the Commission as a derivatives clearing organi-
10 zation.

11 “(c) REGISTRATION OF DERIVATIVES CLEARING OR-
12 GANIZATIONS.—

13 “(1) APPLICATION.—A person desiring to reg-
14 ister as a derivatives clearing organization shall sub-
15 mit to the Commission an application in such form
16 and containing such information as the Commission
17 may require for the purpose of making the deter-
18 minations required for approval under paragraph
19 (2).

20 “(2) CORE PRINCIPLES.—

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

1 graph. The applicant shall have reasonable dis-
2 cretion in establishing the manner in which it
3 complies with the core principles.

4 “(B) FINANCIAL RESOURCES.—The appli-
5 cant shall demonstrate that the applicant has
6 adequate financial, operational, and managerial
7 resources to discharge the responsibilities of a
8 derivatives clearing organization.

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

11 “(i) appropriate admission and con-
12 tinuing eligibility standards (including ap-
13 propriate minimum financial requirements)
14 for members of and participants in the or-
15 ganization; and

16 “(ii) appropriate standards for deter-
17 mining eligibility of agreements, contracts,
18 or transactions submitted to the applicant.

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

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

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

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

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

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

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

21 “(H) RULE ENFORCEMENT.—The appli-
22 cant shall—

23 “(i) maintain adequate arrangements
24 and resources for the effective monitoring
25 and enforcement of compliance with rules

1 of the applicant and for resolution of dis-
2 putes; and

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

7 “(I) SYSTEM SAFEGUARDS.—The applicant
8 shall demonstrate that the applicant—

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

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

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

1 “(K) RECORDKEEPING.—The applicant
2 shall maintain records of all activities related to
3 the business of the applicant as a derivatives
4 clearing organization in a form and manner ac-
5 ceptable to the Commission for a period of 5
6 years.

7 “(L) PUBLIC INFORMATION.—The appli-
8 cant shall make information concerning the
9 rules and operating procedures governing the
10 clearing and settlement systems (including de-
11 fault procedures) available to market partici-
12 pants.

13 “(M) INFORMATION SHARING.—The appli-
14 cant shall—

15 “(i) enter into and abide by the terms
16 of all appropriate and applicable domestic
17 and international information-sharing
18 agreements; and

19 “(ii) use relevant information obtained
20 from the agreements in carrying out the
21 clearing organization’s risk management
22 program.

23 “(N) ANTITRUST CONSIDERATIONS.—Un-
24 less appropriate to achieve the purposes of this

1 Act, the derivatives clearing organization shall
2 avoid—

3 “(i) adopting any rule or taking any
4 action that results in any unreasonable re-
5 straint of trade; or

6 “(ii) imposing any material anti-
7 competitive burden on trading on the con-
8 tract market.

9 “(3) ORDERS CONCERNING COMPETITION.—A
10 derivatives clearing organization may request the
11 Commission to issue an order concerning whether a
12 rule or practice of the applicant is the least anti-
13 competitive means of achieving the objectives, pur-
14 poses, and policies of this Act.

15 “(d) EXISTING DERIVATIVES CLEARING ORGANIZA-
16 TIONS.—A derivatives clearing organization shall be
17 deemed to be registered under this section to the extent
18 that the derivatives clearing organization clears agree-
19 ments, contracts, or transactions for a board of trade that
20 has been designated by the Commission as a contract mar-
21 ket for such agreements, contracts, or transactions before
22 the date of enactment of this section.

23 “(e) APPOINTMENT OF TRUSTEE.—

24 “(1) IN GENERAL.—If a proceeding under sec-
25 tion 5e results in the suspension or revocation of the

1 registration of a derivatives clearing organization, or
2 if a derivatives clearing organization withdraws from
3 registration, the Commission, on notice to the de-
4 rivatives clearing organization, may apply to the ap-
5 propriate United States district court where the de-
6 rivatives clearing organization is located for the ap-
7 pointment of a trustee.

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

11 “(A) the court may take exclusive jurisdic-
12 tion over the derivatives clearing organization
13 and the records and assets of the derivatives
14 clearing organization, wherever located; and

15 “(B) if the court takes jurisdiction under
16 subparagraph (A), the court shall appoint the
17 Commission, or a person designated by the
18 Commission, as trustee with power to take pos-
19 session and continue to operate or terminate
20 the operations of the derivatives clearing orga-
21 nization in an orderly manner for the protection
22 of participants, subject to such terms and con-
23 ditions as the court may prescribe.

24 “(f) LINKING OF REGULATED CLEARING FACILI-
25 TIES.—

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

6 “(2) COORDINATION.—In carrying out para-
7 graph (1), the Commission shall coordinate with the
8 Federal banking agencies and the Securities and Ex-
9 change Commission.”.

10 **SEC. 113. COMMON PROVISIONS APPLICABLE TO REG-**
11 **ISTERED ENTITIES.**

12 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
13 is amended by inserting after section 5b (as added by sec-
14 tion 112(f)) the following:

15 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**
16 **ISTERED ENTITIES.**

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

19 “(1) IN GENERAL.—Consistent with the pur-
20 poses of this Act, the Commission may issue inter-
21 pretations, or approve interpretations submitted to
22 the Commission, of sections 5(d), 5a(d), and
23 5b(d)(2) to describe what would constitute an ac-
24 ceptable business practice under such sections.

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

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

7 “(1) IN GENERAL.—A contract market or de-
8 rivatives transaction execution facility may comply
9 with any applicable core principle through delegation
10 of any relevant function to a registered futures asso-
11 ciation or another registered entity.

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

16 “(3) NONCOMPLIANCE.—If a contract market
17 or derivatives transaction execution facility that dele-
18 gates a function under paragraph (1) becomes
19 aware that a delegated function is not being per-
20 formed as required under this Act, the contract mar-
21 ket or derivatives transaction execution facility shall
22 promptly take steps to address the noncompliance.

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

1 “(1) IN GENERAL.—Subject to paragraph (2), a
2 registered entity may elect to list for trading or ac-
3 cept for clearing any new contract or other instru-
4 ment, or may elect to approve and implement any
5 new rule or rule amendment, by providing to the
6 Commission (and the Secretary of the Treasury, in
7 the case of a contract of sale of a government secu-
8 rity for future delivery (or option on such a con-
9 tract) or a rule or rule amendment specifically re-
10 lated to such a contract) a written certification that
11 the new contract or instrument or clearing of the
12 new contract or instrument, new rule, or rule
13 amendment complies with this Act (including regula-
14 tions under this Act).

15 “(2) PRIOR APPROVAL.—

16 “(A) IN GENERAL.—A registered entity
17 may request that the Commission grant prior
18 approval to any new contract or other instru-
19 ment, new rule, or rule amendment.

20 “(B) PRIOR APPROVAL REQUIRED.—Not-
21 withstanding any other provision of this section,
22 a designated contract market shall submit to
23 the Commission for prior approval each rule
24 amendment that materially changes the terms
25 and conditions, as determined by the Commis-

1 sion, in any contract of sale for future delivery
2 of a commodity specifically enumerated in sec-
3 tion 1a(4) (or any option thereon) traded
4 through its facilities if the rule amendment ap-
5 plies to contracts and delivery months which
6 have already been listed for trading and have
7 open interest.

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

15 “(3) APPROVAL.—The Commission shall ap-
16 prove any such new contract or instrument, new
17 rule, or rule amendment unless the Commission
18 finds that the new contract or instrument, new rule,
19 or rule amendment would violate this Act.

20 “(d) VIOLATION OF CORE PRINCIPLES.—

21 “(1) IN GENERAL.—If the Commission deter-
22 mines, on the basis of substantial evidence, that a
23 registered entity is violating any applicable core
24 principle specified in section 5(d), 5a(d), or
25 5b(d)(2), the Commission shall—

1 “(A) notify the registered entity in writing
2 of the determination; and

3 “(B) afford the registered entity an oppor-
4 tunity to make appropriate changes to bring the
5 registered entity into compliance with the core
6 principles.

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

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

18 **SEC. 114. EXEMPT BOARDS OF TRADE.**

19 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
20 is amended by inserting after section 5c (as added by sec-
21 tion 113) the following:

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

23 “(a) ELECTION TO REGISTER WITH THE COMMIS-
24 SION.—A board of trade that meets the requirements of
25 subsection (b) of this section may operate as an exempt

1 board of trade on receipt from the board of trade of a
2 notice, provided in such manner as the Commission may
3 by rule or regulation prescribe, that the board of trade
4 elects to operate as an exempt board of trade. Except as
5 otherwise provided in this section, no provision of this Act
6 (other than subparagraphs (C) and (D) of section 2(a)(1)
7 and section 12(e)(2)(B)) shall apply with respect to a con-
8 tract of sale of a commodity for future delivery (or option
9 on such a contract) traded on or through the facilities of
10 an exempt board of trade.

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

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

17 “(A) a nearly inexhaustible deliverable
18 supply;

19 “(B) a deliverable supply that is suffi-
20 ciently large, and a cash market sufficiently liq-
21 uid, to render any contract traded on the com-
22 modity highly unlikely to be susceptible to the
23 threat of manipulation; or

24 “(C) no cash market;

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

4 “(3) that are not contracts of sale (or options
5 on such a contract or on a commodity) for future
6 delivery of any security, including any group or
7 index of securities or any interest in, or based on the
8 value of, any security or any group or index of secu-
9 rities.

10 “(c) ANTIMANIPULATION REQUIREMENTS.—A party
11 to a contract of sale of a commodity for future delivery
12 (or option on such a contract or on a commodity) that
13 is traded on an exempt board of trade shall be subject
14 to sections 4b, 4c(b), 4o, 6(c), and 9(a)(2), and the Com-
15 mission shall enforce those provisions with respect to any
16 such trading.

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

1 “(e) JURISDICTION.—The Commission shall have ex-
2 clusive jurisdiction over any account, agreement, contract,
3 or transaction involving a contract of sale of a commodity
4 for future delivery, or option on such a contract or on a
5 commodity, to the extent that the account, agreement,
6 contract, or transaction is traded on an exempt board of
7 trade.

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

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

19 **SEC. 115. SUSPENSION OR REVOCATION OF DESIGNATION**
20 **AS CONTRACT MARKET.**

21 Section 5e of the Commodity Exchange Act (7 U.S.C.
22 7b) (as redesignated by section 20(1)) is amended to read
23 as follows:

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

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

10 **SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

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

14 **SEC. 117. PREEMPTION.**

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

18 “(e) RELATION TO OTHER LAW, DEPARTMENTS, OR
19 AGENCIES.—

20 “(1) Nothing in this Act shall supersede or
21 preempt—

22 “(A) criminal prosecution under any Fed-
23 eral criminal statute;

24 “(B) the application of any Federal or
25 State statute (except as provided in paragraph
26 (2)), including any rule or regulation there-

1 under, to any transaction in or involving any
2 commodity, product, right, service, or interest—

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

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

12 “(iii) that is not subject to regulation
13 by the Commission under section 4e or 19;
14 or

15 “(C) the application of any Federal or
16 State statute, including any rule or regulation
17 thereunder, to any person required to be reg-
18 istered or designated under this Act who shall
19 fail or refuse to obtain such registration or des-
20 ignation.

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

1 “(A) an electronic trading facility excluded
2 under section 2(e) of this Act;

3 “(B) an agreement, contract, or trans-
4 action that is excluded from this Act under sec-
5 tion 2(c), 2(d), 2(f), or 2(g) of this Act or title
6 IV of the Commodity Futures Modernization
7 Act of 2000, or exempted under section 2(h) or
8 4(e) of this Act (regardless of whether any such
9 agreement, contract, or transaction is otherwise
10 subject to this Act).”.

11 **SEC. 118. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
12 **STITUTIONAL CUSTOMERS.**

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

16 “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR
17 INSTITUTIONAL CUSTOMERS.—Nothing in this section
18 prohibits a registered futures commission merchant from
19 requiring a customer that is an eligible contract partici-
20 pant, as a condition to the commission merchant’s con-
21 ducting a transaction for the customer, to enter into an
22 agreement waiving the right to file a claim under this sec-
23 tion.”.

1 **SEC. 119. CONSIDERATION OF COSTS AND BENEFITS AND**
2 **ANTITRUST LAWS.**

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

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

8 “(a) COSTS AND BENEFITS.—

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

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

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

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

22 “(C) considerations of price discovery;

23 “(D) considerations of sound risk manage-
24 ment practices; and

25 “(E) other public interest considerations.

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

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

6 “(B) An emergency action.

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

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

10 **SEC. 120. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
11 **COUNTERPARTIES.**

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

15 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
16 GIBLE COUNTERPARTIES.—No agreement, contract,
17 or transaction between eligible contract participants
18 or persons reasonably believed to be eligible contract
19 participants, and no hybrid instrument sold to any
20 investor, shall be void, voidable, or unenforceable,
21 and no such party shall be entitled to rescind, or re-
22 cover any payment made with respect to, such an
23 agreement, contract, transaction, or instrument
24 under this section or any other provision of Federal
25 or State law, based solely on the failure of the agree-

1 ment, contract, transaction, or instrument to comply
 2 with the terms or conditions of an exemption or ex-
 3 clusion from any provision of this Act or regulations
 4 of the Commission.”.

5 **SEC. 121. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
 6 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
 7 **TURAL PRODUCERS.**

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

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

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

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

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

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

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

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

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

20 **SEC. 122. RULE OF CONSTRUCTION.**

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

1 **SEC. 123. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) COMMODITY EXCHANGE ACT.—

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

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

10 (B) in paragraph (24)—

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

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

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

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

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

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

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

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

9 “(1) JURISDICTION OF COMMISSION.—

10 “(A) IN GENERAL.—The”; and

11 (B) in subsection (a)(1)—

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

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

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

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

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

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

6 (ii) in subparagraph (B)—

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

9 (II) in clause (v)—

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

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

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

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

20 (D) in subsection (a)(8)(B)(ii)—

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

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

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

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

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

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

7 (A) in subsection (a)—

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

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

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

19 (B) in subsection (c)—

20 (i) in paragraph (1)—

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

1 (II) by striking “section
2 2(a)(1)(B)” and inserting “subpara-
3 graphs (C)(ii) and (D) of section
4 2(a)(1), except that the Commission
5 and the Securities and Exchange
6 Commission may by rule, regulation,
7 or order jointly exclude any agree-
8 ment, contract, or transaction from
9 section 2(a)(1)(D)”;

10 (ii) in paragraph (2)(B)(ii), by insert-
11 ing “or derivatives transaction execution
12 facility” after “contract market”.

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

15 (A) in subsection (a)—

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

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

22 (B) in subsection (b)—

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

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

4 (C) in subsection (e)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (A) in subsection (a)—

9 (i) in the first sentence—

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

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

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

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

7 (iii) in the third sentence—

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

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

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

20 (B) in subsection (b)—

21 (i) in the first sentence—

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

1 or derivatives transaction execution
2 facility on”;

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

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

12 (ii) in the second sentence—

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

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

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

23 (C) in subsection (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (A) in the first sentence—

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

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

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

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

11 (B) in the second sentence—

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

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

18 (C) in the last sentence—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (A) in subsection (a)—

13 (i) in paragraph (1)—

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

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

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

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

4 (B) in subsection (b)—

5 (i) in paragraph (1)—

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

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

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

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

21 (ii) in paragraph (3)—

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

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

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

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

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

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

20 **SEC. 124. PRIVACY.**

21 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
22 is amended by inserting after section 5f (as added by sec-
23 tion 252) the following:

1 **“SEC. 5g. PRIVACY.**

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

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

17 **SEC. 125. REPORT TO CONGRESS.**

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

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

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

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

13 (4) the regulatory functions the Commission
14 currently performs that can be delegated to a reg-
15 istered futures association (within the meaning of
16 the Act) and the regulatory functions that the Com-
17 mission has determined must be retained and the
18 reasons therefor.

19 (b) In conducting the study, the Commission shall so-
20 licit the views of the public as well as Commission reg-
21 istrants, registered entities, and registered futures asso-
22 ciations (all within the meaning of the Act).

23 (c) The Commission shall transmit to the Committee
24 on Agriculture of the House of Representatives and the
25 Committee on Agriculture, Nutrition, and Forestry of the

1 Senate a report of the results of its study, which shall
2 include an analysis of comments received.

3 **SEC. 126. INTERNATIONAL ACTIVITIES OF THE COMMODITY**
4 **FUTURES TRADING COMMISSION.**

5 (a) FINDINGS.—The Congress finds that—

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

8 (2) developments in data processing and com-
9 munications technologies enable users of risk man-
10 agement services to analyze and compare those serv-
11 ices on a worldwide basis;

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

15 (4) regulatory impediments to the operation of
16 global business interests can compromise the com-
17 petitiveness of United States businesses;

18 (5) events that disrupt financial markets and
19 economies are often global in scope, require rapid
20 regulatory response, and coordinated regulatory ef-
21 fort across international jurisdictions;

22 (6) through its membership in the International
23 Organisation of Securities Commissions, the Com-
24modity Futures Trading Commission has promoted

1 beneficial communication among market regulators
2 and international regulatory cooperation; and

3 (7) the Commodity Futures Trading Commis-
4 sion and other United States financial regulators
5 and self-regulatory organizations should continue to
6 foster productive and cooperative working relation-
7 ships with their counterparts in foreign jurisdictions.

8 (b) SENSE OF THE CONGRESS.—It is the sense of
9 the Congress that, consistent with its responsibilities
10 under the Commodity Exchange Act, the Commodity Fu-
11 tures Trading Commission should, as part of its inter-
12 national activities, continue to coordinate with foreign reg-
13 ulatory authorities, to participate in international regu-
14 latory organizations and forums, and to provide technical
15 assistance to foreign government authorities, in order to
16 encourage—

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

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

22 (3) the enhancement of international super-
23 visory cooperation and emergency procedures;

24 (4) the strengthening of international coopera-
25 tion for customer and market protection; and

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

3 **TITLE II—COORDINATED REGU-**
4 **LATION OF SECURITY FU-**
5 **TURES PRODUCTS**

6 **Subtitle A—Securities Law**
7 **Amendments**

8 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**
9 **CHANGE ACT OF 1934.**

10 Section 3(a) of the Securities Exchange Act of 1934
11 (15 U.S.C. 78c(a)) is amended—

12 (1) in paragraph (10), by inserting “security
13 future,” after “treasury stock,”;

14 (2) by striking paragraph (11) and inserting
15 the following:

16 “(11) The term ‘equity security’ means any
17 stock or similar security; or any security future on
18 any such security; or any security convertible, with
19 or without consideration, into such a security, or
20 carrying any warrant or right to subscribe to or pur-
21 chase such a security; or any such warrant or right;
22 or any other security which the Commission shall
23 deem to be of similar nature and consider necessary
24 or appropriate, by such rules and regulations as it

1 may prescribe in the public interest or for the pro-
2 tection of investors, to treat as an equity security.”;

3 (3) in paragraph (13), by adding at the end the
4 following: “For security futures products, such term
5 includes any contract, agreement, or transaction for
6 future delivery.”;

7 (4) in paragraph (14), by adding at the end the
8 following: “For security futures products, such term
9 includes any contract, agreement, or transaction for
10 future delivery.”; and

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

12 “(55)(A) The term ‘security future’ means a
13 contract of sale for future delivery of a single secu-
14 rity or of a narrow-based security index, including
15 any interest therein or based on the value thereof,
16 except an exempted security under section 3(a)(12)
17 of the Securities Exchange Act of 1934 as in effect
18 on the date of enactment of the Futures Trading
19 Act of 1982 (other than any municipal security as
20 defined in section 3(a)(29) as in effect on the date
21 of enactment of the Futures Trading Act of 1982).
22 The term ‘security future’ does not include any
23 agreement, contract, or transaction excluded from
24 the Commodity Exchange Act under section 2(c),
25 2(d), 2(f) or 2(g) of the Commodity Exchange Act

1 (as in effect on the date of enactment of the Com-
2 modity Futures Modernization Act of 2000) or title
3 IV of the Commodity Futures Modernization Act of
4 2000.

5 “(B) The term ‘narrow-based security index’
6 means an index—

7 “(i) that has 9 or fewer component securi-
8 ties;

9 “(ii) in which a component security com-
10 prises more than 30 percent of the index’s
11 weighting;

12 “(iii) in which the 5 highest weighted com-
13 ponent securities in the aggregate comprise
14 more than 60 percent of the index’s weighting;
15 or

16 “(iv) in which the lowest weighted compo-
17 nent securities comprising, in the aggregate, 25
18 percent of the index’s weighting have an aggre-
19 gate dollar value of average daily trading vol-
20 ume of less than \$50,000,000 (or in the case of
21 an index with 15 or more component securities,
22 \$30,000,000), except that if there are two or
23 more securities with equal weighting that could
24 be included in the calculation of the lowest
25 weighted component securities comprising, in

1 the aggregate, 25 percent of the index's
2 weighting, such securities shall be ranked from
3 lowest to highest dollar value of average daily
4 trading volume and shall be included in the cal-
5 culation based on their ranking starting with
6 the lowest ranked security.

7 “(C) Notwithstanding subparagraph (B), an
8 index is not a narrow-based security index if—

9 “(i)(I) it has at least 9 component securi-
10 ties;

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

14 “(III) each component security is—

15 “(aa) registered pursuant to section
16 12 of the Securities Exchange Act of 1934;

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

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

22 “(ii) a board of trade was designated as a
23 contract market by the Commodity Futures
24 Trading Commission with respect to a contract
25 of sale for future delivery on the index, before

1 the date of enactment of the Commodity Fu-
2 tures Modernization Act of 2000;

3 “(iii)(I) a contract of sale for future deliv-
4 ery on the index traded on a designated con-
5 tract market or registered derivatives trans-
6 action execution facility for at least 30 days as
7 a contract of sale for future delivery on an
8 index that was not a narrow-based security
9 index; and

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

13 “(iv) a contract of sale for future delivery
14 on the index is traded on or subject to the rules
15 of a foreign board of trade and meets such re-
16 quirements as are jointly established by rule or
17 regulation by the Commission and the Com-
18 modity Futures Trading Commission;

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

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

24 “(II) the offer and sale in the United
25 States of a contract of sale for future de-

1 livery on the index was authorized before
2 the date of the enactment of the Com-
3modity Futures Modernization Act of
4 2000; and

5 “(III) the conditions of such author-
6 ization continue to be met; or

7 “(vi) a contract of sale for future delivery
8 on the index is traded on or subject to the rules
9 of a board of trade and meets such require-
10 ments as are jointly established by rule, regula-
11 tion, or order by the Commission and the Com-
12modity Futures Trading Commission.

13 “(D) Within 1 year after the enactment of the
14 Commodity Futures Modernization Act of 2000, the
15 Commission and the Commodity Futures Trading
16 Commission jointly shall adopt rules or regulations
17 that set forth the requirements under clause (iv) of
18 subparagraph (C).

19 “(E) An index that is a narrow-based security
20 index solely because it was a narrow-based security
21 index for more than 45 business days over 3 con-
22 secutive calendar months pursuant to clause (iii) of
23 subparagraph (C) shall not be a narrow-based secu-
24 rity index for the 3 following calendar months.

1 “(F) For purposes of subparagraphs (B) and
2 (C) of this paragraph—

3 “(i) the dollar value of average daily trad-
4 ing volume and the market capitalization shall
5 be calculated as of the preceding 6 full calendar
6 months; and

7 “(ii) the Commission and the Commodity
8 Futures Trading Commission shall, by rule or
9 regulation, jointly specify the method to be used
10 to determine market capitalization and dollar
11 value of average daily trading volume.

12 “(56) The term ‘security futures product’
13 means a security future or any put, call, straddle,
14 option, or privilege on any security future.

15 “(57)(A) The term ‘margin’, when used with
16 respect to a security futures product, means the
17 amount, type, and form of collateral required to se-
18 cure any extension or maintenance of credit, or the
19 amount, type, and form of collateral required as a
20 performance bond related to the purchase, sale, or
21 carrying of a security futures product.

22 “(B) The terms ‘margin level’ and ‘level of mar-
23 gin’, when used with respect to a security futures
24 product, mean the amount of margin required to se-
25 cure any extension or maintenance of credit, or the

1 amount of margin required as a performance bond
2 related to the purchase, sale, or carrying of a secu-
3 rity futures product.

4 “(C) The terms ‘higher margin level’ and ‘high-
5 er level of margin’, when used with respect to a se-
6 curity futures product, mean a margin level estab-
7 lished by a national securities exchange registered
8 pursuant to section 6(g) that is higher than the min-
9 imum amount established and in effect pursuant to
10 section 7(c)(2)(B).”.

11 **SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING**
12 **SECURITY FUTURES PRODUCTS.**

13 (a) EXPEDITED REGISTRATION AND EXEMPTION.—
14 Section 6 of the Securities Exchange Act of 1934 (15
15 U.S.C. 78f) is amended by adding at the end the following:

16 “(g) NOTICE REGISTRATION OF SECURITY FUTURES
17 PRODUCT EXCHANGES.—

18 “(1) REGISTRATION REQUIRED.—An exchange
19 that lists or trades security futures products may
20 register as a national securities exchange solely for
21 the purposes of trading security futures products
22 if—

23 “(A) the exchange is a board of trade, as
24 that term is defined by the Commodity Ex-
25 change Act (7 U.S.C. 1a(2)), that—

1 “(i) has been designated a contract
2 market by the Commodity Futures Trad-
3 ing Commission and such designation is
4 not suspended by order of the Commodity
5 Futures Trading Commission; or

6 “(ii) is registered as a derivative
7 transaction execution facility under section
8 5a of the Commodity Exchange Act and
9 such registration is not suspended by the
10 Commodity Futures Trading Commission;
11 and

12 “(B) such exchange does not serve as a
13 market place for transactions in securities other
14 than—

15 “(i) security futures products; or

16 “(ii) futures on exempted securities or
17 groups or indexes of securities or options
18 thereon that have been authorized under
19 section 2(a)(1)(C) of the Commodity Ex-
20 change Act.

21 “(2) REGISTRATION BY NOTICE FILING.—

22 “(A) FORM AND CONTENT.—An exchange
23 required to register only because such exchange
24 lists or trades security futures products may
25 register for purposes of this section by filing

1 with the Commission a written notice in such
2 form as the Commission, by rule, may prescribe
3 containing the rules of the exchange and such
4 other information and documents concerning
5 such exchange, comparable to the information
6 and documents required for national securities
7 exchanges under section 6(a), as the Commis-
8 sion, by rule, may prescribe as necessary or ap-
9 propriate in the public interest or for the pro-
10 tection of investors. If such exchange has filed
11 documents with the Commodity Futures Trad-
12 ing Commission, to the extent that such docu-
13 ments contain information satisfying the Com-
14 mission's informational requirements, copies of
15 such documents may be filed with the Commis-
16 sion in lieu of the required written notice.

17 “(B) IMMEDIATE EFFECTIVENESS.—Such
18 registration shall be effective contempora-
19 neously with the submission of notice, in writ-
20 ten or electronic form, to the Commission, ex-
21 cept that such registration shall not be effective
22 if such registration would be subject to suspen-
23 sion or revocation.

24 “(C) TERMINATION.—Such registration
25 shall be terminated immediately if any of the

1 conditions for registration set forth in this sub-
2 section are no longer satisfied.

3 “(3) PUBLIC AVAILABILITY.—The Commission
4 shall promptly publish in the Federal Register an ac-
5 knowledgment of receipt of all notices the Commis-
6 sion receives under this subsection and shall make
7 all such notices available to the public.

8 “(4) EXEMPTION OF EXCHANGES FROM SPECI-
9 FIED PROVISIONS.—

10 “(A) TRANSACTION EXEMPTIONS.—An ex-
11 change that is registered under paragraph (1)
12 of this subsection shall be exempt from, and
13 shall not be required to enforce compliance by
14 its members with, and its members shall not,
15 solely with respect to those transactions effected
16 on such exchange in security futures products,
17 be required to comply with, the following provi-
18 sions of this title and the rules thereunder:

19 “(i) Subsections (b)(2), (b)(3), (b)(4),
20 (b)(7), (b)(9), (c), (d), and (e) of this sec-
21 tion.

22 “(ii) Section 8.

23 “(iii) Section 11.

24 “(iv) Subsections (d), (f), and (k) of
25 section 17.

1 “(v) Subsections (a), (f), and (h) of
2 section 19.

3 “(B) RULE CHANGE EXEMPTIONS.—An ex-
4 change that registered under paragraph (1) of
5 this subsection shall also be exempt from sub-
6 mitting proposed rule changes pursuant to sec-
7 tion 19(b) of this title, except that—

8 “(i) such exchange shall file proposed
9 rule changes related to higher margin lev-
10 els, fraud or manipulation, recordkeeping,
11 reporting, listing standards, or decimal
12 pricing for security futures products, sales
13 practices for security futures products for
14 persons who effect transactions in security
15 futures products, or rules effectuating such
16 exchange’s obligation to enforce the securi-
17 ties laws pursuant to section 19(b)(7);

18 “(ii) such exchange shall file pursuant
19 to sections 19(b)(1) and 19(b)(2) proposed
20 rule changes related to margin, except for
21 changes resulting in higher margin levels;
22 and

23 “(iii) such exchange shall file pursu-
24 ant to section 19(b)(1) proposed rule
25 changes that have been abrogated by the

1 Commission pursuant to section
2 19(b)(7)(C).

3 “(5) TRADING IN SECURITY FUTURES PROD-
4 UCTS.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), it shall be unlawful for any person
7 to execute or trade a security futures product
8 until the later of—

9 “(i) 1 year after the date of enact-
10 ment of the Commodity Futures Mod-
11 ernization Act of 2000; or

12 “(ii) such date that a futures associa-
13 tion registered under section 17 of the
14 Commodity Exchange Act has met the re-
15 quirements set forth in section 15A(k)(2)
16 of this title.

17 “(B) PRINCIPAL-TO-PRINCIPAL TRANS-
18 ACTIONS.—Notwithstanding subparagraph (A),
19 a person may execute or trade a security fu-
20 tures product transaction if—

21 “(i) the transaction is entered into—

22 “(I) on a principal-to-principal
23 basis between parties trading for their
24 own accounts or as described in sec-

1 tion 1a(12)(B)(ii) of the Commodity
2 Exchange Act; and

3 “(II) only between eligible con-
4 tract participants (as defined in sub-
5 paragraphs (A), (B)(ii), and (C) of
6 such section 1a(12)) at the time at
7 which the persons enter into the
8 agreement, contract, or transaction;
9 and

10 “(ii) the transaction is entered into on
11 or after the later of—

12 “(I) 8 months after the date of
13 enactment of the Commodity Futures
14 Modernization Act of 2000; or

15 “(II) such date that a futures as-
16 sociation registered under section 17
17 of the Commodity Exchange Act has
18 met the requirements set forth in sec-
19 tion 15A(k)(2) of this title.”.

20 (b) COMMISSION REVIEW OF PROPOSED RULE
21 CHANGES.—

22 (1) EXPEDITED REVIEW.—Section 19(b) of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78s(b))
24 is amended by adding at the end the following:

1 “(7) SECURITY FUTURES PRODUCT RULE
2 CHANGES.—

3 “(A) FILING REQUIRED.—A self-regulatory
4 organization that is an exchange registered with
5 the Commission pursuant to section 6(g) of this
6 title or that is a national securities association
7 registered pursuant to section 15A(k) of this
8 title shall file with the Commission, in accord-
9 ance with such rules as the Commission may
10 prescribe, copies of any proposed rule change or
11 any proposed change in, addition to, or deletion
12 from the rules of such self-regulatory organiza-
13 tion (hereinafter in this paragraph collectively
14 referred to as a ‘proposed rule change’) that re-
15 lates to higher margin levels, fraud or manipu-
16 lation, recordkeeping, reporting, listing stand-
17 ards, or decimal pricing for security futures
18 products, sales practices for security futures
19 products for persons who effect transactions in
20 security futures products, or rules effectuating
21 such self-regulatory organization’s obligation to
22 enforce the securities laws. Such proposed rule
23 change shall be accompanied by a concise gen-
24 eral statement of the basis and purpose of such
25 proposed rule change. The Commission shall,

1 upon the filing of any proposed rule change,
2 promptly publish notice thereof together with
3 the terms of substance of the proposed rule
4 change or a description of the subjects and
5 issues involved. The Commission shall give in-
6 terested persons an opportunity to submit data,
7 views, and arguments concerning such proposed
8 rule change.

9 “(B) FILING WITH CFTC.—A proposed rule
10 change filed with the Commission pursuant to
11 subparagraph (A) shall be filed concurrently
12 with the Commodity Futures Trading Commis-
13 sion. Such proposed rule change may take ef-
14 fect upon filing of a written certification with
15 the Commodity Futures Trading Commission
16 under section 5c(c) of the Commodity Exchange
17 Act, upon a determination by the Commodity
18 Futures Trading Commission that review of the
19 proposed rule change is not necessary, or upon
20 approval of the proposed rule change by the
21 Commodity Futures Trading Commission.

22 “(C) ABROGATION OF RULE CHANGES.—
23 Any proposed rule change of a self-regulatory
24 organization that has taken effect pursuant to
25 subparagraph (B) may be enforced by such self-

1 regulatory organization to the extent such rule
2 is not inconsistent with the provisions of this
3 title, the rules and regulations thereunder, and
4 applicable Federal law. At any time within 60
5 days of the date of the filing of a written cer-
6 tification with the Commodity Futures Trading
7 Commission under section 5c(c) of the Com-
8 modity Exchange Act, the date the Commodity
9 Futures Trading Commission determines that
10 review of such proposed rule change is not nec-
11 essary, or the date the Commodity Futures
12 Trading Commission approves such proposed
13 rule change, the Commission, after consultation
14 with the Commodity Futures Trading Commis-
15 sion, may summarily abrogate the proposed rule
16 change and require that the proposed rule
17 change be refiled in accordance with the provi-
18 sions of paragraph (1), if it appears to the
19 Commission that such proposed rule change un-
20 duly burdens competition or efficiency, conflicts
21 with the securities laws, or is inconsistent with
22 the public interest and the protection of inves-
23 tors. Commission action pursuant to the pre-
24 ceding sentence shall not affect the validity or
25 force of the rule change during the period it

1 was in effect and shall not be reviewable under
2 section 25 of this title nor deemed to be a final
3 agency action for purposes of section 704 of
4 title 5, United States Code.

5 “(D) REVIEW OF RESUBMITTED ABRO-
6 GATED RULES.—

7 “(i) PROCEEDINGS.—Within 35 days
8 of the date of publication of notice of the
9 filing of a proposed rule change that is ab-
10 rogated in accordance with subparagraph
11 (C) and refiled in accordance with para-
12 graph (1), or within such longer period as
13 the Commission may designate up to 90
14 days after such date if the Commission
15 finds such longer period to be appropriate
16 and publishes its reasons for so finding or
17 as to which the self-regulatory organization
18 consents, the Commission shall—

19 “(I) by order approve such pro-
20 posed rule change; or

21 “(II) after consultation with the
22 Commodity Futures Trading Commis-
23 sion, institute proceedings to deter-
24 mine whether the proposed rule
25 change should be disapproved. Pro-

1 ceedings under subclause (II) shall in-
2 clude notice of the grounds for dis-
3 approval under consideration and op-
4 portunity for hearing and be con-
5 cluded within 180 days after the date
6 of publication of notice of the filing of
7 the proposed rule change. At the con-
8 clusion of such proceedings, the Com-
9 mission, by order, shall approve or
10 disapprove such proposed rule change.
11 The Commission may extend the time
12 for conclusion of such proceedings for
13 up to 60 days if the Commission finds
14 good cause for such extension and
15 publishes its reasons for so finding or
16 for such longer period as to which the
17 self-regulatory organization consents.

18 “(ii) GROUNDS FOR APPROVAL.—The
19 Commission shall approve a proposed rule
20 change of a self-regulatory organization
21 under this subparagraph if the Commission
22 finds that such proposed rule change does
23 not unduly burden competition or effi-
24 ciency, does not conflict with the securities
25 laws, and is not inconsistent with the pub-

1 lic interest or the protection of investors.
2 The Commission shall disapprove such a
3 proposed rule change of a self-regulatory
4 organization if it does not make such find-
5 ing. The Commission shall not approve any
6 proposed rule change prior to the 30th day
7 after the date of publication of notice of
8 the filing thereof, unless the Commission
9 finds good cause for so doing and pub-
10 lishes its reasons for so finding.”.

11 (2) DECIMAL PRICING PROVISIONS.—Section
12 19(b) of the Securities Exchange Act of 1934 (15
13 U.S.C. 78s(b)) is amended by inserting after para-
14 graph (7), as added by paragraph (1), the following:

15 “(8) DECIMAL PRICING.—Not later than 9
16 months after the date on which trading in any secu-
17 rity futures product commences under this title, all
18 self-regulatory organizations listing or trading secu-
19 rity futures products shall file proposed rule changes
20 necessary to implement decimal pricing of security
21 futures products. The Commission may not require
22 such rules to contain equal minimum increments in
23 such decimal pricing.”.

24 (3) CONSULTATION PROVISIONS.—Section 19(b)
25 of the Securities Exchange Act of 1934 (15 U.S.C.

1 78s(b)) is amended by inserting after paragraph (8),
2 as added by paragraph (2), the following:

3 “(9) CONSULTATION WITH CFTC.—

4 “(A) CONSULTATION REQUIRED.—The
5 Commission shall consult with and consider the
6 views of the Commodity Futures Trading Com-
7 mission prior to approving or disapproving a
8 proposed rule change filed by a national securi-
9 ties association registered pursuant to section
10 15A(a) or a national securities exchange subject
11 to the provisions of subsection (a) that pri-
12 marily concerns conduct related to transactions
13 in security futures products, except where the
14 Commission determines that an emergency ex-
15 ists requiring expeditious or summary action
16 and publishes its reasons therefor.

17 “(B) RESPONSES TO CFTC COMMENTS AND
18 FINDINGS.—If the Commodity Futures Trading
19 Commission comments in writing to the Com-
20 mission on a proposed rule that has been pub-
21 lished for comment, the Commission shall re-
22 spond in writing to such written comment be-
23 fore approving or disapproving the proposed
24 rule. If the Commodity Futures Trading Com-
25 mission determines, and notifies the Commis-

1 sion, that such rule, if implemented or as ap-
2 plied, would—

3 “(i) adversely affect the liquidity or
4 efficiency of the market for security fu-
5 tures products; or

6 “(ii) impose any burden on competi-
7 tion not necessary or appropriate in fur-
8 therance of the purposes of this section,
9 the Commission shall, prior to approving or dis-
10 approving the proposed rule, find that such rule
11 is necessary and appropriate in furtherance of
12 the purposes of this section notwithstanding the
13 Commodity Futures Trading Commission’s de-
14 termination.”.

15 (c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Sec-
16 tion 19(d) of the Securities Exchange Act of 1934 (15
17 U.S.C. 78s(d)) is amended by adding at the end the fol-
18 lowing:

19 “(3) The provisions of this subsection shall apply to
20 an exchange registered pursuant to section 6(g) of this
21 title or a national securities association registered pursu-
22 ant to section 15A(k) of this title only to the extent that
23 such exchange or association imposes any final discipli-
24 nary sanction for—

1 “(A) a violation of the Federal securities laws
2 or the rules and regulations thereunder; or

3 “(B) a violation of a rule of such exchange or
4 association, as to which a proposed change would be
5 required to be filed under section 19 of this title, ex-
6 cept that, to the extent that the exchange or associa-
7 tion rule violation relates to any account, agreement,
8 contract, or transaction, this subsection shall apply
9 only to the extent such violation involves a security
10 futures product.”.

11 **SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES**
12 **TRADING SECURITY FUTURES PRODUCTS.**

13 (a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

14 (1) AMENDMENT.—Section 15(b) of the Securi-
15 ties Exchange Act of 1934 (15 U.S.C. 78o(b)) is
16 amended by adding at the end the following:

17 “(11) BROKER/DEALER REGISTRATION WITH
18 RESPECT TO TRANSACTIONS IN SECURITY FUTURES
19 PRODUCTS.—

20 “(A) NOTICE REGISTRATION.—

21 “(i) CONTENTS OF NOTICE.—Not-
22 withstanding paragraphs (1) and (2), a
23 broker or dealer required to register only
24 because it effects transactions in security
25 futures products on an exchange registered

1 pursuant to section 6(g) may register for
2 purposes of this section by filing with the
3 Commission a written notice in such form
4 and containing such information con-
5 cerning such broker or dealer and any per-
6 sons associated with such broker or dealer
7 as the Commission, by rule, may prescribe
8 as necessary or appropriate in the public
9 interest or for the protection of investors.
10 A broker or dealer may not register under
11 this paragraph unless that broker or dealer
12 is a member of a national securities asso-
13 ciation registered under section 15A(k).

14 “(ii) IMMEDIATE EFFECTIVENESS.—
15 Such registration shall be effective contem-
16 poraneously with the submission of notice,
17 in written or electronic form, to the Com-
18 mission, except that such registration shall
19 not be effective if the registration would be
20 subject to suspension or revocation under
21 paragraph (4).

22 “(iii) SUSPENSION.—Such registration
23 shall be suspended immediately if a na-
24 tional securities association registered pur-
25 suant to section 15A(k) of this title sus-

1 pends the membership of that broker or
2 dealer.

3 “(iv) TERMINATION.—Such registra-
4 tion shall be terminated immediately if any
5 of the above stated conditions for registra-
6 tion set forth in this paragraph are no
7 longer satisfied.

8 “(B) EXEMPTIONS FOR REGISTERED BRO-
9 KERS AND DEALERS.—A broker or dealer reg-
10 istered pursuant to the requirements of sub-
11 paragraph (A) shall be exempt from the fol-
12 lowing provisions of this title and the rules
13 thereunder with respect to transactions in secu-
14 rity futures products:

15 “(i) Section 8.

16 “(ii) Section 11.

17 “(iii) Subsections (c)(3) and (c)(5) of
18 this section.

19 “(iv) Section 15B.

20 “(v) Section 15C.

21 “(vi) Subsections (d), (e), (f), (g), (h),
22 and (i) of section 17.”.

23 (2) CONFORMING AMENDMENT.—Section 28(e)
24 of the Securities Exchange Act of 1934 (15 U.S.C.

1 78bb(e)) is amended by adding at the end the fol-
2 lowing:

3 “(4) The provisions of this subsection shall not apply
4 with regard to securities that are security futures prod-
5 ucts.”.

6 (b) FLOOR BROKERS AND FLOOR TRADERS.—Sec-
7 tion 15(b) of the Securities Exchange Act of 1934 (15
8 U.S.C. 78o(b)) is amended by inserting after paragraph
9 (11), as added by subsection (a), the following:

10 “(12) EXEMPTION FOR SECURITY FUTURES
11 PRODUCT EXCHANGE MEMBERS.—

12 “(A) REGISTRATION EXEMPTION.—A nat-
13 ural person shall be exempt from the registra-
14 tion requirements of this section if such
15 person—

16 “(i) is a member of a designated con-
17 tract market registered with the Commis-
18 sion as an exchange pursuant to section
19 6(g);

20 “(ii) effects transactions only in secu-
21 rities on the exchange of which such per-
22 son is a member; and

23 “(iii) does not directly accept or solicit
24 orders from public customers or provide
25 advice to public customers in connection

1 with the trading of security futures prod-
2 ucts.

3 “(B) OTHER EXEMPTIONS.—A natural
4 person exempt from registration pursuant to
5 subparagraph (A) shall also be exempt from the
6 following provisions of this title and the rules
7 thereunder:

8 “(i) Section 8.

9 “(ii) Section 11.

10 “(iii) Subsections (c)(3), (c)(5), and
11 (e) of this section.

12 “(iv) Section 15B.

13 “(v) Section 15C.

14 “(vi) Subsections (d), (e), (f), (g), (h),
15 and (i) of section 17.”.

16 (c) LIMITED PURPOSE NATIONAL SECURITIES ASSO-
17 CIATION.—Section 15A of the Securities Exchange Act of
18 1934 (15 U.S.C. 78o–3) is amended by adding at the end
19 the following:

20 “(k) LIMITED PURPOSE NATIONAL SECURITIES AS-
21 SOCIATION.—

22 “(1) REGULATION OF MEMBERS WITH RESPECT
23 TO SECURITY FUTURES PRODUCTS.—A futures asso-
24 ciation registered under section 17 of the Com-
25 modity Exchange Act shall be a registered national

1 securities association for the limited purpose of reg-
2 ulating the activities of members who are registered
3 as brokers or dealers in security futures products
4 pursuant to section 15(b)(11).

5 “(2) REQUIREMENTS FOR REGISTRATION.—

6 Such a securities association shall—

7 “(A) be so organized and have the capacity
8 to carry out the purposes of the securities laws
9 applicable to security futures products and to
10 comply, and (subject to any rule or order of the
11 Commission pursuant to section 19(g)(2)) to
12 enforce compliance by its members and persons
13 associated with its members, with the provisions
14 of the securities laws applicable to security fu-
15 tures products, the rules and regulations there-
16 under, and its rules;

17 “(B) have rules that—

18 “(i) are designed to prevent fraudu-
19 lent and manipulative acts and practices,
20 to promote just and equitable principles of
21 trade, and, in general, to protect investors
22 and the public interest, including rules
23 governing sales practices and the adver-
24 tising of security futures products reason-
25 ably comparable to those of other national

1 securities associations registered pursuant
2 to subsection (a) that are applicable to se-
3 curity futures products; and

4 “(ii) are not designed to regulate by
5 virtue of any authority conferred by this
6 title matters not related to the purposes of
7 this title or the administration of the asso-
8 ciation;

9 “(C) have rules that provide that (subject
10 to any rule or order of the Commission pursu-
11 ant to section 19(g)(2)) its members and per-
12 sons associated with its members shall be ap-
13 propriately disciplined for violation of any provi-
14 sion of the securities laws applicable to security
15 futures products, the rules or regulations there-
16 under, or the rules of the association, by expul-
17 sion, suspension, limitation of activities, func-
18 tions, and operations, fine, censure, being sus-
19 pended or barred from being associated with a
20 member, or any other fitting sanction; and

21 “(D) have rules that ensure that members
22 and natural persons associated with members
23 meet such standards of training, experience,
24 and competence necessary to effect transactions
25 in security futures products and are tested for

1 their knowledge of securities and security fu-
2 tures products.

3 “(3) EXEMPTION FROM RULE CHANGE SUBMIS-
4 SION.—Such a securities association shall be exempt
5 from submitting proposed rule changes pursuant to
6 section 19(b) of this title, except that—

7 “(A) the association shall file proposed
8 rule changes related to higher margin levels,
9 fraud or manipulation, recordkeeping, report-
10 ing, listing standards, or decimal pricing for se-
11 curity futures products, sales practices for, ad-
12 vertising of, or standards of training, experi-
13 ence, competence, or other qualifications for se-
14 curity futures products for persons who effect
15 transactions in security futures products, or
16 rules effectuating the association’s obligation to
17 enforce the securities laws pursuant to section
18 19(b)(7);

19 “(B) the association shall file pursuant to
20 sections 19(b)(1) and 19(b)(2) proposed rule
21 changes related to margin, except for changes
22 resulting in higher margin levels; and

23 “(C) the association shall file pursuant to
24 section 19(b)(1) proposed rule changes that

1 have been abrogated by the Commission pursu-
2 ant to section 19(b)(7)(C).

3 “(4) OTHER EXEMPTIONS.—Such a securities
4 association shall be exempt from and shall not be re-
5 quired to enforce compliance by its members, and its
6 members shall not, solely with respect to their trans-
7 actions effected in security futures products, be re-
8 quired to comply, with the following provisions of
9 this title and the rules thereunder:

10 “(A) Section 8.

11 “(B) Subsections (b)(1), (b)(3), (b)(4),
12 (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13),
13 (c), (d), (e), (f), (g), (h), and (i) of this section.

14 “(C) Subsections (d), (f), and (k) of sec-
15 tion 17.

16 “(D) Subsections (a), (f), and (h) of sec-
17 tion 19.”.

18 (d) EXEMPTION UNDER THE SECURITIES INVESTOR
19 PROTECTION ACT OF 1970.—

20 (1) Section 16(14) of the Securities Investor
21 Protection Act of 1970 (15 U.S.C. 78ll(14)) is
22 amended by inserting “or any security future as that
23 term is defined in section 3(a)(55)(A) of the Securi-
24 ties Exchange Act of 1934,” after “certificate of de-
25 posit for a security,”.

1 (2) Section 3(a)(2)(A) of the Securities Investor
2 Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A))
3 is amended—

4 (A) in clause (i), by striking “and” after
5 the semicolon;

6 (B) in clause (ii), by striking the period
7 and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(iii) persons who are registered as a
10 broker or dealer pursuant to section
11 15(b)(11)(A) of the Securities Exchange
12 Act of 1934.”.

13 **SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-**
14 **OPERATION.**

15 Section 17(b) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78q(b)) is amended—

17 (1) by striking “(b) All” and inserting the fol-
18 lowing:

19 “(b) RECORDS SUBJECT TO EXAMINATION.—

20 “(1) PROCEDURES FOR COOPERATION WITH
21 OTHER AGENCIES.—All”;

22 (2) by striking “prior to conducting any such
23 examination of a registered clearing” and inserting
24 the following: “prior to conducting any such exam-
25 ination of a—

1 “(A) registered clearing”;

2 (3) by redesignating the last sentence as para-
3 graph (4)(C);

4 (4) by striking the period at the end of the first
5 sentence and inserting the following: “; or

6 “(B) broker or dealer registered pursuant
7 to section 15(b)(11), exchange registered pursu-
8 ant to section 6(g), or national securities asso-
9 ciation registered pursuant to section 15A(k)
10 gives notice to the Commodity Futures Trading
11 Commission of such proposed examination and
12 consults with the Commodity Futures Trading
13 Commission concerning the feasibility and de-
14 sirability of coordinating such examination with
15 examinations conducted by the Commodity Fu-
16 tures Trading Commission in order to avoid un-
17 necessary regulatory duplication or undue regu-
18 latory burdens for such broker or dealer or ex-
19 change.”;

20 (5) by adding at the end the following new
21 paragraphs:

22 “(2) FURNISHING DATA AND REPORTS TO
23 CFTC.—The Commission shall notify the Commodity
24 Futures Trading Commission of any examination
25 conducted of any broker or dealer registered pursu-

1 ant to section 15(b)(11), exchange registered pursu-
2 ant to section 6(g), or national securities association
3 registered pursuant to section 15A(k) and, upon re-
4 quest, furnish to the Commodity Futures Trading
5 Commission any examination report and data sup-
6 plied to, or prepared by, the Commission in connec-
7 tion with such examination.

8 “(3) USE OF CFTC REPORTS.—Prior to con-
9 ducting an examination under paragraph (1), the
10 Commission shall use the reports of examinations, if
11 the information available therein is sufficient for the
12 purposes of the examination, of—

13 “(A) any broker or dealer registered pursu-
14 ant to section 15(b)(11);

15 “(B) exchange registered pursuant to sec-
16 tion 6(g); or

17 “(C) national securities association reg-
18 istered pursuant to section 15A(k);

19 that is made by the Commodity Futures Trading
20 Commission, a national securities association reg-
21 istered pursuant to section 15A(k), or an exchange
22 registered pursuant to section 6(g).

23 “(4) RULES OF CONSTRUCTION.—

24 “(A) Notwithstanding any other provision
25 of this subsection, the records of a broker or

1 dealer registered pursuant to section 15(b)(11),
2 an exchange registered pursuant to section
3 6(g), or a national securities association reg-
4 istered pursuant to section 15A(k) described in
5 this subparagraph shall not be subject to rou-
6 tine periodic examinations by the Commission.

7 “(B) Any recordkeeping rules adopted
8 under this subsection for a broker or dealer reg-
9 istered pursuant to section 15(b)(11), an ex-
10 change registered pursuant to section 6(g), or a
11 national securities association registered pursu-
12 ant to section 15A(k) shall be limited to records
13 with respect to persons, accounts, agreements,
14 contracts, and transactions involving security
15 futures products.”; and

16 (6) in paragraph (4)(C) (as redesignated by
17 paragraph (3) of this section), by striking “Nothing
18 in the proviso to the preceding sentence” and insert-
19 ing “Nothing in the proviso in paragraph (1)”.

20 **SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SE-**
21 **CURITY FUTURES PRODUCTS.**

22 (a) ADDITION OF SECURITY FUTURES PRODUCTS TO
23 OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

1 (1) PROHIBITION AGAINST MANIPULATION.—
2 Section 9(b) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78i(b)) is amended—

4 (A) in paragraph (1)—

5 (i) by inserting “(A)” after “ac-
6 quires”; and

7 (ii) by striking “; or” and inserting “;
8 or (B) any security futures product on the
9 security; or”;

10 (B) in paragraph (2)—

11 (i) by inserting “(A)” after “interest
12 in any”; and

13 (ii) by striking “; or” and inserting “;
14 or (B) such security futures product; or”;
15 and

16 (C) in paragraph (3)—

17 (i) by inserting “(A)” after “interest
18 in any”; and

19 (ii) by inserting “; or (B) such secu-
20 rity futures product” after “privilege”.

21 (2) MANIPULATION IN OPTIONS AND OTHER
22 DERIVATIVE PRODUCTS.—Section 9(g) of the Securi-
23 ties Exchange Act of 1934 (15 U.S.C. 78i(g)) is
24 amended—

25 (A) by inserting “(1)” after “(g)”;

1 (B) by inserting “other than a security fu-
2 tures product” after “future delivery”; and

3 (C) by adding at the end following:

4 “(2) Notwithstanding the Commodity Exchange Act,
5 the Commission shall have the authority to regulate the
6 trading of any security futures product to the extent pro-
7 vided in the securities laws.”.

8 (3) LIABILITY OF CONTROLLING PERSONS AND
9 PERSONS WHO AID AND ABET VIOLATIONS.—Section
10 20(d) of the Securities Exchange Act of 1934 (15
11 U.S.C. 78t(d)) is amended by striking “or privilege”
12 and inserting “, privilege, or security futures prod-
13 uct”.

14 (4) LIABILITY TO CONTEMPORANEOUS TRADERS
15 FOR INSIDER TRADING.—Section 21A(a)(1) of the
16 Securities Exchange Act of 1934 (15 U.S.C. 78u-
17 1(a)(1)) is amended by striking “standardized op-
18 tions, the Commission—” and inserting “standard-
19 ized options or security futures products, the Com-
20 mission—”.

21 (5) ENFORCEMENT CONSULTATION.—Section
22 21 of the Securities Exchange Act of 1934 (15
23 U.S.C. 78u) is amended by adding at the end the
24 following:

1 only security futures products that (A) conform with
2 listing standards that such exchange or association
3 files with the Commission under section 19(b) and
4 (B) meet the criteria specified in section
5 2(a)(1)(D)(i) of the Commodity Exchange Act.

6 “(3) REQUIREMENTS FOR LISTING STANDARDS
7 AND CONDITIONS FOR TRADING.—Such listing
8 standards shall—

9 “(A) except as otherwise provided in a
10 rule, regulation, or order issued pursuant to
11 paragraph (4), require that any security under-
12 lying the security future, including each compo-
13 nent security of a narrow-based security index,
14 be registered pursuant to section 12 of this
15 title;

16 “(B) require that if the security futures
17 product is not cash settled, the market on
18 which the security futures product is traded
19 have arrangements in place with a registered
20 clearing agency for the payment and delivery of
21 the securities underlying the security futures
22 product;

23 “(C) be no less restrictive than comparable
24 listing standards for options traded on a na-
25 tional securities exchange or national securities

1 association registered pursuant to section
2 15A(a) of this title;

3 “(D) except as otherwise provided in a
4 rule, regulation, or order issued pursuant to
5 paragraph (4), require that the security future
6 be based upon common stock and such other
7 equity securities as the Commission and the
8 Commodity Futures Trading Commission joint-
9 ly determine appropriate;

10 “(E) require that the security futures
11 product is cleared by a clearing agency that has
12 in place provisions for linked and coordinated
13 clearing with other clearing agencies that clear
14 security futures products, which permits the se-
15 curity futures product to be purchased on one
16 market and offset on another market that
17 trades such product;

18 “(F) require that only a broker or dealer
19 subject to suitability rules comparable to those
20 of a national securities association registered
21 pursuant to section 15A(a) effect transactions
22 in the security futures product;

23 “(G) require that the security futures
24 product be subject to the prohibition against
25 dual trading in section 4j of the Commodity Ex-

1 change Act (7 U.S.C. 6j) and the rules and reg-
2 ulations thereunder or the provisions of section
3 11(a) of this title and the rules and regulations
4 thereunder, except to the extent otherwise per-
5 mitted under this title and the rules and regula-
6 tions thereunder;

7 “(H) require that trading in the security
8 futures product not be readily susceptible to
9 manipulation of the price of such security fu-
10 tures product, nor to causing or being used in
11 the manipulation of the price of any underlying
12 security, option on such security, or option on
13 a group or index including such securities;

14 “(I) require that procedures be in place for
15 coordinated surveillance among the market on
16 which the security futures product is traded,
17 any market on which any security underlying
18 the security futures product is traded, and
19 other markets on which any related security is
20 traded to detect manipulation and insider trad-
21 ing;

22 “(J) require that the market on which the
23 security futures product is traded has in place
24 audit trails necessary or appropriate to facili-

1 tate the coordinated surveillance required in
2 subparagraph (I);

3 “(K) require that the market on which the
4 security futures product is traded has in place
5 procedures to coordinate trading halts between
6 such market and any market on which any se-
7 curity underlying the security futures product is
8 traded and other markets on which any related
9 security is traded; and

10 “(L) require that the margin requirements
11 for a security futures product comply with the
12 regulations prescribed pursuant to section
13 7(e)(2)(B), except that nothing in this subpara-
14 graph shall be construed to prevent a national
15 securities exchange or national securities asso-
16 ciation from requiring higher margin levels for
17 a security futures product when it deems such
18 action to be necessary or appropriate.

19 “(4) AUTHORITY TO MODIFY CERTAIN LISTING
20 STANDARD REQUIREMENTS.—

21 “(A) AUTHORITY TO MODIFY.—The Com-
22 mission and the Commodity Futures Trading
23 Commission, by rule, regulation, or order, may
24 jointly modify the listing standard requirements
25 specified in subparagraph (A) or (D) of para-

1 graph (3) to the extent such modification fos-
2 ters the development of fair and orderly mar-
3 kets in security futures products, is necessary
4 or appropriate in the public interest, and is con-
5 sistent with the protection of investors.

6 “(B) AUTHORITY TO GRANT EXEMP-
7 TIONS.—The Commission and the Commodity
8 Futures Trading Commission, by order, may
9 jointly exempt any person from compliance with
10 the listing standard requirement specified in
11 subparagraph (E) of paragraph (3) to the ex-
12 tent such exemption fosters the development of
13 fair and orderly markets in security futures
14 products, is necessary or appropriate in the
15 public interest, and is consistent with the pro-
16 tection of investors.

17 “(5) REQUIREMENTS FOR OTHER PERSONS
18 TRADING SECURITY FUTURE PRODUCTS.—It shall be
19 unlawful for any person (other than a national secu-
20 rities exchange or a national securities association
21 registered pursuant to section 15A(a)) to constitute,
22 maintain, or provide a marketplace or facilities for
23 bringing together purchasers and sellers of security
24 future products or to otherwise perform with respect
25 to security future products the functions commonly

1 performed by a stock exchange as that term is gen-
2 erally understood, unless a national securities asso-
3 ciation registered pursuant to section 15A(a) or a
4 national securities exchange of which such person is
5 a member—

6 “(A) has in place procedures for coordi-
7 nated surveillance among such person, the mar-
8 ket trading the securities underlying the secu-
9 rity future products, and other markets trading
10 related securities to detect manipulation and in-
11 sider trading;

12 “(B) has rules to require audit trails nec-
13 essary or appropriate to facilitate the coordi-
14 nated surveillance required in subparagraph
15 (A); and

16 “(C) has rules to require such person to
17 coordinate trading halts with markets trading
18 the securities underlying the security future
19 products and other markets trading related se-
20 curities.

21 “(6) DEFERRAL OF OPTIONS ON SECURITY FU-
22 TURES TRADING.—No person shall offer to enter
23 into, enter into, or confirm the execution of any put,
24 call, straddle, option, or privilege on a security fu-
25 ture, except that, after 3 years after the date of en-

1 actment of this subsection, the Commission and the
2 Commodity Futures Trading Commission may by
3 order jointly determine to permit trading of puts,
4 calls, straddles, options, or privileges on any security
5 future authorized to be traded under the provisions
6 of this Act and the Commodity Exchange Act.

7 “(7) DEFERRAL OF LINKED AND COORDINATED
8 CLEARING.—

9 “(A) Notwithstanding paragraph (2), until
10 the compliance date, a national securities ex-
11 change or national securities association reg-
12 istered pursuant to section 15A(a) may trade a
13 security futures product that does not—

14 “(i) conform with any listing standard
15 promulgated to meet the requirement spec-
16 ified in subparagraph (E) of paragraph
17 (3); or

18 “(ii) meet the criterion specified in
19 section 2(a)(1)(D)(i)(IV) of the Com-
20 modity Exchange Act.

21 “(B) The Commission and the Commodity
22 Futures Trading Commission shall jointly pub-
23 lish in the Federal Register a notice of the com-
24 pliance date no later than 165 days before the
25 compliance date.

1 “(C) For purposes of this paragraph, the
2 term ‘compliance date’ means the later of—

3 “(i) 180 days after the end of the
4 first full calendar month period in which
5 the average aggregate comparable share
6 volume for all security futures products
7 based on single equity securities traded on
8 all national securities exchanges, any na-
9 tional securities associations registered
10 pursuant to section 15A(a), and all other
11 persons equals or exceeds 10 percent of the
12 average aggregate comparable share vol-
13 ume of options on single equity securities
14 traded on all national securities exchanges
15 and any national securities associations
16 registered pursuant to section 15A(a); or

17 “(ii) 2 years after the date on which
18 trading in any security futures product
19 commences under this title.”.

20 (b) MARGIN.—Section 7 of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78g) is amended—

22 (1) in subsection (a), by inserting “or a security
23 futures product” after “exempted security”;

24 (2) in subsection (c)(1)(A), by inserting “except
25 as provided in paragraph (2),” after “security,”;

1 (3) by redesignating paragraph (2) of sub-
2 section (c) as paragraph (3) of such subsection; and

3 (4) by inserting after paragraph (1) of such
4 subsection the following:

5 “(2) MARGIN REGULATIONS.—

6 “(A) COMPLIANCE WITH MARGIN RULES
7 REQUIRED.—It shall be unlawful for any
8 broker, dealer, or member of a national securi-
9 ties exchange to, directly or indirectly, extend
10 or maintain credit to or for, or collect margin
11 from any customer on, any security futures
12 product unless such activities comply with the
13 regulations—

14 “(i) which the Board shall prescribe
15 pursuant to subparagraph (B); or

16 “(ii) if the Board determines to dele-
17 gate the authority to prescribe such regula-
18 tions, which the Commission and the Com-
19 modity Futures Trading Commission shall
20 jointly prescribe pursuant to subparagraph
21 (B).

22 If the Board delegates the authority to pre-
23 scribe such regulations under clause (ii) and the
24 Commission and the Commodity Futures Trad-
25 ing Commission have not jointly prescribed such

1 regulations within a reasonable period of time
2 after the date of such delegation, the Board
3 shall prescribe such regulations pursuant to
4 subparagraph (B).

5 “(B) CRITERIA FOR ISSUANCE OF
6 RULES.—The Board shall prescribe, or, if the
7 authority is delegated pursuant to subpara-
8 graph (A)(ii), the Commission and the Com-
9 modity Futures Trading Commission shall
10 jointly prescribe, such regulations to establish
11 margin requirements, including the establish-
12 ment of levels of margin (initial and mainte-
13 nance) for security futures products under such
14 terms, and at such levels, as the Board deems
15 appropriate, or as the Commission and the
16 Commodity Futures Trading Commission joint-
17 ly deem appropriate—

18 “(i) to preserve the financial integrity
19 of markets trading security futures prod-
20 ucts;

21 “(ii) to prevent systemic risk;

22 “(iii) to require that—

23 “(I) the margin requirements for
24 a security future product be con-
25 sistent with the margin requirements

1 for comparable option contracts trad-
2 ed on any exchange registered pursu-
3 ant to section 6(a) of this title; and

4 “(II) initial and maintenance
5 margin levels for a security future
6 product not be lower than the lowest
7 level of margin, exclusive of premium,
8 required for any comparable option
9 contract traded on any exchange reg-
10 istered pursuant to section 6(a) of
11 this title, other than an option on a
12 security future;

13 except that nothing in this subparagraph
14 shall be construed to prevent a national se-
15 curities exchange or national securities as-
16 sociation from requiring higher margin lev-
17 els for a security future product when it
18 deems such action to be necessary or ap-
19 propriate; and

20 “(iv) to ensure that the margin re-
21 quirements (other than levels of margin),
22 including the type, form, and use of collat-
23 eral for security futures products, are and
24 remain consistent with the requirements
25 established by the Board, pursuant to sub-

1 paragraphs (A) and (B) of paragraph
2 (1).”.

3 (c) INCORPORATION OF SECURITY FUTURES PROD-
4 UCTS INTO THE NATIONAL MARKET SYSTEM.—Section
5 11A of the Securities Exchange Act of 1934 (15 U.S.C.
6 78k-1) is amended by adding at the end the following:

7 “(e) NATIONAL MARKETS SYSTEM FOR SECURITY
8 FUTURES PRODUCTS.—

9 “(1) CONSULTATION AND COOPERATION RE-
10 QUIRED.—With respect to security futures products,
11 the Commission and the Commodity Futures Trad-
12 ing Commission shall consult and cooperate so that,
13 to the maximum extent practicable, their respective
14 regulatory responsibilities may be fulfilled and the
15 rules and regulations applicable to security futures
16 products may foster a national market system for
17 security futures products if the Commission and the
18 Commodity Futures Trading Commission jointly de-
19 termine that such a system would be consistent with
20 the congressional findings in subsection (a)(1). In
21 accordance with this objective, the Commission shall,
22 at least 15 days prior to the issuance for public com-
23 ment of any proposed rule or regulation under this
24 section concerning security futures products, consult

1 and request the views of the Commodity Futures
2 Trading Commission.

3 “(2) APPLICATION OF RULES BY ORDER OF
4 CFTC.—No rule adopted pursuant to this section
5 shall be applied to any person with respect to the
6 trading of security futures products on an exchange
7 that is registered under section 6(g) unless the Com-
8 modity Futures Trading Commission has issued an
9 order directing that such rule is applicable to such
10 persons.”.

11 (d) INCORPORATION OF SECURITY FUTURES PROD-
12 UCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND
13 SETTLEMENT.—Section 17A(b) of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78q-1(b)) is amended by
15 adding at the end the following:

16 “(7)(A) A clearing agency that is regulated directly
17 or indirectly by the Commodity Futures Trading Commis-
18 sion through its association with a designated contract
19 market for security futures products that is a national se-
20 curities exchange registered pursuant to section 6(g), and
21 that would be required to register pursuant to paragraph
22 (1) of this subsection only because it performs the func-
23 tions of a clearing agency with respect to security futures
24 products effected pursuant to the rules of the designated
25 contract market with which such agency is associated, is

1 exempted from the provisions of this section and the rules
2 and regulations thereunder, except that if such a clearing
3 agency performs the functions of a clearing agency with
4 respect to a security futures product that is not cash set-
5 tled, it must have arrangements in place with a registered
6 clearing agency to effect the payment and delivery of the
7 securities underlying the security futures product.

8 “(B) Any clearing agency that performs the functions
9 of a clearing agency with respect to security futures prod-
10 ucts must coordinate with and develop fair and reasonable
11 links with any and all other clearing agencies that perform
12 the functions of a clearing agency with respect to security
13 futures products, in order to permit, as of the compliance
14 date (as defined in section 6(h)(6)(C)), security futures
15 products to be purchased on one market and offset on an-
16 other market that trades such products.”.

17 (e) MARKET EMERGENCY POWERS AND CIRCUIT
18 BREAKERS.—Section 12(k) of the Securities Exchange
19 Act of 1934 (15 U.S.C. 78l(k)) is amended—

20 (1) in paragraph (1), by adding at the end the
21 following: “If the actions described in subparagraph
22 (A) or (B) involve a security futures product, the
23 Commission shall consult with and consider the
24 views of the Commodity Futures Trading Commis-
25 sion.”; and

1 (2) in paragraph (2)(B), by inserting after the
2 first sentence the following: “If the actions described
3 in subparagraph (A) involve a security futures prod-
4 uct, the Commission shall consult with and consider
5 the views of the Commodity Futures Trading Com-
6 mission.”.

7 (f) TRANSACTION FEES.—Section 31 of the Securi-
8 ties Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

9 (1) in subsection (a), by inserting “and assess-
10 ments” after “fees”;

11 (2) in subsections (b), (c), and (d)(1), by strik-
12 ing “and other evidences of indebtedness” and in-
13 sserting “other evidences of indebtedness, and secu-
14 rity futures products”;

15 (3) in subsection (f), by inserting “or assess-
16 ment” after “fee”;

17 (4) in subsection (g), by inserting “and assess-
18 ment” after “fee”;

19 (5) by redesignating subsections (e), (f), and
20 (g) as subsections (f), (g), and (h), respectively; and

21 (6) by inserting after subsection (d) the fol-
22 lowing new subsection:

23 “(e) ASSESSMENTS ON SECURITY FUTURES TRANS-
24 ACTIONS.—Each national securities exchange and national
25 securities association shall pay to the Commission an as-

1 assessment equal to \$0.02 for each round turn transaction
2 (treated as including one purchase and one sale of a con-
3 tract of sale for future delivery) on a security future trad-
4 ed on such national securities exchange or by or through
5 any member of such association otherwise than on a na-
6 tional securities exchange, except that for fiscal year 2007
7 or any succeeding fiscal year such assessment shall be
8 equal to \$0.0075 for each such transaction. Assessments
9 collected pursuant to this subsection shall be deposited
10 and collected as general revenue of the Treasury.”.

11 (g) EXEMPTION FROM SHORT SALE PROVISIONS.—
12 Section 10(a) of the Securities Exchange Act of 1934 (15
13 U.S.C 78j(a)) is amended—

14 (1) by inserting “(1)” after “(a)”; and

15 (2) by adding at the end the following:

16 “(2) Paragraph (1) of this subsection shall not apply
17 to security futures products.”.

18 (h) RULEMAKING AUTHORITY TO ADDRESS DUPLI-
19 CATIVE REGULATION OF DUAL REGISTRANTS.—Section
20 15(c)(3) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78o(c)(3))is amended—

22 (1) by inserting “(A)” after “(3)”; and

23 (2) by adding at the end the following:

24 “(B) Consistent with this title, the Commission, in
25 consultation with the Commodity Futures Trading Com-

1 mission, shall issue such rules, regulations, or orders as
2 are necessary to avoid duplicative or conflicting regula-
3 tions applicable to any broker or dealer registered with
4 the Commission pursuant to section 15(b) (except para-
5 graph (11) thereof), that is also registered with the Com-
6modity Futures Trading Commission pursuant to section
7 4f(a) of the Commodity Exchange Act (except paragraph
8 (2) thereof), with respect to the application of (i) the pro-
9 visions of section 8, section 15(c)(3), and section 17 of
10 this title and the rules and regulations thereunder related
11 to the treatment of customer funds, securities, or prop-
12 erty, maintenance of books and records, financial report-
13 ing, or other financial responsibility rules, involving secu-
14 rity futures products and (ii) similar provisions of the
15 Commodity Exchange Act and rules and regulations there-
16 under involving security futures products.”.

17 (i) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
18 LATION OF DUAL REGISTRANTS.—Section 6 of the Securi-
19 ties Exchange Act of 1934 (15 U.S.C 78f) is amended
20 by inserting after subsection (h), as added by subsection
21 (a) of this section, the following:

22 “(i) Consistent with this title, each national securities
23 exchange registered pursuant to subsection (a) of this sec-
24 tion shall issue such rules as are necessary to avoid dupli-
25 cative or conflicting rules applicable to any broker or deal-

1 er registered with the Commission pursuant to section
2 15(b) (except paragraph (11) thereof), that is also reg-
3 istered with the Commodity Futures Trading Commission
4 pursuant to section 4f(a) of the Commodity Exchange Act
5 (except paragraph (2) thereof), with respect to the appli-
6 cation of—

7 (1) rules of such national securities exchange of
8 the type specified in section 15(c)(3)(B) involving
9 security futures products; and

10 (2) similar rules of national securities ex-
11 changes registered pursuant to section 6(g) and na-
12 tional securities associations registered pursuant to
13 section 15A(k) involving security futures products.”.

14 (j) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
15 LATION OF DUAL REGISTRANTS.—Section 15A of the Se-
16 curities Exchange Act of 1934 (15 U.S.C 78o–3) is
17 amended by inserting after subsection (k), as added by
18 section 203, the following:

19 “(l) Consistent with this title, each national securities
20 association registered pursuant to subsection (a) of this
21 section shall issue such rules as are necessary to avoid du-
22 plicative or conflicting rules applicable to any broker or
23 dealer registered with the Commission pursuant to section
24 15(b) (except paragraph (11) thereof), that is also reg-
25 istered with the Commodity Futures Trading Commission

1 pursuant to section 4f(a) of the Commodity Exchange Act
2 (except paragraph (2) thereof), with respect to the appli-
3 cation of—

4 “(1) rules of such national securities association
5 of the type specified in section 15(c)(3)(B) involving
6 security futures products; and

7 “(2) similar rules of national securities associa-
8 tions registered pursuant to subsection (k) of this
9 section and national securities exchanges registered
10 pursuant to section 6(g) involving security futures
11 products.”.

12 (k) OBLIGATION TO PUT IN PLACE PROCEDURES
13 AND ADOPT RULES.—

14 (1) NATIONAL SECURITIES ASSOCIATIONS.—
15 Section 15A of the Securities Exchange Act of 1934
16 (15 U.S.C. 78o-3) is amended by inserting after
17 subsection (l), as added by subsection (j) of this sec-
18 tion, the following new subsection:

19 “(m) PROCEDURES AND RULES FOR SECURITY FU-
20 TURE PRODUCTS.—A national securities association reg-
21 istered pursuant to subsection (a) shall, not later than 8
22 months after the date of enactment of the Commodity Fu-
23 tures Modernization Act of 2000, implement the proce-
24 dures specified in section 6(h)(5)(A) of this title and adopt

1 the rules specified in subparagraphs (B) and (C) of section
2 6(h)(5) of this title.”.

3 (2) NATIONAL SECURITIES EXCHANGES.—Sec-
4 tion 6 of the Securities Exchange Act of 1934 (15
5 U.S.C. 78f) is amended by inserting after subsection
6 (i), as added by subsection (i) of this section, the fol-
7 lowing new subsection:

8 “(j) PROCEDURES AND RULES FOR SECURITY FU-
9 TURE PRODUCTS.—A national securities exchange reg-
10 istered pursuant to subsection (a) shall implement the pro-
11 cedures specified in section 6(h)(5)(A) of this title and
12 adopt the rules specified in subparagraphs (B) and (C)
13 of section 6(h)(5) of this title not later than 8 months
14 after the date of receipt of a request from an alternative
15 trading system for such implementation and rules.”.

16 (l) OBLIGATION TO ADDRESS SECURITY FUTURES
17 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section
18 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
19 is amended by adding after subsection (j), as added by
20 subsection (k) of this section, the following—

21 “(k)(1) To the extent necessary or appropriate in the
22 public interest, to promote fair competition, and consistent
23 with the promotion of market efficiency, innovation, and
24 expansion of investment opportunities, the protection of
25 investors, and the maintenance of fair and orderly mar-

1 kets, the Commission and the Commodity Futures Trad-
2 ing Commission shall jointly issue such rules, regulations,
3 or orders as are necessary and appropriate to permit the
4 offer and sale of a security futures product traded on or
5 subject to the rules of a foreign board of trade to United
6 States persons.

7 “(2) The rules, regulations, or orders adopted under
8 paragraph (1) shall take into account, as appropriate, the
9 nature and size of the markets that the securities under-
10 lying the security futures product reflect.”.

11 **SEC. 207. CLEARANCE AND SETTLEMENT.**

12 Section 17A(b) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78q-1(b)) is amended—

14 (1) in paragraph (3)(A), by inserting “and de-
15 rivative agreements, contracts, and transactions”
16 after “prompt and accurate clearance and settlement
17 of securities transactions”;

18 (2) in paragraph (3)(F), by inserting “and, to
19 the extent applicable, derivative agreements, con-
20 tracts, and transactions” after “designed to promote
21 the prompt and accurate clearance and settlement of
22 securities transactions”; and

23 (3) by inserting after paragraph (7), as added
24 by section 206(d), the following:

1 “(8) A registered clearing agency shall be permitted
2 to provide facilities for the clearance and settlement of any
3 derivative agreements, contracts, or transactions that are
4 excluded from the Commodity Exchange Act, subject to
5 the requirements of this section and to such rules and reg-
6 ulations as the Commission may prescribe as necessary or
7 appropriate in the public interest, for the protection of in-
8 vestors, or otherwise in furtherance of the purposes of this
9 title.”.

10 **SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND**
11 **DISCLOSURE ISSUES UNDER THE SECURI-**
12 **TIES ACT OF 1933 AND THE SECURITIES EX-**
13 **CHANGE ACT OF 1934.**

14 (a) AMENDMENTS TO THE SECURITIES ACT OF
15 1933.—

16 (1) TREATMENT OF SECURITY FUTURES PROD-
17 UCTS.—Section 2(a) of the Securities Act of 1933
18 (15 U.S.C. 77b(a)) is amended—

19 (A) in paragraph (1), by inserting “secu-
20 rity future,” after “treasury stock,”;

21 (B) in paragraph (3), by adding at the end
22 the following: “Any offer or sale of a security
23 futures product by or on behalf of the issuer of
24 the securities underlying the security futures
25 product, an affiliate of the issuer, or an under-

1 writer, shall constitute a contract for sale of,
2 sale of, offer for sale, or offer to sell the under-
3 lying securities.”;

4 (C) by adding at the end the following:

5 “(16) The terms ‘security future’, ‘narrow-
6 based security index’, and ‘security futures product’
7 have the same meanings as provided in section
8 3(a)(55) of the Securities Exchange Act of 1934.”.

9 (2) EXEMPTION FROM REGISTRATION.—Section
10 3(a) of the Securities Act of 1933 (15 U.S.C.
11 77c(a)) is amended by adding at the end the fol-
12 lowing:

13 “(14) Any security futures product that is—

14 “(A) cleared by a clearing agency reg-
15 istered under section 17A of the Securities Ex-
16 change Act of 1934 or exempt from registration
17 under subsection (b)(7) of such section 17A;
18 and

19 “(B) traded on a national securities ex-
20 change or a national securities association reg-
21 istered pursuant to section 15A(a) of the Secu-
22 rities Exchange Act of 1934.”.

23 (3) CONFORMING AMENDMENT.—Section
24 12(a)(2) of the Securities Act of 1933 (15 U.S.C.

1 77l(a)(2)) is amended by striking “paragraph (2)”
2 and inserting “paragraphs (2) and (14)”.

3 (b) AMENDMENTS TO THE SECURITIES EXCHANGE
4 ACT OF 1934.—

5 (1) EXEMPTION FROM REGISTRATION.—Section
6 12(a) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78l(a)) is amended by adding at the end the
8 following: “The provisions of this subsection shall
9 not apply in respect of a security futures product
10 traded on a national securities exchange.”.

11 (2) EXEMPTIONS FROM REPORTING REQUIRE-
12 MENT.—Section 12(g)(5) of the Securities Exchange
13 Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by
14 adding at the end the following: “For purposes of
15 this subsection, a security futures product shall not
16 be considered a class of equity security of the issuer
17 of the securities underlying the security futures
18 product.”.

19 (3) TRANSACTIONS BY CORPORATE INSIDERS.—
20 Section 16 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78p) is amended by adding at the end
22 the following:

23 “(f) TREATMENT OF TRANSACTIONS IN SECURITY
24 FUTURES PRODUCTS.—The provisions of this section

1 shall apply to ownership of and transactions in security
2 futures products.”.

3 **SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY**

4 **ACT OF 1940 AND THE INVESTMENT ADVIS-**
5 **ERS ACT OF 1940.**

6 (a) DEFINITIONS UNDER THE INVESTMENT COM-
7 PANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT
8 OF 1940.—

9 (1) Section 2(a)(36) of the Investment Com-
10 pany Act of 1940 (15 U.S.C. 80a-2(a)(36)) is
11 amended by inserting “security future,” after
12 “treasury stock,”.

13 (2) Section 202(a)(18) of the Investment Advis-
14 ers Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amend-
15 ed by inserting “security future,” after “treasury
16 stock,”.

17 (3) Section 2(a) of the Investment Company
18 Act of 1940 (15 U.S.C. 80a-2(a)) is amended by
19 adding at the end the following:

20 “(52) The terms ‘security future’ and ‘narrow-
21 based security index’ have the same meanings as
22 provided in section 3(a)(55) of the Securities Ex-
23 change Act of 1934.”.

1 (4) Section 202(a) of the Investment Advisers
2 Act of 1940 (15 U.S.C. 80b-2(a)) is amended by
3 adding at the end the following:

4 “(27) The terms ‘security future’ and ‘narrow-
5 based security index’ have the same meanings as
6 provided in section 3(a)(55) of the Securities Ex-
7 change Act of 1934.”.

8 (b) OTHER PROVISION.—Section 203(b) of the In-
9 vestment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is
10 amended—

11 (1) by striking “or” at the end of paragraph
12 (4);

13 (2) by striking the period at the end of para-
14 graph (5) and inserting “; or”; and

15 (3) by adding at the end the following:

16 “(6) any investment adviser that is registered
17 with the Commodity Futures Trading Commission
18 as a commodity trading advisor whose business does
19 not consist primarily of acting as an investment ad-
20 viser, as defined in section 202(a)(11) of this title,
21 and that does not act as an investment adviser to—

22 “(A) an investment company registered
23 under title I of this Act; or

24 “(B) a company which has elected to be a
25 business development company pursuant to sec-

1 tion 54 of title I of this Act and has not with-
2 drawn its election.”.

3 **SEC. 210. PREEMPTION OF STATE LAWS.**

4 Section 28(a) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78bb(a)) is amended—

6 (1) in the last sentence—

7 (A) by inserting “subject to this title”
8 after “privilege, or other security”; and

9 (B) by striking “any such instrument, if
10 such instrument is traded pursuant to rules and
11 regulations of a self-regulatory organization
12 that are filed with the Commission pursuant to
13 section 19(b) of this Act” and inserting “any
14 such security”; and

15 (2) by adding at the end the following new sen-
16 tence: “No provision of State law regarding the
17 offer, sale, or distribution of securities shall apply to
18 any transaction in a security futures product, except
19 that this sentence shall not be construed as limiting
20 any State antifraud law of general applicability.”.

1 **Subtitle B—Amendments to the**
2 **Commodity Exchange Act**

3 **SEC. 251. JURISDICTION OF SECURITIES AND EXCHANGE**

4 **COMMISSION; OTHER PROVISIONS.**

5 (a) JURISDICTION OF SECURITIES AND EXCHANGE

6 COMMISSION.—

7 (1) Section 2(a)(1)(C) of the Commodity Ex-
8 change Act (7 U.S.C. 2a) (as redesignated by sec-
9 tion 34(a)(2)(C)) is amended—

10 (A) in clause (ii)—

11 (i) by inserting “or register a deriva-
12 tives transaction execution facility that
13 trades or executes,” after “contract market
14 in,”;

15 (ii) by inserting after “contracts) for
16 future delivery” the following: “, and no
17 derivatives transaction execution facility
18 shall trade or execute such contracts of
19 sale (or options on such contracts) for fu-
20 ture delivery,”;

21 (iii) by striking “making such applica-
22 tion demonstrates and the Commission ex-
23 pressly finds that the specific contract (or
24 option on such contract) with respect to
25 which the application has been made

1 meets” and inserting “or the derivatives
2 transaction execution facility, and the ap-
3 plicable contract, meet”;

4 (iv) by striking subclause (III) of
5 clause (ii) and inserting the following:

6 “(III) Such group or index of securities
7 shall not constitute a narrow-based security
8 index.”;

9 (B) by striking clause (iii);

10 (C) by striking clause (iv) and inserting
11 the following:

12 “(iii) If, in its discretion, the Commission deter-
13 mines that a stock index futures contract, notwith-
14 standing its conformance with the requirements in
15 clause (ii) of this subparagraph, can reasonably be
16 used as a surrogate for trading a security (including
17 a security futures product), it may, by order, require
18 such contract and any option thereon be traded and
19 regulated as security futures products as defined in
20 section 3(a)(56) of the Securities Exchange Act of
21 1934 and section 1a of this Act subject to all rules
22 and regulations applicable to security futures prod-
23 ucts under this Act and the securities laws as de-
24 fined in section 3(a)(47) of the Securities Exchange
25 Act of 1934.”; and

1 (D) by redesignating clause (v) as clause
2 (iv).

3 (2) Section 2(a)(1) of the Commodity Exchange
4 Act (7 U.S.C. 2, 2a, 4) is amended by adding at the
5 end the following:

6 “(D)(i) Notwithstanding any other provision of this
7 Act, the Securities and Exchange Commission shall have
8 jurisdiction and authority over security futures as defined
9 in section 3(a)(55) of the Securities Exchange Act of
10 1934, section 2(a)(16) of the Securities Act of 1933, sec-
11 tion 2(a)(52) of the Investment Company Act of 1940,
12 and section 202(a)(27) of the Investment Advisers Act of
13 1940, options on security futures, and persons effecting
14 transactions in security futures and options thereon, and
15 this Act shall apply to and the Commission shall have ju-
16 risdiction with respect to accounts, agreements (including
17 any transaction which is of the character of, or is com-
18 monly known to the trade as, an ‘option’, ‘privilege’, ‘in-
19 demnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or
20 ‘decline guaranty’), contracts, and transactions involving,
21 and may designate a board of trade as a contract market
22 in, or register a derivatives transaction execution facility
23 that trades or executes, a security futures product as de-
24 fined in section 1a of this Act: *Provided, however,* That,
25 except as provided in clause (vi) of this subparagraph, no

1 board of trade shall be designated as a contract market
2 with respect to, or registered as a derivatives transaction
3 execution facility for, any such contracts of sale for future
4 delivery unless the board of trade and the applicable con-
5 tract meet the following criteria:

6 “(I) Except as otherwise provided in a rule,
7 regulation, or order issued pursuant to clause (v) of
8 this subparagraph, any security underlying the secu-
9 rity future, including each component security of a
10 narrow-based security index, is registered pursuant
11 to section 12 of the Securities Exchange Act of
12 1934.

13 “(II) If the security futures product is not cash
14 settled, the board of trade on which the security fu-
15 tures product is traded has arrangements in place
16 with a clearing agency registered pursuant to section
17 17A of the Securities Exchange Act of 1934 for the
18 payment and delivery of the securities underlying the
19 security futures product.

20 “(III) Except as otherwise provided in a rule,
21 regulation, or order issued pursuant to clause (v) of
22 this subparagraph, the security future is based upon
23 common stock and such other equity securities as
24 the Commission and the Securities and Exchange
25 Commission jointly determine appropriate.

1 “(IV) The security futures product is cleared by
2 a clearing agency that has in place provisions for
3 linked and coordinated clearing with other clearing
4 agencies that clear security futures products, which
5 permits the security futures product to be purchased
6 on a designated contract market, registered deriva-
7 tives transaction execution facility, national securi-
8 ties exchange registered under section 6(a) of the
9 Securities Exchange Act of 1934, or national securi-
10 ties association registered pursuant to section
11 15A(a) of the Securities Exchange Act of 1934 and
12 offset on another designated contract market, reg-
13 istered derivatives transaction execution facility, na-
14 tional securities exchange registered under section
15 6(a) of the Securities Exchange Act of 1934, or na-
16 tional securities association registered pursuant to
17 section 15A(a) of the Securities Exchange Act of
18 1934.

19 “(V) Only futures commission merchants, intro-
20 ducing brokers, commodity trading advisors, com-
21 modity pool operators or associated persons subject
22 to suitability rules comparable to those of a national
23 securities association registered pursuant to section
24 15A(a) of the Securities Exchange Act of 1934 so-
25 licit, accept any order for, or otherwise deal in any

1 transaction in or in connection with the security fu-
2 tures product.

3 “(VI) The security futures product is subject to
4 a prohibition against dual trading in section 4j of
5 this Act and the rules and regulations thereunder or
6 the provisions of section 11(a) of the Securities Ex-
7 change Act of 1934 and the rules and regulations
8 thereunder, except to the extent otherwise permitted
9 under the Securities Exchange Act of 1934 and the
10 rules and regulations thereunder.

11 “(VII) Trading in the security futures product
12 is not readily susceptible to manipulation of the
13 price of such security futures product, nor to caus-
14 ing or being used in the manipulation of the price
15 of any underlying security, option on such security,
16 or option on a group or index including such securi-
17 ties;

18 “(VIII) The board of trade on which the secu-
19 rity futures product is traded has procedures in
20 place for coordinated surveillance among such board
21 of trade, any market on which any security under-
22 lying the security futures product is traded, and
23 other markets on which any related security is trad-
24 ed to detect manipulation and insider trading, except
25 that, if the board of trade is an alternative trading

1 system, a national securities association registered
2 pursuant to section 15A(a) of the Securities Ex-
3 change Act of 1934 or national securities exchange
4 registered pursuant to section 6(a) of the Securities
5 Exchange Act of 1934 of which such alternative
6 trading system is a member has in place such proce-
7 dures.

8 “(IX) The board of trade on which the security
9 futures product is traded has in place audit trails
10 necessary or appropriate to facilitate the coordinated
11 surveillance required in subclause (VIII), except
12 that, if the board of trade is an alternative trading
13 system, a national securities association registered
14 pursuant to section 15A(a) of the Securities Ex-
15 change Act of 1934 or national securities exchange
16 registered pursuant to section 6(a) of the Securities
17 Exchange Act of 1934 of which such alternative
18 trading system is a member has rules to require
19 such audit trails.

20 “(X) The board of trade on which the security
21 futures product is traded has in place procedures to
22 coordinate trading halts between such board of trade
23 and markets on which any security underlying the
24 security futures product is traded and other markets
25 on which any related security is traded, except that,

1 if the board of trade is an alternative trading sys-
2 tem, a national securities association registered pur-
3 suant to section 15A(a) of the Securities Exchange
4 Act of 1934 or national securities exchange reg-
5 istered pursuant to section 6(a) of the Securities Ex-
6 change Act of 1934 of which such alternative trad-
7 ing system is a member has rules to require such co-
8 ordinated trading halts.

9 “(XI) The margin requirements for a security
10 futures product comply with the regulations pre-
11 scribed pursuant to section 7(c)(2)(B) of the Securi-
12 ties Exchange Act of 1934, except that nothing in
13 this subclause shall be construed to prevent a board
14 of trade from requiring higher margin levels for a
15 security futures product when it deems such action
16 to be necessary or appropriate.

17 “(ii) It shall be unlawful for any person to offer, to
18 enter into, to execute, to confirm the execution of, or to
19 conduct any office or business anywhere in the United
20 States, its territories or possessions, for the purpose of
21 soliciting, or accepting any order for, or otherwise dealing
22 in, any transaction in, or in connection with, a security
23 futures product unless—

24 “(I) the transaction is conducted on or subject
25 to the rules of a board of trade that—

1 “(aa) has been designated by the Commis-
2 sion as a contract market in such security fu-
3 tures product; or

4 “(bb) is a registered derivatives trans-
5 action execution facility for the security futures
6 product that has provided a certification with
7 respect to the security futures product pursuant
8 to clause (vii);

9 “(II) the contract is executed or consummated
10 by, through, or with a member of the contract mar-
11 ket or registered derivatives transaction execution
12 facility; and

13 “(III) the security futures product is evidenced
14 by a record in writing which shows the date, the
15 parties to such security futures product and their
16 addresses, the property covered, and its price, and
17 each contract market member or registered deriva-
18 tives transaction execution facility member shall
19 keep the record for a period of 3 years from the date
20 of the transaction, or for a longer period if the Com-
21 mission so directs, which record shall at all times be
22 open to the inspection of any duly authorized rep-
23 resentative of the Commission.

24 “(iii)(I) Except as provided in subclause (II) but not-
25 withstanding any other provision of this Act, no person

1 shall offer to enter into, enter into, or confirm the execu-
2 tion of any option on a security future.

3 “(II) After 3 years after the date of the enactment
4 of the Commodity Futures Modernization Act of 2000, the
5 Commission and the Securities and Exchange Commission
6 may by order jointly determine to permit trading of op-
7 tions on any security future authorized to be traded under
8 the provisions of this Act and the Securities Exchange Act
9 of 1934.

10 “(iv)(I) All relevant records of a futures commission
11 merchant or introducing broker registered pursuant to
12 section 4f(a)(2), floor broker or floor trader exempt from
13 registration pursuant to section 4f(a)(3), associated per-
14 son exempt from registration pursuant to section 4k(6),
15 or board of trade designated as a contract market in a
16 security futures product pursuant to section 5f shall be
17 subject to such reasonable periodic or special examinations
18 by representatives of the Commission as the Commission
19 deems necessary or appropriate in the public interest, for
20 the protection of investors, or otherwise in furtherance of
21 the purposes of this Act, and the Commission, before con-
22 ducting any such examination, shall give notice to the Se-
23 curities and Exchange Commission of the proposed exam-
24 ination and consult with the Securities and Exchange
25 Commission concerning the feasibility and desirability of

1 coordinating the examination with examinations conducted
2 by the Securities and Exchange Commission in order to
3 avoid unnecessary regulatory duplication or undue regu-
4 latory burdens for the registrant or board of trade.

5 “(II) The Commission shall notify the Securities and
6 Exchange Commission of any examination conducted of
7 any futures commission merchant or introducing broker
8 registered pursuant to section 4f(a)(2), floor broker or
9 floor trader exempt from registration pursuant to section
10 4f(a)(3), associated person exempt from registration pur-
11 suant to section 4k(6), or board of trade designated as
12 a contract market in a security futures product pursuant
13 to section 5f, and, upon request, furnish to the Securities
14 and Exchange Commission any examination report and
15 data supplied to or prepared by the Commission in connec-
16 tion with the examination.

17 “(III) Before conducting an examination under sub-
18 clause (I), the Commission shall use the reports of exami-
19 nations, unless the information sought is unavailable in
20 the reports, of any futures commission merchant or intro-
21 ducing broker registered pursuant to section 4f(a)(2),
22 floor broker or floor trader exempt from registration pur-
23 suant to section 4f(a)(3), associated person exempt from
24 registration pursuant to section 4k(6), or board of trade
25 designated as a contract market in a security futures

1 product pursuant to section 5f that is made by the Securi-
2 ties and Exchange Commission, a national securities asso-
3 ciation registered pursuant to section 15A(a) of the Secu-
4 rities Exchange Act of 1934 (15 U.S.C. 78o-3(a)), or a
5 national securities exchange registered pursuant to section
6 6(a) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78f(a)).

8 “(IV) Any records required under this subsection for
9 a futures commission merchant or introducing broker reg-
10 istered pursuant to section 4f(a)(2), floor broker or floor
11 trader exempt from registration pursuant to section
12 4f(a)(3), associated person exempt from registration pur-
13 suant to section 4k(6), or board of trade designated as
14 a contract market in a security futures product pursuant
15 to section 5f, shall be limited to records with respect to
16 accounts, agreements, contracts, and transactions involv-
17 ing security futures products.

18 “(v)(I) The Commission and the Securities and Ex-
19 change Commission, by rule, regulation, or order, may
20 jointly modify the criteria specified in subclause (I) or
21 (III) of clause (i), including the trading of security futures
22 based on securities other than equity securities, to the ex-
23 tent such modification fosters the development of fair and
24 orderly markets in security futures products, is necessary

1 or appropriate in the public interest, and is consistent with
2 the protection of investors.

3 “(II) The Commission and the Securities and Ex-
4 change Commission, by order, may jointly exempt any per-
5 son from compliance with the criterion specified in clause
6 (i)(IV) to the extent such exemption fosters the develop-
7 ment of fair and orderly markets in security futures prod-
8 ucts, is necessary or appropriate in the public interest, and
9 is consistent with the protection of investors.

10 “(vi)(I) Notwithstanding clauses (i) and (vii), until
11 the compliance date, a board of trade shall not be required
12 to meet the criterion specified in clause (i)(IV).

13 “(II) The Commission and the Securities and Ex-
14 change Commission shall jointly publish in the Federal
15 Register a notice of the compliance date no later than 165
16 days before the compliance date.

17 “(III) For purposes of this clause, the term ‘compli-
18 ance date’ means the later of—

19 “(aa) 180 days after the end of the first full
20 calendar month period in which the average aggreg-
21 ate comparable share volume for all security fu-
22 tures products based on single equity securities trad-
23 ed on all designated contract markets and registered
24 derivatives transaction execution facilities equals or
25 exceeds 10 percent of the average aggregate com-

1 parable share volume of options on single equity se-
2 curities traded on all national securities exchanges
3 registered pursuant to section 6(a) of the Securities
4 Exchange Act of 1934 and any national securities
5 associations registered pursuant to section 15A(a) of
6 such Act; or

7 “(bb) 2 years after the date on which trading
8 in any security futures product commences under
9 this Act.

10 “(vii) It shall be unlawful for a board of trade to
11 trade or execute a security futures product unless the
12 board of trade has provided the Commission with a certifi-
13 cation that the specific security futures product and the
14 board of trade, as applicable, meet the criteria specified
15 in subclauses (I) through (XI) of clause (i), except as oth-
16 erwise provided in clause (vi).”.

17 (b) MARGIN ON SECURITY FUTURES.—Section
18 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C.
19 2a(vi)) (as redesignated by section 34) is amended—

20 (1) by redesignating subclause (V) as subclause
21 (VI); and

22 (2) by striking “(vi)(I)” and all that follows
23 through subclause (IV) and inserting the following:

24 “(v)(I) Notwithstanding any other provision of
25 this Act, any contract market in a stock index fu-

1 tures contract (or option thereon) other than a secu-
2 rity futures product, or any derivatives transaction
3 execution facility on which such contract or option
4 is traded, shall file with the Board of Governors of
5 the Federal Reserve System any rule establishing or
6 changing the levels of margin (initial and mainte-
7 nance) for such stock index futures contract (or op-
8 tion thereon) other than security futures products.

9 “(II) The Board may at any time request any
10 contract market or derivatives transaction execution
11 facility to set the margin for any stock index futures
12 contract (or option thereon), other than for any se-
13 curity futures product, at such levels as the Board
14 in its judgment determines are appropriate to pre-
15 serve the financial integrity of the contract market
16 or derivatives transaction execution facility, or its
17 clearing system, or to prevent systemic risk. If the
18 contract market or derivatives transaction execution
19 facility fails to do so within the time specified by the
20 Board in its request, the Board may direct the con-
21 tract market or derivatives transaction execution fa-
22 cility to alter or supplement the rules of the contract
23 market or derivatives transaction execution facility
24 as specified in the request.

1 “(III) Subject to such conditions as the Board
2 may determine, the Board may delegate any or all
3 of its authority, relating to margin for any stock
4 index futures contract (or option thereon), other
5 than security futures products, under this clause to
6 the Commission.

7 “(IV) It shall be unlawful for any futures com-
8 mission merchant to, directly or indirectly, extend or
9 maintain credit to or for, or collect margin from any
10 customer on any security futures product unless
11 such activities comply with the regulations pre-
12 scribed pursuant to section 7(c)(2)(B) of the Securi-
13 ties Exchange Act of 1934.

14 “(V) Nothing in this clause shall supersede or
15 limit the authority granted to the Commission in
16 section 8a(9) to direct a contract market or reg-
17 istered derivatives transaction execution facility, on
18 finding an emergency to exist, to raise temporary
19 margin levels on any futures contract, or option on
20 the contract covered by this clause, or on any secu-
21 rity futures product.”.

22 (c) DUAL TRADING.—Section 4j of the Commodity
23 Exchange Act (7 U.S.C. 6j) is amended to read as follows:

1 **“SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY**
2 **FUTURES PRODUCTS ON DESIGNATED CON-**
3 **TRACT MARKETS AND REGISTERED DERIVA-**
4 **TIVES TRANSACTION EXECUTION FACILITIES.**

5 “(a) The Commission shall issue regulations to pro-
6 hibit the privilege of dual trading in security futures prod-
7 ucts on each contract market and registered derivatives
8 transaction execution facility. The regulations issued by
9 the Commission under this section—

10 “(1) shall provide that the prohibition of dual
11 trading thereunder shall take effect upon issuance of
12 the regulations; and

13 “(2) shall provide exceptions, as the Commis-
14 sion determines appropriate, to ensure fairness and
15 orderly trading in security futures product markets,
16 including—

17 “(A) exceptions for spread transactions
18 and the correction of trading errors;

19 “(B) allowance for a customer to designate
20 in writing not less than once annually a named
21 floor broker to execute orders for such cus-
22 tomer, notwithstanding the regulations to pro-
23 hibit the privilege of dual trading required
24 under this section; and

25 “(C) other measures reasonably designed
26 to accommodate unique or special characteris-

1 tics of individual boards of trade or contract
2 markets, to address emergency or unusual mar-
3 ket conditions, or otherwise to further the pub-
4 lic interest consistent with the promotion of
5 market efficiency, innovation, and expansion of
6 investment opportunities, the protection of in-
7 vestors, and with the purposes of this section.

8 “(b) As used in this section, the term ‘dual trading’
9 means the execution of customer orders by a floor broker
10 during the same trading session in which the floor broker
11 executes any trade in the same contract market or reg-
12 istered derivatives transaction execution facility for—

13 “(1) the account of such floor broker;

14 “(2) an account for which such floor broker has
15 trading discretion; or

16 “(3) an account controlled by a person with
17 whom such floor broker has a relationship through
18 membership in a broker association.

19 “(c) As used in this section, the term ‘broker associa-
20 tion’ shall include two or more contract market members
21 or registered derivatives transaction execution facility
22 members with floor trading privileges of whom at least one
23 is acting as a floor broker, who—

24 “(1) engage in floor brokerage activity on be-
25 half of the same employer,

1 “(2) have an employer and employee relation-
2 ship which relates to floor brokerage activity,

3 “(3) share profits and losses associated with
4 their brokerage or trading activity, or

5 “(4) regularly share a deck of orders.”.

6 (d) EXEMPTION FROM REGISTRATION FOR INVEST-
7 MENT ADVISERS.—Section 4m of the Commodity Ex-
8 change Act (7 U.S.C. 6m) is amended by adding at the
9 end the following:

10 “(3) Subsection (1) of this section shall not apply to
11 any commodity trading advisor that is registered with the
12 Securities and Exchange Commission as an investment ad-
13 viser whose business does not consist primarily of acting
14 as a commodity trading advisor, as defined in section
15 1a(6), and that does not act as a commodity trading advi-
16 sor to any investment trust, syndicate, or similar form of
17 enterprise that is engaged primarily in trading in any com-
18 modity for future delivery on or subject to the rules of
19 any contract market or registered derivatives transaction
20 execution facility.”.

21 (e) EXEMPTION FROM INVESTIGATIONS OF MARKETS
22 IN UNDERLYING SECURITIES.—Section 16 of the Com-
23 modity Exchange Act (7 U.S.C. 20) is amended by adding
24 at the end the following:

1 “(e) This section shall not apply to investigations in-
2 volving any security underlying a security futures prod-
3 uct.”.

4 (f) RULEMAKING AUTHORITY TO ADDRESS DUPLI-
5 CATIVE REGULATION OF DUAL REGISTRANTS.—Section
6 4d of the Commodity Exchange Act (7 U.S.C. 6d) is
7 amended—

8 (1) by inserting “(a)” before the first undesig-
9 nated paragraph;

10 (2) by inserting “(b)” before the second undes-
11 igned paragraph; and

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

13 “(c) Consistent with this Act, the Commission, in
14 consultation with the Securities and Exchange Commis-
15 sion, shall issue such rules, regulations, or orders as are
16 necessary to avoid duplicative or conflicting regulations
17 applicable to any futures commission merchant registered
18 with the Commission pursuant to section 4f(a) (except
19 paragraph (2) thereof), that is also registered with the Se-
20 curities and Exchange Commission pursuant to section
21 15(b) of the Securities Exchange Act (except paragraph
22 (11) thereof), involving the application of—

23 “(1) section 8, section 15(e)(3), and section 17
24 of the Securities Exchange Act of 1934 and the
25 rules and regulations thereunder related to the treat-

1 ment of customer funds, securities, or property,
2 maintenance of books and records, financial report-
3 ing or other financial responsibility rules (as defined
4 in section 3(a)(40) of the Securities Exchange Act
5 of 1934), involving security futures products; and

6 “(2) similar provisions of this Act and the rules
7 and regulations thereunder involving security futures
8 products.”.

9 (g) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
10 LATION OF DUAL REGISTRANTS.—Section 17 of the Com-
11 modity Exchange Act (7 U.S.C. 21) is amended by adding
12 at the end the following:

13 “(r) Consistent with this Act, each futures associa-
14 tion registered under this section shall issue such rules
15 as are necessary to avoid duplicative or conflicting rules
16 applicable to any futures commission merchant registered
17 with the Commission pursuant to section 4f(a) of this Act
18 (except paragraph (2) thereof), that is also registered with
19 the Securities and Exchange Commission pursuant to sec-
20 tion 15(b) of the Securities and Exchange Act of 1934
21 (except paragraph (11) thereof), with respect to the appli-
22 cation of—

23 “(1) rules of such futures association of the
24 type specified in section 4d(3) of this Act involving
25 security futures products; and

1 “(2) similar rules of national securities associa-
2 tions registered pursuant to section 15A(a) of the
3 Securities and Exchange Act of 1934 involving secu-
4 rity futures products.”.

5 (h) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
6 LATION OF DUAL REGISTRANTS.—Section 5c of the Com-
7 modity Exchange Act (as added by section 114) is amend-
8 ed by adding at the end the following:

9 “(f) Consistent with this Act, each designated con-
10 tract market and registered derivatives transaction execu-
11 tion facility shall issue such rules as are necessary to avoid
12 duplicative or conflicting rules applicable to any futures
13 commission merchant registered with the Commission pur-
14 suant to section 4f(a) of this Act (except paragraph (2)
15 thereof), that is also registered with the Securities and Ex-
16 change Commission pursuant to section 15(b) of the Secu-
17 rities Exchange Act of 1934 (except paragraph (11) there-
18 of) with respect to the application of—

19 “(1) rules of such designated contract market
20 or registered derivatives transaction execution facil-
21 ity of the type specified in section 4d(3) of this Act
22 involving security futures products; and

23 “(2) similar rules of national securities associa-
24 tions registered pursuant to section 15A(a) of the
25 Securities Exchange Act of 1934 and national secu-

1 rities exchanges registered pursuant to section 6(g)
2 of such Act involving security futures products.”.

3 (i) OBLIGATION TO ADDRESS SECURITY FUTURES
4 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section
5 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a,
6 and 4)) is amended by adding at the end the following:
7 “(E)(i) To the extent necessary or appropriate in the
8 public interest, to promote fair competition, and consistent
9 with promotion of market efficiency, innovation, and ex-
10 pansion of investment opportunities, the protection of in-
11 vestors, and the maintenance of fair and orderly markets,
12 the Commission and the Securities and Exchange Com-
13 mission shall jointly issue such rules, regulations, or or-
14 ders as are necessary and appropriate to permit the offer
15 and sale of a security futures product traded on or subject
16 to the rules of a foreign board of trade to United States
17 persons.

18 “(ii) The rules, regulations, or orders adopted under
19 clause (i) shall take into account, as appropriate, the na-
20 ture and size of the markets that the securities underlying
21 the security futures product reflects.”.

22 (j) SECURITY FUTURES PRODUCTS TRADED ON FOR-
23 EIGN BOARDS OF TRADE.—Section 2(a)(1) of the Com-
24modity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended
25 by adding at the end the following:

1 “(F)(i) Nothing in this Act is intended to prohibit
2 a futures commission merchant from carrying security fu-
3 tures products traded on or subject to the rules of a for-
4 eign board of trade in the accounts of persons located out-
5 side of the United States.

6 “(ii) Nothing in this Act is intended to prohibit any
7 eligible contract participant located in the United States
8 from purchasing or carrying securities futures products
9 traded on or subject to the rules of a foreign board of
10 trade, exchange, or market to the same extent such person
11 may be authorized to purchase or carry other securities
12 traded on a foreign board of trade, exchange, or market
13 so long as any underlying security for such security fu-
14 tures products is traded principally on, by, or through any
15 exchange or market located outside the United States.”.

16 **SEC. 252. APPLICATION OF THE COMMODITY EXCHANGE**
17 **ACT TO NATIONAL SECURITIES EXCHANGES**
18 **AND NATIONAL SECURITIES ASSOCIATIONS**
19 **THAT TRADE SECURITY FUTURES.**

20 (a) NOTICE DESIGNATION OF NATIONAL SECURITIES
21 EXCHANGES AND NATIONAL SECURITIES ASSOCIA-
22 TIONS.—The Commodity Exchange Act is amended by in-
23 serting after section 5e (7 U.S.C. 7b), as redesignated by
24 section 21(1), the following:

1 **“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND**
2 **ASSOCIATIONS AS CONTRACT MARKETS.**

3 “(a) Any board of trade that is registered with the
4 Securities and Exchange Commission as a national securi-
5 ties exchange, is a national securities association reg-
6 istered pursuant to section 15A(a) of the Securities Ex-
7 change Act of 1934, or is an alternative trading system
8 shall be a designated contract market in security futures
9 products if—

10 “(1) such national securities exchange, national
11 securities association, or alternative trading system
12 lists or trades no other contracts of sale for future
13 delivery, except for security futures products;

14 “(2) such national securities exchange, national
15 securities association, or alternative trading system
16 files written notice with the Commission in such
17 form as the Commission, by rule, may prescribe con-
18 taining such information as the Commission, by rule,
19 may prescribe as necessary or appropriate in the
20 public interest or for the protection of customers;
21 and

22 “(3) the registration of such national securities
23 exchange, national securities association, or alter-
24 native trading system is not suspended pursuant to
25 an order by the Securities and Exchange Commis-
26 sion.

1 Such designation shall be effective contemporaneously
2 with the submission of notice, in written or electronic
3 form, to the Commission.

4 “(b)(1) A national securities exchange, national secu-
5 rities association, or alternative trading system that is des-
6 ignated as a contract market pursuant to section 5f shall
7 be exempt from the following provisions of this Act and
8 the rules thereunder:

9 “(A) Subsections (c), (e), and (g) of section 4e.

10 “(B) Section 4j.

11 “(C) Section 5.

12 “(D) Section 5c.

13 “(E) Section 6a.

14 “(F) Section 8(d).

15 “(G) Section 9(f).

16 “(H) Section 16.

17 “(2) An alternative trading system that is a des-
18 ignated contract market under this section shall be re-
19 quired to be a member of a futures association registered
20 under section 17 and shall be exempt from any provision
21 of this Act that would require such alternative trading sys-
22 tem to—

23 “(A) set rules governing the conduct of sub-
24 scribers other than the conduct of such subscribers’
25 trading on such alternative trading system; or

1 “(B) discipline subscribers other than by exclu-
2 sion from trading.

3 “(3) To the extent that an alternative trading system
4 is exempt from any provision of this Act pursuant to para-
5 graph (2) of this subsection, the futures association reg-
6 istered under section 17 of which the alternative trading
7 system is a member shall set rules governing the conduct
8 of subscribers to the alternative trading system and dis-
9 cipline the subscribers.

10 “(4)(A) Except as provided in subparagraph (B), but
11 notwithstanding any other provision of this Act, the Com-
12 mission, by rule, regulation, or order, may conditionally
13 or unconditionally exempt any designated contract market
14 in security futures subject to the designation requirement
15 of this section from any provision of this Act or of any
16 rule or regulation thereunder, to the extent such exemp-
17 tion is necessary or appropriate in the public interest and
18 is consistent with the protection of investors.

19 “(B) The Commission shall, by rule or regulation, de-
20 termine the procedures under which an exemptive order
21 under this section is granted and may, in its sole discre-
22 tion, decline to entertain any application for an order of
23 exemption under this section.

24 “(C) An alternative trading system shall not be
25 deemed to be an exchange for any purpose as a result of

1 the designation of such alternative trading system as a
2 contract market under this section.”.

3 (b) NOTICE REGISTRATION OF CERTAIN SECURITIES
4 BROKER-DEALERS; EXEMPTION FROM REGISTRATION
5 FOR CERTAIN SECURITIES BROKER-DEALERS.—Section
6 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a))
7 is amended—

8 (1) by inserting “(1)” after “(a)”; and

9 (2) by adding at the end the following:

10 “(2) Notwithstanding paragraph (1), and except as
11 provided in paragraph (3), any broker or dealer that is
12 registered with the Securities and Exchange Commission
13 shall be registered as a futures commission merchant or
14 introducing broker, as applicable, if—

15 “(A) the broker or dealer limits its solicitation
16 of orders, acceptance of orders, or execution of or-
17 ders, or placing of orders on behalf of others involv-
18 ing any contracts of sale of any commodity for fu-
19 ture delivery, on or subject to the rules of any con-
20 tract market or registered derivatives transaction
21 execution facility to security futures products;

22 “(B) the broker or dealer files written notice
23 with the Commission in such form as the Commis-
24 sion, by rule, may prescribe containing such infor-
25 mation as the Commission, by rule, may prescribe as

1 necessary or appropriate in the public interest or for
2 the protection of investors;

3 “(C) the registration of the broker or dealer is
4 not suspended pursuant to an order of the Securities
5 and Exchange Commission; and

6 “(D) the broker or dealer is a member of a na-
7 tional securities association registered pursuant to
8 section 15A(a) of the Securities Exchange Act of
9 1934.

10 The registration shall be effective contemporaneously with
11 the submission of notice, in written or electronic form, to
12 the Commission.

13 “(3) A floor broker or floor trader shall be exempt
14 from the registration requirements of section 4e and para-
15 graph (1) of this subsection if—

16 “(A) the floor broker or floor trader is a broker
17 or dealer registered with the Securities and Ex-
18 change Commission;

19 “(B) the floor broker or floor trader limits its
20 solicitation of orders, acceptance of orders, or execu-
21 tion of orders, or placing of orders on behalf of oth-
22 ers involving any contracts of sale of any commodity
23 for future delivery, on or subject to the rules of any
24 contract market to security futures products; and

1 “(C) the registration of the floor broker or floor
2 trader is not suspended pursuant to an order of the
3 Securities and Exchange Commission.”.

4 (c) EXEMPTION FOR SECURITIES BROKER-DEALERS
5 FROM CERTAIN PROVISIONS OF THE COMMODITY EX-
6 CHANGE ACT.—Section 4f(a) of the Commodity Exchange
7 Act (7 U.S.C. 6f(a)) is amended by inserting after para-
8 graph (3), as added by subsection (b) of this section, the
9 following:

10 “(4)(A) A broker or dealer that is registered as a fu-
11 tures commission merchant or introducing broker pursu-
12 ant to paragraph (2), or that is a floor broker or floor
13 trader exempt from registration pursuant to paragraph
14 (3), shall be exempt from the following provisions of this
15 Act and the rules thereunder:

16 “(i) Subsections (b), (d), (e), and (g) of section
17 4c.

18 “(ii) Sections 4d, 4e, and 4h.

19 “(iii) Subsections (b) and (c) of this section.

20 “(iv) Section 4j.

21 “(v) Section 4k(1).

22 “(vi) Section 4p.

23 “(vii) Section 6d.

24 “(viii) Subsections (d) and (g) of section 8.

25 “(ix) Section 16.

1 “(B)(i) Except as provided in clause (ii) of this sub-
2 paragraph, but notwithstanding any other provision of this
3 Act, the Commission, by rule, regulation, or order, may
4 conditionally or unconditionally exempt any broker or
5 dealer subject to the registration requirement of para-
6 graph (2), or any broker or dealer exempt from registra-
7 tion pursuant to paragraph (3), from any provision of this
8 Act or of any rule or regulation thereunder, to the extent
9 the exemption is necessary or appropriate in the public
10 interest and is consistent with the protection of investors.

11 “(ii) The Commission shall, by rule or regulation, de-
12 termine the procedures under which an exemptive order
13 under this section shall be granted and may, in its sole
14 discretion, decline to entertain any application for an
15 order of exemption under this section.

16 “(C)(i) A broker or dealer that is registered as a fu-
17 tures commission merchant or introducing broker pursu-
18 ant to paragraph (2) or an associated person thereof, or
19 that is a floor broker or floor trader exempt from registra-
20 tion pursuant to paragraph (3), shall not be required to
21 become a member of any futures association registered
22 under section 17.

23 “(ii) No futures association registered under section
24 17 shall limit its members from carrying an account, ac-
25 cepting an order, or transacting business with a broker

1 or dealer that is registered as a futures commission mer-
2 chant or introducing broker pursuant to paragraph (2) or
3 an associated person thereof, or that is a floor broker or
4 floor trader exempt from registration pursuant to para-
5 graph (3).”.

6 (d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SE-
7 CURITIES BROKER-DEALERS.—Section 4k of the Com-
8 modity Exchange Act (7 U.S.C. 6k), is amended by insert-
9 ing after paragraph (4), as added by subsection (c) of this
10 section, the following:

11 “(5) Any associated person of a broker or dealer that
12 is registered with the Securities and Exchange Commis-
13 sion, and who limits its solicitation of orders, acceptance
14 of orders, or execution of orders, or placing of orders on
15 behalf of others involving any contracts of sale of any com-
16 modity for future delivery or any option on such a con-
17 tract, on or subject to the rules of any contract market
18 or registered derivatives transaction execution facility to
19 security futures products, shall be exempt from the fol-
20 lowing provisions of this Act and the rules thereunder:

21 “(A) Subsections (b), (d), (e), and (g) of section
22 4c.

23 “(B) Sections 4d, 4e, and 4h.

24 “(C) Subsections (b) and (c) of section 4f.

25 “(D) Section 4j.

1 “(E) Paragraph (1) of this section.

2 “(F) Section 4p.

3 “(G) Section 6d.

4 “(H) Subsections (d) and (g) of section 8.

5 “(I) Section 16.”.

6 **SEC. 253. NOTIFICATION OF INVESTIGATIONS AND EN-**
7 **FORCEMENT ACTIONS.**

8 (a) Section 8(a) of the Commodity Exchange Act (7
9 U.S.C. 12(a)) is amended by adding at the end the fol-
10 lowing:

11 “(3) The Commission shall provide the Securities and
12 Exchange Commission with notice of the commencement
13 of any proceeding and a copy of any order entered by the
14 Commission against any futures commission merchant or
15 introducing broker registered pursuant to section 4f(a)(2),
16 any floor broker or floor trader exempt from registration
17 pursuant to section 4f(a)(3), any associated person exempt
18 from registration pursuant to section 4k(6), or any board
19 of trade designated as a contract market pursuant to sec-
20 tion 5f.”.

21 (b) Section 6 of the Commodity Exchange Act (7
22 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at
23 the end the following:

24 “(g) The Commission shall provide the Securities and
25 Exchange Commission with notice of the commencement

1 of any proceeding and a copy of any order entered by the
2 Commission pursuant to subsections (c) and (d) of this
3 section against any futures commission merchant or intro-
4 ducing broker registered pursuant to section 4f(a)(2), any
5 floor broker or floor trader exempt from registration pur-
6 suant to section 4f(a)(3), any associated person exempt
7 from registration pursuant to section 4k(6), or any board
8 of trade designated as a contract market pursuant to sec-
9 tion 5f.”.

10 (c) Section 6c of the Commodity Exchange Act (7
11 U.S.C. 13a-1) is amended by adding at the end the fol-
12 lowing:

13 “(h) The Commission shall provide the Securities and
14 Exchange Commission with notice of the commencement
15 of any proceeding and a copy of any order entered by the
16 Commission against any futures commission merchant or
17 introducing broker registered pursuant to section 4f(a)(2),
18 any floor broker or floor trader exempt from registration
19 pursuant to section 4f(a)(3), any associated person exempt
20 from registration pursuant to section 4k(6), or any board
21 of trade designated as a contract market pursuant to sec-
22 tion 5f.”.

1 **TITLE III—LEGAL CERTAINTY**
2 **FOR SWAP AGREEMENTS**

3 **SEC. 301. SWAP AGREEMENT.**

4 (a) AMENDMENT.—Title II of the Gramm-Leach-Bliley Act (Public Law 106–102) is amended by inserting
5 after section 206 the following new sections:
6

7 **“SEC. 206A. SWAP AGREEMENT.**

8 “(a) IN GENERAL.—Except as provided in subsection
9 (b), as used in this section, the term ‘swap agreement’
10 means any agreement, contract, or transaction between el-
11 igible contract participants (as defined in section 1a(12)
12 of the Commodity Exchange Act as in effect on the date
13 of enactment of this section), other than a person that
14 is an eligible contract participant under section 1a(12)(C)
15 of the Commodity Exchange Act, the material terms of
16 which (other than price and quantity) are subject to indi-
17 vidual negotiation, and that—

18 “(1) is a put, call, cap, floor, collar, or similar
19 option of any kind for the purchase or sale of, or
20 based on the value of, one or more interest or other
21 rates, currencies, commodities, indices, quantitative
22 measures, or other financial or economic interests or
23 property of any kind;

24 “(2) provides for any purchase, sale, payment
25 or delivery (other than a dividend on an equity secu-

1 rity) that is dependent on the occurrence, non-occur-
2 rence, or the extent of the occurrence of an event or
3 contingency associated with a potential financial,
4 economic, or commercial consequence;

5 “(3) provides on an executory basis for the ex-
6 change, on a fixed or contingent basis, of one or
7 more payments based on the value or level of one or
8 more interest or other rates, currencies, commod-
9 ities, securities, instruments of indebtedness, indices,
10 quantitative measures, or other financial or eco-
11 nomic interests or property of any kind, or any in-
12 terest therein or based on the value thereof, and
13 that transfers, as between the parties to the trans-
14 action, in whole or in part, the financial risk associ-
15 ated with a future change in any such value or level
16 without also conveying a current or future direct or
17 indirect ownership interest in an asset (including
18 any enterprise or investment pool) or liability that
19 incorporates the financial risk so transferred, includ-
20 ing any such agreement, contract, or transaction
21 commonly known as an interest rate swap, including
22 a rate floor, rate cap, rate collar, cross-currency rate
23 swap, basis swap, currency swap, equity index swap,
24 equity swap, debt index swap, debt swap, credit

1 spread, credit default swap, credit swap, weather
2 swap, or commodity swap;

3 “(4) provides for the purchase or sale, on a
4 fixed or contingent basis, of any commodity, cur-
5 rency, instrument, interest, right, service, good, arti-
6 cle, or property of any kind; or

7 “(5) is any combination or permutation of, or
8 option on, any agreement, contract, or transaction
9 described in any of paragraphs (1) through (4).

10 “(b) EXCLUSIONS.—The term ‘swap agreement’ does
11 not include—

12 “(1) any put, call, straddle, option, or privilege
13 on any security, certificate of deposit, or group or
14 index of securities, including any interest therein or
15 based on the value thereof;

16 “(2) any put, call, straddle, option, or privilege
17 entered into on a national securities exchange reg-
18 istered pursuant to section 6(a) of the Securities Ex-
19 change Act of 1934 relating to foreign currency;

20 “(3) any agreement, contract, or transaction
21 providing for the purchase or sale of one or more se-
22 curities on a fixed basis;

23 “(4) any agreement, contract, or transaction
24 providing for the purchase or sale of one or more se-
25 curities on a contingent basis, unless such agree-

1 ment, contract, or transaction predicates such pur-
2 chase or sale on the occurrence of a bona fide con-
3 tingency that might reasonably be expected to affect
4 or be affected by the creditworthiness of a party
5 other than a party to the agreement, contract, or
6 transaction;

7 “(5) any note, bond, or evidence of indebted-
8 ness that is a security as defined in section 2(a)(1)
9 of the Securities Exchange Act of 1933 or section
10 3(a)(10) of the Securities Exchange Act of 1934; or

11 “(6) any agreement, contract, or transaction
12 that is—

13 “(A) based on a security; and

14 “(B) entered into directly or through an
15 underwriter (as defined in section 2(a) of the
16 Securities Act of 1933) by the issuer of such se-
17 curity for the purposes of raising capital, unless
18 such agreement, contract, or transaction is en-
19 tered into to manage a risk associated with cap-
20 ital raising.

21 “(c) RULE OF CONSTRUCTION REGARDING MASTER
22 AGREEMENTS.—As used in this section, the term ‘swap
23 agreement’ shall be construed to include a master agree-
24 ment that provides for an agreement, contract, or trans-
25 action that is a swap agreement pursuant to subsections

1 (a) and (b), together with all supplements to any such
2 master agreement, without regard to whether the master
3 agreement contains an agreement, contract, or transaction
4 that is not a swap agreement pursuant to subsections (a)
5 and (b), except that the master agreement shall be consid-
6 ered to be a swap agreement only with respect to each
7 agreement, contract, or transaction under the master
8 agreement that is a swap agreement pursuant to sub-
9 sections (a) and (b).

10 **“SEC. 206B. SECURITY-BASED SWAP AGREEMENT.**

11 “As used in this section, the term ‘security-based
12 swap agreement’ means a swap agreement (as defined in
13 section 206A) of which a material term is based on the
14 price, yield, value, or volatility of any security or any
15 group or index of securities, or any interest therein.

16 **“SEC. 206C. NON-SECURITY-BASED SWAP AGREEMENT.**

17 “As used in this section, the term ‘non-security-based
18 swap agreement’ means any swap agreement (as defined
19 in section 206A) that is not a security-based swap agree-
20 ment (as defined in section 206B).”.

21 (b) SECURITY DEFINITION.—As used in the amend-
22 ment made by subsection (a), the term “security” has the
23 same meaning as in section 2(a)(1) of the Securities Act
24 of 1933 or section 3(a)(10) of the Securities Exchange
25 Act of 1934.

1 **SEC. 302. AMENDMENTS TO THE SECURITIES ACT OF 1933.**

2 (a) ENFORCEMENT FOCUS.—The Securities Act of
3 1933 is amended by inserting after section 2 (15
4 U.S.C.77b) the following new section:

5 **“SEC. 2A. SWAP AGREEMENTS.**

6 “(a) NON-SECURITY-BASED SWAP AGREEMENTS.—
7 The definition of ‘security’ in section 2(a)(1) of this title
8 does not include any non-security-based swap agreement
9 (as defined in section 206C of the Gramm-Leach-Bliley
10 Act).

11 “(b) SECURITY-BASED SWAP AGREEMENTS.—

12 “(1) The definition of ‘security’ in section
13 2(a)(1) of this title does not include any security-
14 based swap agreement (as defined in section 206B
15 of the Gramm-Leach-Bliley Act).

16 “(2) The Commission is prohibited from reg-
17 istering, or requiring, recommending, or suggesting,
18 the registration under this title of any security-based
19 swap agreement (as defined in section 206B of the
20 Gramm-Leach-Bliley Act). If the Commission be-
21 comes aware that a registrant has filed a registra-
22 tion statement with respect to such a swap agree-
23 ment, the Commission shall promptly so notify the
24 registrant. Any such registration statement with re-
25 spect to such a swap agreement shall be void and of
26 no force or effect.

1 “(3) The Commission is prohibited from—

2 “(A) promulgating, interpreting, or enforcing
3 rules; or

4 “(B) issuing orders of general applicability;
5 under this title in a manner that imposes or speci-
6 fies reporting or recordkeeping requirements, proce-
7 dures, or standards as prophylactic measures against
8 fraud, manipulation, or insider trading with respect
9 to any security-based swap agreement (as defined in
10 section 206B of the Gramm-Leach-Bliley Act).

11 “(4) References in this title to the ‘purchase’ or
12 ‘sale’ of a security-based swap agreement shall be
13 deemed to mean the execution, termination (prior to
14 its scheduled maturity date), assignment, exchange,
15 or similar transfer or conveyance of, or extinguishing
16 of rights or obligations under, a security-based swap
17 agreement (as defined in section 206B of the
18 Gramm-Leach-Bliley Act), as the context may re-
19 quire.”.

20 (b) ANTI-FRAUD AND ANTI-MANIPULATION EN-
21 FORCEMENT AUTHORITY.—Section 17(a) of the Securities
22 Act of 1933 (15 U.S.C. 77q(a)) is amended to read as
23 follows:

24 “(a) It shall be unlawful for any person in the offer
25 or sale of any securities or any security-based swap agree-

1 ment (as defined in section 206B of the Gramm-Leach-
2 Bliley Act) by the use of any means or instruments of
3 transportation or communication in interstate commerce
4 or by use of the mails, directly or indirectly—

5 “(1) to employ any device, scheme, or artifice to
6 defraud, or

7 “(2) to obtain money or property by means of
8 any untrue statement of a material fact or any omis-
9 sion to state a material fact necessary in order to
10 make the statements made, in light of the cir-
11 cumstances under which they were made, not mis-
12 leading; or

13 “(3) to engage in any transaction, practice, or
14 course of business which operates or would operate
15 as a fraud or deceit upon the purchaser.”.

16 (c) LIMITATION.—Section 17 of the Securities Act of
17 1933 is amended by adding at the end the following new
18 subsection:

19 “(d) The authority of the Commission under this sec-
20 tion with respect to security-based swap agreements (as
21 defined in section 206B of the Gramm-Leach-Bliley Act)
22 shall be subject to the restrictions and limitations of sec-
23 tion 2A(b) of this title.”.

1 **SEC. 303. AMENDMENTS TO THE SECURITIES EXCHANGE**
2 **ACT OF 1934.**

3 (a) ENFORCEMENT FOCUS.—The Securities Ex-
4 change Act of 1934 is amended by inserting after section
5 3 (15 U.S.C. 78c) the following new section:

6 **“SEC. 3A. SWAP AGREEMENTS.**

7 “(a) NON-SECURITY-BASED SWAP AGREEMENTS.—
8 The definition of ‘security’ in section 3(a)(10) of this title
9 does not include any non-security-based swap agreement
10 (as defined in section 206C of the Gramm-Leach-Bliley
11 Act).

12 “(b) SECURITY-BASED SWAP AGREEMENTS.—

13 “(1) The definition of ‘security’ in section
14 3(a)(10) of this title does not include any security-
15 based swap agreement (as defined in section 206B
16 of the Gramm-Leach-Bliley Act).

17 “(2) The Commission is prohibited from reg-
18 istering, or requiring, recommending, or suggesting,
19 the registration under this title of any security-based
20 swap agreement (as defined in section 206B of the
21 Gramm-Leach-Bliley Act). If the Commission be-
22 comes aware that a registrant has filed a registra-
23 tion application with respect to such a swap agree-
24 ment, the Commission shall promptly so notify the
25 registrant. Any such registration with respect to

1 such a swap agreement shall be void and of no force
2 or effect.

3 “(3) Except as provided in section 16(a) with
4 respect to reporting requirements, the Commission is
5 prohibited from—

6 “(A) promulgating, interpreting, or enforce-
7 ing rules; or

8 “(B) issuing orders of general applicability;
9 under this title in a manner that imposes or speci-
10 fies reporting or recordkeeping requirements, proce-
11 dures, or standards as prophylactic measures against
12 fraud, manipulation, or insider trading with respect
13 to any security-based swap agreement (as defined in
14 section 206B of the Gramm-Leach-Bliley Act).

15 “(4) References in this title to the ‘purchase’ or
16 ‘sale’ of a security-based swap agreement (as defined
17 in section 206B of the Gramm-Leach-Bliley Act)
18 shall be deemed to mean the execution, termination
19 (prior to its scheduled maturity date), assignment,
20 exchange, or similar transfer or conveyance of, or
21 extinguishing of rights or obligations under, a secu-
22 rity-based swap agreement, as the context may re-
23 quire.”.

24 (b) ANTI-FRAUD, ANTI-MANIPULATION ENFORCE-
25 MENT AUTHORITY.—Paragraphs (2) through (5) of sec-

1 tion 9(a) of the Securities Exchange Act of 1934 (15
2 U.S.C. 78i(a)(2)–(5)) are amended to read as follows:

3 “(2) To effect, alone or with one or more other per-
4 sons, a series of transactions in any security registered
5 on a national securities exchange or in connection with
6 any security-based swap agreement (as defined in section
7 206B of the Gramm-Leach-Bliley Act) with respect to
8 such security creating actual or apparent active trading
9 in such security, or raising or depressing the price of such
10 security, for the purpose of inducing the purchase or sale
11 of such security by others.

12 “(3) If a dealer or broker, or other person selling or
13 offering for sale or purchasing or offering to purchase the
14 security or a security-based swap agreement (as defined
15 in section 206B of the Gramm-Leach-Bliley Act) with re-
16 spect to such security, to induce the purchase or sale of
17 any security registered on a national securities exchange
18 or any security-based swap agreement (as defined in sec-
19 tion 206B of the Gramm-Leach-Bliley Act) with respect
20 to such security by the circulation or dissemination in the
21 ordinary course of business of information to the effect
22 that the price of any such security will or is likely to rise
23 or fall because of market operations of any one or more
24 persons conducted for the purpose of raising or depressing
25 the price of such security.

1 “(4) If a dealer or broker, or the person selling or
2 offering for sale or purchasing or offering to purchase the
3 security or a security-based swap agreement (as defined
4 in section 206B of the Gramm-Leach-Bliley Act) with re-
5 spect to such security, to make, regarding any security
6 registered on a national securities exchange or any secu-
7 rity-based swap agreement (as defined in section 206B of
8 the Gramm-Leach-Bliley Act) with respect to such secu-
9 rity, for the purpose of inducing the purchase or sale of
10 such security or such security-based swap agreement, any
11 statement which was at the time and in the light of the
12 circumstances under which it was made, false or mis-
13 leading with respect to any material fact, and which he
14 knew or had reasonable ground to believe was so false or
15 misleading.

16 “(5) For a consideration, received directly or indi-
17 rectly from a dealer or broker, or other person selling or
18 offering for sale or purchasing or offering to purchase the
19 security or a security-based swap agreement (as defined
20 in section 206B of the Gramm-Leach-Bliley Act) with re-
21 spect to such security, to induce the purchase of any secu-
22 rity registered on a national securities exchange or any
23 security-based swap agreement (as defined in section
24 206B of the Gramm-Leach-Bliley Act) with respect to
25 such security by the circulation or dissemination of infor-

1 mation to the effect that the price of any such security
2 will or is likely to rise or fall because of the market oper-
3 ations of any one or more persons conducted for the pur-
4 pose of raising or depressing the price of such security.”.

5 (c) LIMITATION.—Section 9 of the Securities Ex-
6 change Act of 1934 is amended by adding at the end the
7 following new subsection:

8 “(i) The authority of the Commission under this sec-
9 tion with respect to security-based swap agreements (as
10 defined in section 206B of the Gramm-Leach-Bliley Act)
11 shall be subject to the restrictions and limitations of sec-
12 tion 3A(b) of this title.”.

13 (d) REGULATIONS ON THE USE OF MANIPULATIVE
14 AND DECEPTIVE DEVICES.—Section 10 of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78j) is amended—

16 (1) in subsection (b), by inserting “or any secu-
17 rities-based swap agreement (as defined in section
18 206B of the Gramm-Leach-Bliley Act),” before “any
19 manipulative or deceptive device”; and

20 (2) by adding at the end the following:
21 “Rules promulgated under subsection (b) that prohibit
22 fraud, manipulation, or insider trading (but not rules im-
23 posing or specifying reporting or recordkeeping require-
24 ments, procedures, or standards as prophylactic measures
25 against fraud, manipulation, or insider trading), and judi-

1 cial precedents decided under subsection (b) and rules pro-
2 mulgated thereunder that prohibit fraud, manipulation, or
3 insider trading, shall apply to security-based swap agree-
4 ments (as defined in section 206B of the Gramm-Leach-
5 Bliley Act) to the same extent as they apply to securities.
6 Judicial precedents decided under section 17(a) of the Se-
7 curities Act of 1933 and sections 9, 15, 16, 20, and 21A
8 of this title, and judicial precedents decided under applica-
9 ble rules promulgated under such sections, shall apply to
10 security-based swap agreements (as defined in section
11 206B of the Gramm-Leach-Bliley Act) to the same extent
12 as they apply to securities.”.

13 (e) BROKER, DEALER ANTI-FRAUD, ANTI-MANIPU-
14 LATION ENFORCEMENT AUTHORITY.—Section 15(c)(1) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78o(c)(1)) is amended to read as follows:

17 “(c)(1)(A) No broker or dealer shall make use of the
18 mails or any means or instrumentality of interstate com-
19 merce to effect any transaction in, or to induce or attempt
20 to induce the purchase or sale of, any security (other than
21 commercial paper, bankers’ acceptances, or commercial
22 bills) otherwise than on a national securities exchange of
23 which it is a member, or any security-based swap agree-
24 ment (as defined in section 206B of the Gramm-Leach-

1 Bliley Act), by means of any manipulative, deceptive, or
2 other fraudulent device or contrivance.

3 “(B) No municipal securities dealer shall make use
4 of the mails or any means or instrumentality of interstate
5 commerce to effect any transaction in, or to induce or at-
6 tempt to induce the purchase or sale of, any municipal
7 security or any security-based swap agreement (as defined
8 in section 206B of the Gramm-Leach-Bliley Act) involving
9 a municipal security by means of any manipulative, decep-
10 tive, or other fraudulent device or contrivance.

11 “(C) No government securities broker or government
12 securities dealer shall make use of the mails or any means
13 or instrumentality of interstate commerce to effect any
14 transaction in, or to induce or to attempt to induce the
15 purchase or sale of, any government security or any secu-
16 rity-based swap agreement (as defined in section 206B of
17 the Gramm-Leach-Bliley Act) involving a government se-
18 curity by means of any manipulative, deceptive, or other
19 fraudulent device or contrivance.”.

20 (f) LIMITATION.—Section 15 of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78o) is amended by adding
22 at the end the following new subsection:

23 “(i) The authority of the Commission under this sec-
24 tion with respect to security-based swap agreements (as
25 defined in section 206B of the Gramm-Leach-Bliley Act)

1 shall be subject to the restrictions and limitations of sec-
2 tion 3A(b) of this title.”.

3 (g) ANTI-INSIDER TRADING ENFORCEMENT AU-
4 THORITY.—Subsections (a) and (b) of section 16 (15
5 U.S.C. 78p(a), (b)) of the Securities Exchange of 1934
6 are amended to read as follows:

7 “(a) Every person who is directly or indirectly the
8 beneficial owner of more than 10 per centum of any class
9 of any equity security (other than an exempted security)
10 which is registered pursuant to section 12 of this title,
11 or who is a director or an officer of the issuer of such
12 security, shall file, at the time of the registration of such
13 security on a national securities exchange or by the effec-
14 tive date of a registration statement filed pursuant to sec-
15 tion 12(g) of this title, or within ten days after he becomes
16 such beneficial owner, director, or officer, a statement
17 with the Commission (and, if such security is registered
18 on a national securities exchange, also with the exchange)
19 of the amount of all equity securities of such issuer of
20 which he is the beneficial owner, and within ten days after
21 the close of each calendar month thereafter, if there has
22 been a change in such ownership or if such person shall
23 have purchased or sold a security-based swap agreement
24 (as defined in section 206B of the Gramm-Leach-Bliley
25 Act) involving such equity security during such month,

1 shall file with the Commission (and if such security is reg-
2 istered on a national securities exchange, shall also file
3 with the exchange), a statement indicating his ownership
4 at the close of the calendar month and such changes in
5 his ownership and such purchases and sales of such secu-
6 rity-based swap agreements as have occurred during such
7 calendar month.

8 “(b) For the purpose of preventing the unfair use of
9 information which may have been obtained by such bene-
10 ficial owner, director, or officer by reason of his relation-
11 ship to the issuer, any profit realized by him from any
12 purchase and sale, or any sale and purchase, of any equity
13 security of such issuer (other than an exempted security)
14 or a security-based swap agreement (as defined in section
15 206B of the Gramm-Leach-Bliley Act) involving any such
16 equity security within any period of less than six months,
17 unless such security or security-based swap agreement was
18 acquired in good faith in connection with a debt previously
19 contracted, shall inure to and be recoverable by the issuer,
20 irrespective of any intention on the part of such beneficial
21 owner, director, or officer in entering into such transaction
22 of holding the security or security-based swap agreement
23 purchased or of not repurchasing the security or security-
24 based swap agreement sold for a period exceeding six
25 months. Suit to recover such profit may be instituted at

1 law or in equity in any court of competent jurisdiction by
2 the issuer, or by the owner of any security of the issuer
3 in the name and in behalf of the issuer if the issuer shall
4 fail or refuse to bring such suit within sixty days after
5 request or shall fail diligently to prosecute the same there-
6 after; but no such suit shall be brought more than two
7 years after the date such profit was realized. This sub-
8 section shall not be construed to cover any transaction
9 where such beneficial owner was not such both at the time
10 of the purchase and sale, or the sale and purchase, of the
11 security or security-based swap agreement (as defined in
12 section 206B of the Gramm-Leach-Bliley Act) involved, or
13 any transaction or transactions which the Commission by
14 rules and regulations may exempt as not comprehended
15 within the purpose of this subsection.”.

16 (h) LIMITATION.—Section 16 of the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78p) is amended by adding
18 at the end the following new subsection:

19 “(g) The authority of the Commission under this sec-
20 tion with respect to security-based swap agreements (as
21 defined in section 206B of the Gramm-Leach-Bliley Act)
22 shall be subject to the restrictions and limitations of sec-
23 tion 3A(b) of this title.”.

1 (i) MATERIAL NONPUBLIC INFORMATION.—Section
2 20(d) of the Securities Exchange Act of 1934 (15 U.S.C.
3 78t(d)) is amended to read as follows:

4 “(d) Wherever communicating, or purchasing or sell-
5 ing a security while in possession of, material nonpublic
6 information would violate, or result in liability to any pur-
7 chaser or seller of the security under any provisions of
8 this title, or any rule or regulation thereunder, such con-
9 duct in connection with a purchase or sale of a put, call,
10 straddle, option, privilege or security-based swap agree-
11 ment (as defined in section 206B of the Gramm-Leach-
12 Bliley Act) with respect to such security or with respect
13 to a group or index of securities including such security,
14 shall also violate and result in comparable liability to any
15 purchaser or seller of that security under such provision,
16 rule, or regulation.”.

17 (j) LIMITATION.—Section 20 of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78t) is amended by adding
19 at the end the following new subsection:

20 “(f) The authority of the Commission under this sec-
21 tion with respect to security-based swap agreements (as
22 defined in section 206B of the Gramm-Leach-Bliley Act)
23 shall be subject to the restrictions and limitations of sec-
24 tion 3A(b) of this title.”.

1 (k) CIVIL PENALTIES.—Section 21A(a)(1) of the Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(1))
3 is amended by inserting after “purchasing or selling a se-
4 curity” the following: “or security-based swap agreement
5 (as defined in section 206B of the Gramm-Leach-Bliley
6 Act)”.

7 (l) LIMITATION.—Section 21A of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78u–1) is amended by add-
9 ing at the end the following new subsection:

10 “(g) The authority of the Commission under this sec-
11 tion with respect to security-based swap agreements (as
12 defined in section 206B of the Gramm-Leach-Bliley Act)
13 shall be subject to the restrictions and limitations of sec-
14 tion 3A(b) of this title.”.

15 **SEC. 304. SAVINGS PROVISIONS.**

16 Nothing in this Act or the amendments made by this
17 Act shall be construed as finding or implying that any
18 swap agreement is or is not a security for any purpose
19 under the securities laws. Nothing in this Act or the
20 amendments made by this Act shall be construed as find-
21 ing or implying that any swap agreement is or is not a
22 futures contract or commodity option for any purpose
23 under the Commodity Exchange Act.

1 **TITLE IV—REGULATORY RE-**
2 **SPONSIBILITY FOR BANK**
3 **PRODUCTS**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the “Legal Certainty for
6 Bank Products Act of 2000”.

7 **SEC. 402. DEFINITIONS.**

8 (a) BANK.—In this title, the term “bank” means—

9 (1) any depository institution (as defined in sec-
10 tion 3(c) of the Federal Deposit Insurance Act);

11 (2) any foreign bank or branch or agency of a
12 foreign bank (each as defined in section 1(b) of the
13 International Banking Act of 1978);

14 (3) any Federal or State credit union (as de-
15 fined in section 101 of the Federal Credit Union
16 Act);

17 (4) any corporation organized under section
18 25A of the Federal Reserve Act;

19 (5) any corporation operating under section 25
20 of the Federal Reserve Act;

21 (6) any trust company; or

22 (7) any subsidiary of any entity described in
23 paragraph (1) through (6) of this subsection, if the
24 subsidiary is regulated as if the subsidiary were part
25 of the entity and is not a broker or dealer (as such

1 terms are defined in section 3 of the Securities Ex-
2 change Act of 1934) or a futures commission mer-
3 chant (as defined in section 1a(20) of the Com-
4modity Exchange Act).

5 (b) IDENTIFIED BANKING PRODUCT.—In this title,
6 the term “identified banking product” shall have the same
7 meaning as in paragraphs (1) through (5) of section
8 206(a) of the Gramm-Leach-Bliley Act, except that in ap-
9 plying such section for purposes of this title—

10 (1) the term “bank” shall have the meaning
11 given in subsection (a) of this section; and

12 (2) the term “qualified investor” means eligible
13 contract participant (as defined in section 1a(12) of
14 the Commodity Exchange Act, as in effect on the
15 date of enactment of the Commodity Futures Mod-
16ernization Act of 2000).

17 (c) HYBRID INSTRUMENT.—In this title, the term
18 “hybrid instrument” means an identified banking product
19 not excluded by section 403 of this Act, offered by a bank,
20 having 1 or more payments indexed to the value, level,
21 or rate of, or providing for the delivery of, 1 or more com-
22modities (as defined in section 1a(4) of the Commodity
23 Exchange Act).

24 (d) COVERED SWAP AGREEMENT.—In this title, the
25 term “covered swap agreement” means a swap agreement

1 (as defined in section 206(b) of the Gramm-Leach-Bliley
2 Act), including a credit or equity swap, based on a com-
3 modity other than an agricultural commodity enumerated
4 in section 1a(4) of the Commodity Exchange Act if—

5 (1) the swap agreement—

6 (A) is entered into only between persons
7 that are eligible contract participants (as de-
8 fined in section 1a(12) of the Commodity Ex-
9 change Act, as in effect on the date of enact-
10 ment of the Commodity Futures Modernization
11 Act of 2000) at the time the persons enter into
12 the swap agreement; and

13 (B) is not entered into or executed on a
14 trading facility (as defined in section 1a(33) of
15 the Commodity Exchange Act); or

16 (2) the swap agreement—

17 (A) is entered into or executed on an elec-
18 tronic trading facility (as defined in section
19 1a(10) of the Commodity Exchange Act);

20 (B) is entered into on a principal-to-prin-
21 cipal basis between parties trading for their
22 own accounts or as described in section
23 1a(12)(B)(ii) of the Commodity Exchange Act;

24 (C) is entered into only between persons
25 that are eligible contract participants as de-

1 scribed in subparagraphs (A), (B)(ii), or (C) of
2 section 1a(12) of the Commodity Exchange Act,
3 as in effect on the date of enactment of the
4 Commodity Futures Modernization Act of 2000,
5 at the time the persons enter into the swap
6 agreement; and

7 (D) is an agreement, contract or trans-
8 action in an excluded commodity (as defined in
9 section 1a(13) of the Commodity Exchange
10 Act).

11 **SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCTS**

12 **COMMONLY OFFERED ON OR BEFORE DE-**
13 **CEMBER 5, 2000.**

14 No provision of the Commodity Exchange Act shall
15 apply to, and the Commodity Futures Trading Commis-
16 sion shall not exercise regulatory authority with respect
17 to, an identified banking product if—

18 (1) an appropriate banking agency certifies that
19 the product has been commonly offered, entered
20 into, or provided in the United States by any bank
21 on or before December 5, 2000, under applicable
22 banking law; and

23 (2) the product was not prohibited by the Com-
24modity Exchange Act and not regulated by the Com-
25modity Futures Trading Commission as a contract

1 of sale of a commodity for future delivery (or an op-
2 tion on such a contract) or an option on a com-
3 modity, on or before December 5, 2000.

4 **SEC. 404. EXCLUSION OF CERTAIN IDENTIFIED BANKING**
5 **PRODUCTS OFFERED BY BANKS AFTER DE-**
6 **CEMBER 5, 2000.**

7 No provision of the Commodity Exchange Act shall
8 apply to, and the Commodity Futures Trading Commis-
9 sion shall not exercise regulatory authority with respect
10 to, an identified banking product which had not been com-
11 monly offered, entered into, or provided in the United
12 States by any bank on or before December 5, 2000, under
13 applicable banking law if—

14 (1) the product has no payment indexed to the
15 value, level, or rate of, and does not provide for the
16 delivery of, any commodity (as defined in section
17 1a(4) of the Commodity Exchange Act); or

18 (2) the product or commodity is otherwise ex-
19 cluded from the Commodity Exchange Act.

20 **SEC. 405. EXCLUSION OF CERTAIN OTHER IDENTIFIED**
21 **BANKING PRODUCTS.**

22 (a) IN GENERAL.—No provision of the Commodity
23 Exchange Act shall apply to, and the Commodity Futures
24 Trading Commission shall not exercise regulatory author-
25 ity with respect to, a banking product if the product is

1 a hybrid instrument that is predominantly a banking prod-
2 uct under the predominance test set forth in subsection
3 (b).

4 (b) PREDOMINANCE TEST.—A hybrid instrument
5 shall be considered to be predominantly a banking product
6 for purposes of this section if—

7 (1) the issuer of the hybrid instrument receives
8 payment in full of the purchase price of the hybrid
9 instrument substantially contemporaneously with de-
10 livery of the hybrid instrument;

11 (2) the purchaser or holder of the hybrid in-
12 strument is not required to make under the terms
13 of the instrument, or any arrangement referred to in
14 the instrument, any payment to the issuer in addi-
15 tion to the purchase price referred to in paragraph
16 (1), whether as margin, settlement payment, or oth-
17 erwise during the life of the hybrid instrument or at
18 maturity;

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

22 (4) the hybrid instrument is not marketed as a
23 contract of sale of a commodity for future delivery
24 (or option on such a contract) subject to the Com-
25modity Exchange Act.

1 (c) MARK-TO-MARKET MARGINING REQUIREMENT.—

2 For purposes of subsection (b)(3), mark-to-market mar-
3 gining requirements shall not include the obligation of an
4 issuer of a secured debt instrument to increase the amount
5 of collateral held in pledge for the benefit of the purchaser
6 of the secured debt instrument to secure the repayment
7 obligations of the issuer under the secured debt instru-
8 ment.

9 **SEC. 406. ADMINISTRATION OF THE PREDOMINANCE TEST.**

10 (a) IN GENERAL.—No provision of the Commodity
11 Exchange Act shall apply to, and the Commodity Futures
12 Trading Commission shall not regulate, a hybrid instru-
13 ment, unless the Commission determines, by or under a
14 rule issued in accordance with this section, that—

15 (1) the action is necessary and appropriate in
16 the public interest;

17 (2) the action is consistent with the Commodity
18 Exchange Act and the purposes of the Commodity
19 Exchange Act; and

20 (3) the hybrid instrument is not predominantly
21 a banking product under the predominance test set
22 forth in section 405(b) of this Act.

23 (b) CONSULTATION.—Before commencing a rule-
24 making or making a determination pursuant to a rule
25 issued under this title, the Commodity Futures Trading

1 Commission shall consult with and seek the concurrence
2 of the Board of Governors of the Federal Reserve System
3 concerning—

4 (1) the nature of the hybrid instrument; and

5 (2) the history, purpose, extent, and appro-
6 priateness of the regulation of the hybrid instrument
7 under the Commodity Exchange Act and under ap-
8 propriate banking laws.

9 (c) OBJECTION TO COMMISSION REGULATION.—

10 (1) FILING OF PETITION FOR REVIEW.—The
11 Board of Governors of the Federal Reserve System
12 may obtain review of any rule or determination re-
13 ferred to in subsection (a) in the United States
14 Court of Appeals for the District of Columbia Cir-
15 cuit by filing in the court, not later than 60 days
16 after the date of publication of the rule or deter-
17 mination, a written petition requesting that the rule
18 or determination be set aside. Any proceeding to
19 challenge any such rule or determination shall be ex-
20 pedited by the court.

21 (2) TRANSMITTAL OF PETITION AND
22 RECORD.—A copy of a petition described in para-
23 graph (1) shall be transmitted as soon as possible by
24 the Clerk of the court to an officer or employee of
25 the Commodity Futures Trading Commission des-

1 ignated for that purpose. Upon receipt of the peti-
2 tion, the Commission shall file with the court the
3 rule or determination under review and any docu-
4 ments referred to therein, and any other relevant
5 materials prescribed by the court.

6 (3) EXCLUSIVE JURISDICTION.—On the date of
7 the filing of a petition under paragraph (1), the
8 court shall have jurisdiction, which shall become ex-
9 clusive on the filing of the materials set forth in
10 paragraph (2), to affirm and enforce or to set aside
11 the rule or determination at issue.

12 (4) STANDARD OF REVIEW.—The court shall
13 determine to affirm and enforce or set aside a rule
14 or determination of the Commodity Futures Trading
15 Commission under this section, based on the deter-
16 mination of the court as to whether—

17 (A) the subject product is predominantly a
18 banking product; and

19 (B) making the provision or provisions of
20 the Commodity Exchange Act at issue applica-
21 ble to the subject instrument is appropriate in
22 light of the history, purpose, and extent of reg-
23 ulation under such Act, this title, and under the
24 appropriate banking laws, giving deference nei-
25 ther to the views of the Commodity Futures

1 Trading Commission nor the Board of Gov-
2 ernors of the Federal Reserve System.

3 (5) JUDICIAL STAY.—The filing of a petition by
4 the Board pursuant to paragraph (1) shall operate
5 as a judicial stay, until the date on which the deter-
6 mination of the court is final (including any appeal
7 of the determination).

8 (6) OTHER AUTHORITY TO CHALLENGE.—Any
9 aggrieved party may seek judicial review pursuant to
10 section 6(c) of the Commodity Exchange Act of a
11 determination or rulemaking by the Commodity Fu-
12 tures Trading Commission under this section.

13 **SEC. 407. EXCLUSION OF COVERED SWAP AGREEMENTS.**

14 No provision of the Commodity Exchange Act (other
15 than section 5b of such Act with respect to the clearing
16 of covered swap agreements) shall apply to, and the Com-
17 modity Futures Trading Commission shall not exercise
18 regulatory authority with respect to, a covered swap agree-
19 ment offered, entered into, or provided by a bank.

20 **SEC. 408. CONTRACT ENFORCEMENT.**

21 (a) HYBRID INSTRUMENTS.—No hybrid instrument
22 shall be void, voidable, or unenforceable, and no party to
23 a hybrid instrument shall be entitled to rescind, or recover
24 any payment made with respect to, a hybrid instrument
25 under any provision of Federal or State law, based solely

1 on the failure of the hybrid instrument to satisfy the pre-
2 dominance test set forth in section 405(b) of this Act or
3 to comply with the terms or conditions of an exemption
4 or exclusion from any provision of the Commodity Ex-
5 change Act or any regulation of the Commodity Futures
6 Trading Commission.

7 (b) COVERED SWAP AGREEMENTS.—No covered
8 swap agreement shall be void, voidable, or unenforceable,
9 and no party to a covered swap agreement shall be entitled
10 to rescind, or recover any payment made with respect to,
11 a covered swap agreement under any provision of Federal
12 or State law, based solely on the failure of the covered
13 swap agreement to comply with the terms or conditions
14 of an exemption or exclusion from any provision of the
15 Commodity Exchange Act or any regulation of the Com-
16 modity Futures Trading Commission.

17 (c) PREEMPTION.—This title shall supersede and pre-
18 empt the application of any State or local law that pro-
19 hibits or regulates gaming or the operation of bucket
20 shops (other than antifraud provisions of general applica-
21 bility) in the case of—

- 22 (1) a hybrid instrument that is predominantly
23 a banking product; or
- 24 (2) a covered swap agreement.

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