

106TH CONGRESS
2D SESSION

H. R. 4541

AN ACT

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

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

TITLE I—COMMODITY FUTURES MODERNIZATION

Sec. 101. Definitions.

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

Sec. 103. Legal certainty for excluded derivative transactions.

Sec. 104. Excluded electronic trading facilities.

Sec. 105. Hybrid instruments.

Sec. 106. Transactions in exempt commodities.

Sec. 107. Swap transactions.

Sec. 108. Application of commodity futures laws.

Sec. 109. Protection of the public interest.

Sec. 110. Prohibited transactions.

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

Sec. 112. Derivatives transaction execution facilities.

Sec. 113. Derivatives clearing.

Sec. 114. Common provisions applicable to registered entities.

Sec. 115. Exempt boards of trade.

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

Sec. 117. Authorization of appropriations.

Sec. 118. Preemption.

Sec. 119. Predispute resolution agreements for institutional customers.

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

Sec. 121. Contract enforcement between eligible counterparties.

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

Sec. 123. Rule of construction.

Sec. 124. Technical and conforming amendments.

Sec. 125. Privacy.

Sec. 126. Report to Congress.

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

Sec. 128. Rules of construction.

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

Subtitle A—Securities Law Amendments

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

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

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

Sec. 204. Special provisions for interagency cooperation.

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

Subtitle B—Amendments to the Commodity Exchange Act

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

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

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

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

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

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

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

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

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

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

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

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

17 **SEC. 101. DEFINITIONS.**

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

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

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

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

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

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

12 “(C) does not—

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

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

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

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

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

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

8 “(9) DERIVATIVES CLEARING ORGANIZATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(ii) either—

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

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

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

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

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

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

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

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

22 “(A) acting for its own account—

23 “(i) a financial institution;

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

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

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

15 “(iv) a commodity pool that—

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

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

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

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

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

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

16 “(III) that—

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

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

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

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

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

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

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

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

1 “(cc) a financial institution;

2 or

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

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

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

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

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

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

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

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

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

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

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

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

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

“(I) \$10,000,000; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(H) a trust company; or

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

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

22 “(21) HYBRID INSTRUMENT.—

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

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

3 “(B) DEPOSIT INSTRUMENT DEFINED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(III) each component security is—

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

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

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

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

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

“(iii)(I) it traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery that was not a narrow-based security index; and

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

“(iv) it is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(A) permits trading—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(33) TRADING FACILITY.—

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

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

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

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

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

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

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

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

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

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

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

15 “(A) foreign currency;

16 “(B) government securities;

17 “(C) security warrants;

18 “(D) security rights;

19 “(E) resales of installment loan contracts;

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

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

24 “(2) COMMISSION JURISDICTION.—

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

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

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

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

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

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

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

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

8 “(I) a financial institution;

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

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

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

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

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

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

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

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

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

6 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 “(A) sections 5b and 12(e)(2)(B);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(iii) certifications that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **SEC. 107. SWAP TRANSACTIONS.**

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

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

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

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

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

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

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

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

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

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

16 is or would otherwise be subject to this Act.

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

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

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

4 **“SEC. 3. FINDINGS AND PURPOSE.**

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

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

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

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

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

6 **“(a) IN GENERAL.—**

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

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

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

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

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

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

4 “(ii) is a fictitious sale; or

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

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

10 The Commodity Exchange Act is amended—

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

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

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

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

22 “(b) CRITERIA FOR DESIGNATION.—

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

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

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

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

16 “(A) transfer trades or office trades;

17 “(B) an exchange of—

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

20 “(ii) futures for cash commodities; or

21 “(iii) futures for swaps; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(e) CURRENT AGRICULTURAL COMMODITIES.—

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

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

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

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

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

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

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

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

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

19 “(b) REQUIREMENTS FOR TRADING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(c) CRITERIA FOR REGISTRATION.—

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

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

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

9 “(B) use technological means to—

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

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

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

21 “(A) transfer trades or office trades;

22 “(B) an exchange of—

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

25 “(ii) futures for cash commodities;

1 “(iii) futures for swaps; or

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

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

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

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

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

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

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

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

20 “(A) contract terms and conditions;

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

23 “(C) financial integrity protections; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **“SEC. 408. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(a) CONSERVATORSHIP OR RECEIVERSHIP.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (5) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

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

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

13 “SUBCHAPTER V—CLEARING BANK
 14 LIQUIDATION

15 **“§ 781. Definitions**

16 “For purposes of this subchapter, the following defi-
 17 nitions shall apply:

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

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

23 “(3) CLEARING BANK.—The term ‘clearing
 24 bank’ means an uninsured State member bank, or a
 25 corporation organized under section 25A of the Fed-

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

5 **“§ 782. Selection of trustee**

6 “(a) IN GENERAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **“§ 784. Right to be heard**

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

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

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

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

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

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

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

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

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

9 “SUBCHAPTER V—CLEARING BANK
10 LIQUIDATION

“Sec.

“781. Definitions.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.”.

11 (g) RESOLUTION OF EDGE ACT CORPORATIONS.—
12 The 16th undesignated paragraph of section 25A of the
13 Federal Reserve Act (12 U.S.C. 624) is amended to read
14 as follows:

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

17 “(A) IN GENERAL.—The Board may ap-
18 point a conservator or receiver for a corporation
19 organized under the provisions of this section to
20 the same extent and in the same manner as the
21 Comptroller of the Currency may appoint a con-
22 servator or receiver for a national bank, and the
23 conservator or receiver for such corporation

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

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

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

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

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

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

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

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

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

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

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

8 “(2) CORE PRINCIPLES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(e) APPOINTMENT OF TRUSTEE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(2) PRIOR APPROVAL.—

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

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

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

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

1 “(d) VIOLATION OF CORE PRINCIPLES.—

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

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

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

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

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

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

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

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

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

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

24 “(1) for which the underlying commodity has—
 25 “(A) a nearly inexhaustible deliverable sup-
 26 ply;

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

6 “(C) no cash market;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **SEC. 118. PREEMPTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(a) COSTS AND BENEFITS.—

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

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

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

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

24 “(C) considerations of price discovery;

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

3 “(E) other public interest considerations.

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

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

9 “(B) An emergency action.

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

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

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

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

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

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

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

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

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

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

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

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

1 quirements, 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 formation and otherwise facilitate the participation
11 of domestic agricultural producers in contract mar-
12 kets.

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

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

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

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

2 (a) COMMODITY EXCHANGE ACT.—

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

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

10 (B) in paragraph (24)—

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

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

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

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

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

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

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

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

9 “(1) JURISDICTION OF COMMISSION.—

10 “(A) IN GENERAL.—The”; and

11 (B) in subsection (a)(1)—

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

14 (II) by striking “subparagraph
 15 (B) of this subparagraph” and insert-
 16 ing “subparagraphs (C) and (D) of
 17 this paragraph and subsections (c)
 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-

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

(E) in subsection (a), by moving paragraphs (2) through (9) 2 ems to the right.

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

(A) in subsection (a)—

(i) in paragraph (1), by striking “designated by the Commission as a ‘contract market’ for” and inserting “designated or registered by the Commission as a contract market or derivatives transaction execution facility for”;

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

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

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by striking “designated as a contract market” and inserting “designated or registered as a contract market or derivatives transaction execution facility”; and

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

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

15 (A) in subsection (a)—

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

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

22 (B) in subsection (b)—

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

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

4 (C) in subsection (e)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) in subsection (b), by inserting “derivatives transaction execution facility,” after “contract market,”.

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

(A) in subsection (a)—

(i) in the first sentence—

(I) by striking “board of trade desiring to be designated a ‘contract market’ shall make application to the Commission for such designation” and inserting “person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration”;

(II) by striking “above conditions” and inserting “conditions set forth in this Act”; and

(III) by striking “above requirements” and inserting “the requirements 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 ignated or registered again a registered en-
24 tity”.

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

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

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

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

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

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

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

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

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

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

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

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

12 (A) in subsection (a)—

13 (i) in paragraph (1)—

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

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

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

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

4 (B) in subsection (b)—

5 (i) in paragraph (1)—

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

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

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

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

21 (ii) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

5 “(a) TREATMENT OF GAIN OR LOSS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) NONRECOGNITION UNDER SECTION 1032.—

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

11 (4) TREATMENT UNDER WASH SALES RULES.—

12 Section 1091 of such Code is amended by adding at
13 the end the following new subsection:

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

19 (5) TREATMENT UNDER STRADDLE RULES.—

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

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

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

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

15 (7) TREATMENT UNDER SECTION 1256.—

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

21 “(5) any dealer securities futures contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(A) to buy or sell stock, or

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

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

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

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

12 (8) CONFORMING AMENDMENTS.—

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

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

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

 “Sec. 1234B. Securities futures contracts.”

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

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

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

20 **SEC. 125. PRIVACY.**

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

1 **“SEC. 5g. PRIVACY.**

2 “(a) TREATMENT AS FINANCIAL INSTITUTIONS.—

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

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

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

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

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

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

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

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

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

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

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

3 **SEC. 127. INTERNATIONAL ACTIVITIES OF THE COMMODITY**
4 **FUTURES TRADING COMMISSION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SEC. 128. RULES OF CONSTRUCTION.**

4 (a) FINANCIAL INSTITUTION ACTIVITIES.—No provi-
5 sion of this Act, or any amendment made by this Act to
6 any other provision of law, shall be construed as author-
7 izing, supporting the authorization for, or implying any
8 prior authorization for, any financial institution (as de-
9 fined in section 1a(15) of the Commodity Exchange Act),
10 or any subsidiary of such financial institution, to engage
11 in any activity or transaction or to hold any security or
12 other asset.

13 (b) DEPOSITORY INSTITUTIONS.—Section 18 of the
14 Federal Deposit Insurance Act (12 U.S.C. 1828) is
15 amended by adding at the end the following new sub-
16 section:

17 “(v) RULES OF CONSTRUCTION.—

18 “(1) IN GENERAL.—No depository institution
19 may take delivery of an equity security under a secu-
20 rity futures product (as defined in section 3(a)(56)
21 of the Securities Exchange Act of 1934).

22 “(2) ADDITIONAL RULE.—Paragraph (1) shall
23 not be construed as creating any inference that a de-
24 pository institution may take delivery of, or make

1 any investment in, an equity security under any
2 other circumstance.”.

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

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

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

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

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

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

16 “(11) The term ‘equity security’ means any
17 stock or similar security; or any security future on
18 any such security; or any security convertible, with
19 or without consideration, into such a security, or
20 carrying any warrant or right to subscribe to or pur-
21 chase such a security; or any such warrant or right;
22 or any put, call, straddle, option, or privilege on any
23 such security; or any other security which the Com-
24 mission shall deem to be of similar nature and con-
25 sider necessary or appropriate, by such rules and

1 regulations as it may prescribe in the public interest
2 or for the protection of investors, to treat as an equity security.”;

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

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

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

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

1 Commodity Exchange Act as in effect on the date of
2 enactment of the Commodity Futures Modernization
3 Act of 2000.

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

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

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

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

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

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

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

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

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

13 “(III) each component security is—

14 “(aa) registered pursuant to section
15 12 of this title;

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

18 “(cc) 1 of 675 securities with the
19 largest dollar value of average daily trad-
20 ing volume;

21 “(ii) it is a contract of sale for future de-
22 livery with respect to which a board of trade
23 was designated as a contract market by the
24 Commodity Futures Trading Commission prior

1 to the date of enactment of the Commodity Fu-
2 tures Modernization Act of 2000;

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

8 “(II) it has been a narrow-based security
9 index for no more than 45 business days over
10 3 consecutive calendar months;

11 “(iv) it is traded on or subject to the rules
12 of a foreign board of trade and meets such re-
13 quirements as are jointly established by rule or
14 regulation by the Commission and the Com-
15 modity Futures Trading Commission;

16 “(v) no more than 18 months have passed
17 since enactment of the Commodity Futures
18 Modernization Act of 2000 and it is (I) traded
19 on or subject to the rules of a foreign board of
20 trade; (II) the offer and sale in the United
21 States of a contract of sale for future delivery
22 on such index was authorized prior to the effec-
23 tive date of the Commodity Futures Moderniza-
24 tion Act of 2000; and (III) the conditions of
25 such authorization continue to be met; or

1 “(vi) it is traded on or subject to the rules
2 of a board of trade and meets such require-
3 ments as are jointly established by rule, regula-
4 tion, or order by the Commission and the Com-
5 modity Futures Trading Commission.

6 “(D) Within 1 year after the enactment of the
7 Commodity Futures Modernization Act of 2000, the
8 Commission and the Commodity Futures Trading
9 Commission jointly shall adopt rules or regulations
10 that set forth the requirements under clause (iv) of
11 subparagraph (C).

12 “(E) An index that is a narrow-based security
13 index solely because it was a narrow-based security
14 index for more than 45 business days over 3 con-
15 secutive calendar months pursuant to clause (iii) of
16 subparagraph (C) shall not be a narrow-based secu-
17 rity index for the 3 following calendar months.

18 “(F) For purposes of subparagraphs (B) and
19 (C) of this paragraph—

20 “(i) the dollar value of average daily trad-
21 ing volume and the market capitalization shall
22 be calculated as of the preceding 6 full calendar
23 months; and

24 “(ii) the Commission and the Commodity
25 Futures Trading Commission shall, by rule or

1 regulation, jointly specify the method to be used
2 to determine market capitalization and dollar
3 value of average daily trading volume.

4 “(56) The term ‘security futures product’
5 means a security future or any put, call, straddle,
6 option, or privilege on any security future.

7 “(57)(A) The term ‘margin’, when used with
8 respect to a security futures product, means the
9 amount, type, and form of collateral required to se-
10 cure any extension or maintenance of credit, or the
11 amount, type, and form of collateral required as a
12 performance bond related to the purchase, sale, or
13 carrying of a security futures product.

14 “(B) The terms ‘margin level’ and ‘level of mar-
15 gin’, when used with respect to a security futures
16 product, mean the amount of margin required to se-
17 cure any extension or maintenance of credit, or the
18 amount of margin required as a performance bond
19 related to the purchase, sale, or carrying of a secu-
20 rity futures product.

21 “(C) The terms ‘higher margin level’ and ‘high-
22 er level of margin’, when used with respect to a se-
23 curity futures product, mean a margin level estab-
24 lished by a national securities exchange registered
25 pursuant to section 6(g) that is higher than the min-

1 imum amount established and in effect pursuant to
2 section 7(c)(2)(B).”.

3 **SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING**
4 **SECURITY FUTURES PRODUCTS.**

5 (a) EXPEDITED REGISTRATION AND EXEMPTION.—
6 Section 6 of the Securities Exchange Act of 1934 (15
7 U.S.C. 78f) is amended by adding at the end the following:
8 “(g) NOTICE REGISTRATION OF SECURITY FUTURES
9 PRODUCT EXCHANGES.—

10 “(1) REGISTRATION REQUIRED.—An exchange
11 that lists or trades security futures products may
12 register as a national securities exchange solely for
13 the purposes of trading security futures products
14 if—

15 “(A) the exchange is a board of trade, as
16 that term is defined by the Commodity Ex-
17 change Act (7 U.S.C. 1a(2)), that—

18 “(i) has been designated a contract
19 market by the Commodity Futures Trad-
20 ing Commission and such designation is
21 not suspended by order of the Commodity
22 Futures Trading Commission; or

23 “(ii) is registered as a derivative
24 transaction execution facility under section
25 5a of the Commodity Exchange Act and

1 such registration is not suspended by the
2 Commodity Futures Trading Commission;
3 and

4 “(B) such exchange does not serve as a
5 market place for transactions in securities other
6 than—

7 “(i) security futures products; or

8 “(ii) futures on exempted securities or
9 groups or indexes of securities or options
10 thereon that have been authorized under
11 section 2(a)(1)(C) of the Commodity Ex-
12 change Act.

13 “(2) REGISTRATION BY NOTICE FILING.—

14 “(A) FORM AND CONTENT.—An exchange
15 required to register only because such exchange
16 lists or trades security futures products may
17 register for purposes of this section by filing
18 with the Commission a written notice in such
19 form as the Commission, by rule, may prescribe
20 containing the rules of the exchange and such
21 other information and documents concerning
22 such exchange, comparable to the information
23 and documents required for national securities
24 exchanges under section 6(a), as the Commis-
25 sion, by rule, may prescribe as necessary or ap-

1 appropriate in the public interest or for the pro-
2 tection of investors. If such exchange has filed
3 documents with the Commodity Futures Trad-
4 ing Commission, to the extent that such docu-
5 ments contain information satisfying the Com-
6 mission's informational requirements, copies of
7 such documents may be filed with the Commis-
8 sion in lieu of the required written notice.

9 “(B) IMMEDIATE EFFECTIVENESS.—Such
10 registration shall be effective contempora-
11 neously with the submission of notice, in writ-
12 ten or electronic form, to the Commission, ex-
13 cept that such registration shall not be effective
14 if such registration would be subject to suspen-
15 sion or revocation.

16 “(C) TERMINATION.—Such registration
17 shall be terminated immediately if any of the
18 conditions for registration set forth in this sub-
19 section are no longer satisfied.

20 “(3) PUBLIC AVAILABILITY.—The Commission
21 shall promptly publish in the Federal Register an ac-
22 knowledgment of receipt of all notices the Commis-
23 sion receives under this subsection and shall make
24 all such notices available to the public.

1 “(4) EXEMPTION OF EXCHANGES FROM SPECI-
2 FIED PROVISIONS.—

3 “(A) TRANSACTION EXEMPTIONS.—An ex-
4 change that is registered under paragraph (1)
5 of this subsection shall be exempt from, and
6 shall not be required to enforce compliance by
7 its members with, and its members shall not,
8 solely with respect to those transactions effected
9 on such exchange in security futures products,
10 be required to comply with, the following provi-
11 sions of this title and the rules thereunder:

12 “(i) Subsections (b)(2), (b)(3), (b)(4),
13 (b)(7), (b)(9), (c), (d), and (e) of this sec-
14 tion.

15 “(ii) Section 8.

16 “(iii) Section 11.

17 “(iv) Subsections (d), (f), and (k) of
18 section 17.

19 “(v) Subsections (a), (f), and (h) of
20 section 19.

21 “(B) RULE CHANGE EXEMPTIONS.—An ex-
22 change that registered under paragraph (1) of
23 this subsection shall also be exempt from sub-
24 mitting proposed rule changes pursuant to sec-
25 tion 19(b) of this title, except that—

1 “(i) such exchange shall file proposed
2 rule changes related to higher margin lev-
3 els, fraud or manipulation, recordkeeping,
4 reporting, listing standards, or decimal
5 pricing for security futures products, sales
6 practices for security futures products for
7 persons who effect transactions in security
8 futures products, or rules effectuating such
9 exchange’s obligation to enforce the securi-
10 ties laws pursuant to section 19(b)(7);

11 “(ii) such exchange shall file pursuant
12 to sections 19(b)(1) and 19(b)(2) proposed
13 rule changes related to margin, except for
14 changes resulting in higher margin levels;
15 and

16 “(iii) such exchange shall file pursu-
17 ant to section 19(b)(1) proposed rule
18 changes that have been abrogated by the
19 Commission pursuant to section
20 19(b)(7)(C).

21 “(5) TRADING IN SECURITY FUTURES PROD-
22 UCTS.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), it shall be unlawful for any person

1 to execute or trade a security futures product
2 until the later of—

3 “(i) 1 year after the date of enact-
4 ment of the Commodity Futures Mod-
5 ernization Act of 2000; or

6 “(ii) such date that a futures associa-
7 tion registered under section 17 of the
8 Commodity Exchange Act has met the re-
9 quirements set forth in section 15A(k)(2)
10 of this title.

11 “(B) PRINCIPAL-TO-PRINCIPAL TRANS-
12 ACTIONS.—Notwithstanding subparagraph (A),
13 a person may execute or trade a security fu-
14 tures product transaction if—

15 “(i) the transaction is entered into—

16 “(I) on a principal-to-principal
17 basis between parties trading for their
18 own accounts or as described in sec-
19 tion 1a(12)(B)(ii) of the Commodity
20 Exchange Act; and

21 “(II) only between eligible con-
22 tract participants (as defined in sub-
23 paragraphs (A), (B)(ii), and (C) of
24 such section 1a(12)) at the time at
25 which the persons enter into the

1 agreement, contract, or transaction;
 2 and

3 “(ii) the transaction is entered into on
 4 or after the later of—

5 “(I) 8 months after the date of
 6 enactment of the Commodity Futures
 7 Modernization Act of 2000; or

8 “(II) such date that a futures as-
 9 sociation registered under section 17
 10 of the Commodity Exchange Act has
 11 met the requirements set forth in sec-
 12 tion 15A(k)(2) of this title.”.

13 (b) COMMISSION REVIEW OF PROPOSED RULE
 14 CHANGES.—

15 (1) EXPEDITED REVIEW.—Section 19(b) of the
 16 Securities Exchange Act of 1934 (15 U.S.C. 78s(b))
 17 is amended by adding at the end the following:

18 “(7) SECURITY FUTURES PRODUCT RULE
 19 CHANGES.—

20 “(A) FILING REQUIRED.—A self-regulatory
 21 organization that is an exchange registered with
 22 the Commission pursuant to section 6(g) of this
 23 title or that is a national securities association
 24 registered pursuant to section 15A(k) of this
 25 title shall file with the Commission, in accord-

1 ance with such rules as the Commission may
2 prescribe, copies of any proposed rule change or
3 any proposed change in, addition to, or deletion
4 from the rules of such self-regulatory organiza-
5 tion (hereinafter in this paragraph collectively
6 referred to as a ‘proposed rule change’) that re-
7 lates to higher margin levels, fraud or manipu-
8 lation, recordkeeping, reporting, listing stand-
9 ards, or decimal pricing for security futures
10 products, sales practices for security futures
11 products for persons who effect transactions in
12 security futures products, or rules effectuating
13 such self-regulatory organization’s obligation to
14 enforce the securities laws. Such proposed rule
15 change shall be accompanied by a concise gen-
16 eral statement of the basis and purpose of such
17 proposed rule change. The Commission shall,
18 upon the filing of any proposed rule change,
19 promptly publish notice thereof together with
20 the terms of substance of the proposed rule
21 change or a description of the subjects and
22 issues involved. The Commission shall give in-
23 terested persons an opportunity to submit data,
24 views, and arguments concerning such proposed
25 rule change.

1 “(B) FILING WITH CFTC.—A proposed rule
2 change filed with the Commission pursuant to
3 subparagraph (A) shall be filed concurrently
4 with the Commodity Futures Trading Commis-
5 sion. Such proposed rule change may take ef-
6 fect upon filing of a written certification with
7 the Commodity Futures Trading Commission
8 under section 5c(c) of the Commodity Exchange
9 Act, upon a determination by the Commodity
10 Futures Trading Commission that review of the
11 proposed rule change is not necessary, or upon
12 approval of the proposed rule change by the
13 Commodity Futures Trading Commission.

14 “(C) ABROGATION OF RULE CHANGES.—
15 Any proposed rule change of a self-regulatory
16 organization that has taken effect pursuant to
17 subparagraph (B) may be enforced by such self-
18 regulatory organization to the extent such rule
19 is not inconsistent with the provisions of this
20 title, the rules and regulations thereunder, and
21 applicable Federal law. At any time within 60
22 days of the date of the filing of a written cer-
23 tification with the Commodity Futures Trading
24 Commission under section 5c(c) of the Com-
25 modity Exchange Act, the date the Commodity

1 Futures Trading Commission determines that
2 review of such proposed rule change is not nec-
3 essary, or the date the Commodity Futures
4 Trading Commission approves such proposed
5 rule change, the Commission, after consultation
6 with the Commodity Futures Trading Commis-
7 sion, summarily may abrogate the proposed rule
8 change and require that the proposed rule
9 change be refiled in accordance with the provi-
10 sions of paragraph (1), if it appears to the
11 Commission that such proposed rule change un-
12 duly burdens competition or efficiency, conflicts
13 with the securities laws, or is inconsistent with
14 the public interest and the protection of inves-
15 tors. Commission action pursuant to the pre-
16 ceding sentence shall not affect the validity or
17 force of the rule change during the period it
18 was in effect and shall not be reviewable under
19 section 25 nor deemed to be a final agency ac-
20 tion for purposes of section 704 of title 5,
21 United States Code.

22 “(D) REVIEW OF RESUBMITTED ABRO-
23 GATED RULES.—

24 “(i) PROCEEDINGS.—Within 35 days
25 of the date of publication of notice of the

1 filing of a proposed rule change that is ab-
2 rogated in accordance with subparagraph
3 (C) and refiled in accordance with para-
4 graph (1), or within such longer period as
5 the Commission may designate up to 90
6 days after such date if the Commission
7 finds such longer period to be appropriate
8 and publishes its reasons for so finding or
9 as to which the self-regulatory organization
10 consents, the Commission shall—

11 “(I) by order approve such pro-
12 posed rule change; or

13 “(II) after consultation with the
14 Commodity Futures Trading Commis-
15 sion, institute proceedings to deter-
16 mine whether the proposed rule
17 change should be disapproved. Pro-
18 ceedings under subclause (II) shall in-
19 clude notice of the grounds for dis-
20 approval under consideration and op-
21 portunity for hearing and be con-
22 cluded within 180 days after the date
23 of publication of notice of the filing of
24 the proposed rule change. At the con-
25 clusion of such proceedings, the Com-

mission, by order, shall approve or disapprove such proposed rule change.

The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

“(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission

1 finds good cause for so doing and pub-
2 lishes its reasons for so finding.”.

3 (2) DECIMAL PRICING PROVISIONS.—Section
4 19(b) of the Securities Exchange Act of 1934 (15
5 U.S.C. 78s(b)) is amended by inserting after para-
6 graph (7), as added by paragraph (1), the following:

7 “(8) DECIMAL PRICING.—Not later than 9
8 months after the date on which trading in any secu-
9 rity futures product commences under this title, all
10 self-regulatory organizations listing or trading secu-
11 rity futures products shall file proposed rule changes
12 necessary to implement decimal pricing of security
13 futures products. The Commission may not require
14 such rules to contain equal minimum increments in
15 such decimal pricing.”.

16 (3) CONSULTATION PROVISIONS.—Section 19(b)
17 of the Securities Exchange Act of 1934 (15 U.S.C.
18 78s(b)) is amended by inserting after paragraph (8),
19 as added by paragraph (2), the following:

20 “(9) CONSULTATION WITH CFTC.—

21 “(A) CONSULTATION REQUIRED.—The
22 Commission shall consult with and consider the
23 views of the Commodity Futures Trading Com-
24 mission prior to approving or disapproving a
25 proposed rule change filed by a national securi-

1 ties association registered pursuant to section
2 15A(a) or a national securities exchange subject
3 to the provisions of subsection (a) that pri-
4 marily concerns conduct related to transactions
5 in security futures products, except where the
6 Commission determines that an emergency ex-
7 ists requiring expeditious or summary action
8 and publishes its reasons therefor.

9 “(B) RESPONSES TO CFTC COMMENTS AND
10 FINDINGS.—If the Commodity Futures Trading
11 Commission comments in writing to the Com-
12 mission on a proposed rule that has been pub-
13 lished for comment, the Commission shall re-
14 spond in writing to such written comment be-
15 fore approving or disapproving the proposed
16 rule. If the Commodity Futures Trading Com-
17 mission determines, and notifies the Commis-
18 sion, that such rule, if implemented or as ap-
19 plied, would—

20 “(i) adversely affect the liquidity or
21 efficiency of the market for security fu-
22 tures products; or

23 “(ii) impose any burden on competi-
24 tion not necessary or appropriate in fur-
25 therance of the purposes of this section,

1 the Commission shall, prior to approving or dis-
2 approving the proposed rule, find that such rule
3 is necessary and appropriate in furtherance of
4 the purposes of this section notwithstanding the
5 Commodity Futures Trading Commission’s de-
6 termination.”.

7 (c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Sec-
8 tion 19(d) of the Securities Exchange Act of 1934 (15
9 U.S.C. 78s(d)) is amended by adding at the end the fol-
10 lowing:

11 “(3) The provisions of this subsection shall apply to
12 an exchange registered pursuant to section 6(g) of this
13 title or a national securities association registered pursu-
14 ant to section 15A(k) of this title only to the extent that
15 such exchange or association imposes any final discipli-
16 nary sanction for—

17 “(A) a violation of the Federal securities laws
18 or the rules and regulations thereunder; or

19 “(B) a violation of a rule of such exchange or
20 association, as to which a proposed change would be
21 required to be filed under section 19 of this title, ex-
22 cept that, to the extent that the exchange or associa-
23 tion rule violation relates to any account, agreement,
24 or transaction, this subsection shall apply only to the

1 extent such violation involves a security futures
2 product.”.

3 **SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES**
4 **TRADING SECURITY FUTURES PRODUCTS.**

5 (a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

6 (1) AMENDMENT.—Section 15(b) of the Securi-
7 ties Exchange Act of 1934 (15 U.S.C. 78o(b)) is
8 amended by adding at the end the following:

9 “(11) BROKER/DEALER REGISTRATION WITH
10 RESPECT TO TRANSACTIONS IN SECURITY FUTURES
11 PRODUCTS.—

12 “(A) NOTICE REGISTRATION.—

13 “(i) CONTENTS OF NOTICE.—Not-
14 withstanding paragraphs (1) and (2), a
15 broker or dealer required to register only
16 because it effects transactions in security
17 futures products on an exchange registered
18 pursuant to section 6(g) may register for
19 purposes of this section by filing with the
20 Commission a written notice in such form
21 and containing such information con-
22 cerning such broker or dealer and any per-
23 sons associated with such broker or dealer
24 as the Commission, by rule, may prescribe
25 as necessary or appropriate in the public

1 interest or for the protection of investors.
2 A broker or dealer may not register under
3 this paragraph unless that broker or dealer
4 is a member of a national securities asso-
5 ciation registered under section 15A(k).

6 “(ii) IMMEDIATE EFFECTIVENESS.—
7 Such registration shall be effective contem-
8 poraneously with the submission of notice,
9 in written or electronic form, to the Com-
10 mission, except that such registration shall
11 not be effective if the registration would be
12 subject to suspension or revocation under
13 paragraph (4).

14 “(iii) SUSPENSION.—Such registration
15 shall be suspended immediately if a na-
16 tional securities association registered pur-
17 suant to section 15A(k) of this title sus-
18 pends the membership of that broker or
19 dealer.

20 “(iv) TERMINATION.—Such registra-
21 tion shall be terminated immediately if any
22 of the above stated conditions for registra-
23 tion set forth in this paragraph are no
24 longer satisfied.

1 “(B) EXEMPTIONS FOR REGISTERED BRO-
 2 KERS AND DEALERS.—A broker or dealer reg-
 3 istered pursuant to the requirements of sub-
 4 paragraph (A) shall be exempt from the fol-
 5 lowing provisions of this title and the rules
 6 thereunder with respect to transactions in secu-
 7 rity futures products:

8 “(i) Section 8.

9 “(ii) Section 11.

10 “(iii) Subsections (c)(3) and (c)(5) of
 11 this section.

12 “(iv) Section 15B.

13 “(v) Section 15C.

14 “(vi) Subsections (d), (e), (f), (g), (h),
 15 and (i) of section 17.”.

16 (2) CONFORMING AMENDMENT.—Section 28(e)
 17 of the Securities Exchange Act of 1934 (15 U.S.C.
 18 78bb(e)) is amended by adding at the end the fol-
 19 lowing:

20 “(4) The provisions of this subsection shall not apply
 21 with regard to securities that are security futures prod-
 22 ucts.”.

23 (b) FLOOR BROKERS AND FLOOR TRADERS.—Sec-
 24 tion 15(b) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78o(b)) is amended by inserting after paragraph
2 (11), as added by subsection (a), the following:

3 “(12) EXEMPTION FOR SECURITY FUTURES
4 PRODUCT EXCHANGE MEMBERS.—

5 “(A) REGISTRATION EXEMPTION.—A nat-
6 ural person shall be exempt from the registra-
7 tion requirements of this section if such
8 person—

9 “(i) is a member of a designated con-
10 tract market registered with the Commis-
11 sion as an exchange pursuant to section
12 6(g);

13 “(ii) effects transactions only in secu-
14 rities on the exchange of which such per-
15 son is a member; and

16 “(iii) does not directly accept or solicit
17 orders from public customers or provide
18 advice to public customers in connection
19 with the trading of security futures prod-
20 ucts.

21 “(B) OTHER EXEMPTIONS.—A natural
22 person exempt from registration pursuant to
23 subparagraph (A) shall also be exempt from the
24 following provisions of this title and the rules
25 thereunder:

1 “(i) Section 8.

2 “(ii) Section 11.

3 “(iii) Subsections (c)(3), (c)(5), and
4 (e) of this section.

5 “(iv) Section 15B.

6 “(v) Section 15C.

7 “(vi) Subsections (d), (e), (f), (g), (h),
8 and (i) of section 17.”.

9 (c) LIMITED PURPOSE NATIONAL SECURITIES ASSO-
10 CIATION.—Section 15A of the Securities Exchange Act of
11 1934 (15 U.S.C. 78o–3) is amended by adding at the end
12 the following:

13 “(k) LIMITED PURPOSE NATIONAL SECURITIES AS-
14 SOCIATION.—

15 “(1) REGULATION OF MEMBERS WITH RESPECT
16 TO SECURITY FUTURES PRODUCTS.—A futures asso-
17 ciation registered under section 17 of the Com-
18 modity Exchange Act shall be a registered national
19 securities association for the limited purpose of reg-
20 ulating the activities of members who are registered
21 as brokers or dealers in security futures products
22 pursuant to section 15(b)(11).

23 “(2) REQUIREMENTS FOR REGISTRATION.—
24 Such a securities association shall—

1 “(A) be so organized and have the capacity
2 to carry out the purposes of the securities laws
3 applicable to security futures products and to
4 comply, and (subject to any rule or order of the
5 Commission pursuant to section 19(g)(2)) to
6 enforce compliance by its members and persons
7 associated with its members, with the provisions
8 of the securities laws applicable to security fu-
9 tures products, the rules and regulations there-
10 under, and its rules;

11 “(B) have rules that—

12 “(i) are designed to prevent fraudu-
13 lent and manipulative acts and practices,
14 to promote just and equitable principles of
15 trade, and, in general, to protect investors
16 and the public interest, including rules
17 governing sales practices and the adver-
18 tising of security futures products reason-
19 ably comparable to those of other national
20 securities associations registered pursuant
21 to subsection (a) that are applicable to se-
22 curity futures products; and

23 “(ii) are not designed to regulate by
24 virtue of any authority conferred by this
25 title matters not related to the purposes of

1 this title or the administration of the asso-
2 ciation;

3 “(C) have rules that provide that (subject
4 to any rule or order of the Commission pursu-
5 ant to section 19(g)(2)) its members and per-
6 sons associated with its members shall be ap-
7 propriately disciplined for violation of any provi-
8 sion of the securities laws applicable to security
9 futures products, the rules or regulations there-
10 under, or the rules of the association, by expul-
11 sion, suspension, limitation of activities, func-
12 tions, and operations, fine, censure, being sus-
13 pended or barred from being associated with a
14 member, or any other fitting sanction; and

15 “(D) have rules that ensure that members
16 and natural persons associated with members
17 meet such standards of training, experience,
18 and competence necessary to effect transactions
19 in security futures products and are tested for
20 their knowledge of securities and security fu-
21 tures products.

22 “(3) EXEMPTION FROM RULE CHANGE SUBMIS-
23 SION.—Such a securities association shall be exempt
24 from submitting proposed rule changes pursuant to
25 section 19(b) of this title, except that—

1 “(A) the association shall file proposed
2 rule changes related to higher margin levels,
3 fraud or manipulation, recordkeeping, report-
4 ing, listing standards, or decimal pricing for se-
5 curity futures products, sales practices for, ad-
6 vertising of, or standards of training, experi-
7 ence, competence, or other qualifications for se-
8 curity futures products for persons who effect
9 transactions in security futures products, or
10 rules effectuating the association’s obligation to
11 enforce the securities laws pursuant to section
12 19(b)(7);

13 “(B) the association shall file pursuant to
14 sections 19(b)(1) and 19(b)(2) proposed rule
15 changes related to margin, except for changes
16 resulting in higher margin levels; and

17 “(C) the association shall file pursuant to
18 section 19(b)(1) proposed rule changes that
19 have been abrogated by the Commission pursu-
20 ant to section 19(b)(7)(C).

21 “(4) OTHER EXEMPTIONS.—Such a securities
22 association shall be exempt from and shall not be re-
23 quired to enforce compliance by its members, and its
24 members shall not, solely with respect to their trans-
25 actions effected in security futures products, be re-

quired to comply, with the following provisions of
this title and the rules thereunder:

“(A) Section 8.

“(B) Subsections (b)(1), (b)(3), (b)(4),
(b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13),
(c), (d), (e), (f), (g), (h), and (i) of this section.

“(C) Subsections (d), (f), and (k) of sec-
tion 17.

“(D) Subsections (a), (f), and (h) of sec-
tion 19.”.

(d) EXEMPTION UNDER THE SECURITIES INVESTOR
PROTECTION ACT OF 1970.—

(1) Section 16(14) of the Securities Investor
Protection Act of 1970 (15 U.S.C. 78ll(14)) is
amended by inserting “or any security future as that
term is defined in section 3(a)(55)(A) of the Securi-
ties Exchange Act of 1934,” after “certificate of de-
posit for a security,”.

(2) Section 3(a)(2)(A) of the Securities Investor
Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A))
is amended—

(A) in clause (i), by striking “and” after
the semicolon;

(B) in clause (ii), by striking the period
and inserting “; and”;

1 (C) by adding at the end the following:

2 “(iii) persons who are registered as a
3 broker or dealer pursuant to section
4 15(b)(11)(A) of the Securities Exchange
5 Act of 1934.”.

6 **SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-**
7 **OPERATION.**

8 Section 17(b) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78q(b)) is amended—

10 (1) by striking “(b) All” and inserting the fol-
11 lowing:

12 “(b) RECORDS SUBJECT TO EXAMINATION.—

13 “(1) PROCEDURES FOR COOPERATION WITH
14 OTHER AGENCIES.—All”;

15 (2) by striking “prior to conducting any such
16 examination of a registered clearing” and inserting
17 the following: “prior to conducting any such exam-
18 ination of a—

19 “(A) registered clearing”;

20 (3) by redesignating the last sentence as para-
21 graph (4)(C);

22 (4) by striking the period at the end of the first
23 sentence and inserting the following: “; or

24 “(B) broker or dealer registered pursuant
25 to section 15(b)(11), exchange registered pursu-

1 ant to section 6(g), or national securities asso-
2 ciation registered pursuant to section 15A(k)
3 gives notice to the Commodity Futures Trading
4 Commission of such proposed examination and
5 consults with the Commodity Futures Trading
6 Commission concerning the feasibility and de-
7 sirability of coordinating such examination with
8 examinations conducted by the Commodity Fu-
9 tures Trading Commission in order to avoid un-
10 necessary regulatory duplication or undue regu-
11 latory burdens for such broker or dealer or ex-
12 change.”;

13 (5) by adding at the end the following new
14 paragraphs:

15 “(2) FURNISHING DATA AND REPORTS TO
16 CFTC.—The Commission shall notify the Commodity
17 Futures Trading Commission of any examination
18 conducted of any broker or dealer registered pursu-
19 ant to section 15(b)(11), exchange registered pursu-
20 ant to section 6(g), or national securities association
21 registered pursuant to section 15A(k) and, upon re-
22 quest, furnish to the Commodity Futures Trading
23 Commission any examination report and data sup-
24 plied to, or prepared by, the Commission in connec-
25 tion with such examination.

1 “(3) USE OF CFTC REPORTS.—Prior to con-
2 ducting an examination under paragraph (1), the
3 Commission shall use the reports of examinations, if
4 the information available therein is sufficient for the
5 purposes of the examination, of—

6 “(A) any broker or dealer registered pursu-
7 ant to section 15(b)(11);

8 “(B) exchange registered pursuant to sec-
9 tion 6(g); or

10 “(C) national securities association reg-
11 istered pursuant to section 15A(k);

12 that is made by the Commodity Futures Trading
13 Commission, a national securities association reg-
14 istered pursuant to section 15A(k), or an exchange
15 registered pursuant to section 6(g).

16 “(4) RULES OF CONSTRUCTION.—

17 “(A) Notwithstanding any other provision
18 of this subsection, the records of a broker or
19 dealer registered pursuant to section 15(b)(11),
20 an exchange registered pursuant to section
21 6(g), or a national securities association reg-
22 istered pursuant to section 15A(k) described in
23 this subparagraph shall not be subject to rou-
24 tine periodic examinations by the Commission.

1 “(B) Any recordkeeping rules adopted
 2 under this subsection for a broker or dealer reg-
 3 istered pursuant to section 15(b)(11), an ex-
 4 change registered pursuant to section 6(g), or a
 5 national securities association registered pursu-
 6 ant to section 15A(k) shall be limited to records
 7 with respect to persons, accounts, agreements,
 8 and transactions involving security futures
 9 products.”; and

10 (6) in paragraph (4)(C) (as redesignated by
 11 paragraph (3) of this section), by striking “Nothing
 12 in the proviso to the preceding sentence” and insert-
 13 ing “Nothing in the proviso in paragraph (1)”.

14 **SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SE-**
 15 **CURITY FUTURES PRODUCTS.**

16 (a) ADDITION OF SECURITY FUTURES PRODUCTS TO
 17 OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

18 (1) PROHIBITION AGAINST MANIPULATION.—

19 Section 9(b) of the Securities Exchange Act of 1934
 20 (15 U.S.C. 78i(b)) is amended—

21 (A) in paragraph (1)—

22 (i) by inserting “(A)” after “ac-
 23 quires”; and

1 (ii) by striking “; or” and inserting “;
 2 or (B) any security futures product on the
 3 security; or”;

4 (B) in paragraph (2)—

5 (i) by inserting “(A)” after “interest
 6 in any”; and

7 (ii) by striking “; or” and inserting “;
 8 or (B) such security futures product; or”;
 9 and

10 (C) in paragraph (3)—

11 (i) by inserting “(A)” after “interest
 12 in any”; and

13 (ii) by inserting “; or (B) such secu-
 14 rity futures product” after “privilege”.

15 (2) MANIPULATION IN OPTIONS AND OTHER
 16 DERIVATIVE PRODUCTS.—Section 9(g) of the Securi-
 17 ties Exchange Act of 1934 (15 U.S.C. 78i(g)) is
 18 amended—

19 (A) by inserting “(1)” after “(g)”;

20 (B) by inserting “other than a security fu-
 21 tures product” after “future delivery”; and

22 (C) by adding at the end following:

23 “(2) Notwithstanding the Commodity Exchange Act,
 24 the Commission shall have the authority to regulate the

1 trading of any security futures product to the extent pro-
2 vided in the securities laws.”.

3 (3) LIABILITY OF CONTROLLING PERSONS AND
4 PERSONS WHO AID AND ABET VIOLATIONS.—Section
5 20(d) of the Securities Exchange Act of 1934 (15
6 U.S.C. 78t(d)) is amended by striking “or privilege”
7 and inserting “, privilege, or security futures prod-
8 uct”.

9 (4) LIABILITY TO CONTEMPORANEOUS TRADERS
10 FOR INSIDER TRADING.—Section 21A(a)(1) of the
11 Securities Exchange Act of 1934 (15 U.S.C. 78u-
12 1(a)(1)) is amended by striking “standardized op-
13 tions, the Commission—” and inserting “standard-
14 ized options or security futures products, the Com-
15 mission—”.

16 (5) ENFORCEMENT CONSULTATION.—Section
17 21 of the Securities Exchange Act of 1934 (15
18 U.S.C. 78u) is amended by adding at the end the
19 following:

20 “(i) INFORMATION TO CFTC.—The Commission
21 shall provide the Commodity Futures Trading Commission
22 with notice of the commencement of any proceeding and
23 a copy of any order entered by the Commission against
24 any broker or dealer registered pursuant to section
25 15(b)(11), any exchange registered pursuant to section

1 6(g), or any national securities association registered pur-
2 suant to section 15A(k).”.

3 **SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SE-**
4 **CURITY FUTURES PRODUCTS.**

5 (a) LISTING STANDARDS AND CONDITIONS FOR
6 TRADING.—Section 6 of the Securities Exchange Act of
7 1934 (15 U.S.C. 78f) is amended by inserting after sub-
8 section (g), as added by section 202, the following:

9 “(h) TRADING IN SECURITY FUTURES PRODUCTS.—

10 “(1) TRADING ON EXCHANGE OR ASSOCIATION
11 REQUIRED.—It shall be unlawful for any person to
12 effect transactions in security futures products that
13 are not listed on a national securities exchange or a
14 national securities association registered pursuant to
15 section 15A(a).

16 “(2) LISTING STANDARDS REQUIRED.—Except
17 as otherwise provided in paragraph (7), a national
18 securities exchange or a national securities associa-
19 tion registered pursuant to section 15A(a) may trade
20 only security futures products that (A) conform with
21 listing standards that such exchange or association
22 files with the Commission under section 19(b) and
23 (B) meet the criteria specified in section
24 2(a)(1)(D)(i) of the Commodity Exchange Act.

1 “(3) REQUIREMENTS FOR LISTING STANDARDS
2 AND CONDITIONS FOR TRADING.—Such listing
3 standards shall—

4 “(A) except as otherwise provided in a
5 rule, regulation, or order issued pursuant to
6 paragraph (4), require that any security under-
7 lying the security future, including each compo-
8 nent security of a narrow-based security index,
9 be registered pursuant to section 12 of this
10 title;

11 “(B) require that if the security futures
12 product is not cash settled, the market on
13 which the security futures product is traded
14 have arrangements in place with a registered
15 clearing agency for the payment and delivery of
16 the securities underlying the security futures
17 product;

18 “(C) be no less restrictive than comparable
19 listing standards for options traded on a na-
20 tional securities exchange or national securities
21 association registered pursuant to section
22 15A(a) of this title;

23 “(D) except as otherwise provided in a
24 rule, regulation, or order issued pursuant to
25 paragraph (4), require that the security future

1 be based upon common stock and such other
2 equity securities as the Commission and the
3 Commodity Futures Trading Commission joint-
4 ly determine appropriate;

5 “(E) require that the security futures
6 product is cleared by a clearing agency that has
7 in place provisions for linked and coordinated
8 clearing with other clearing agencies that clear
9 security futures products, which permits the se-
10 curity futures product to be purchased on one
11 market and offset on another market that
12 trades such product;

13 “(F) require that only a broker or dealer
14 subject to suitability rules comparable to those
15 of a national securities association registered
16 pursuant to section 15A(a) effect transactions
17 in the security futures product;

18 “(G) require that the security futures
19 product be subject to the prohibition against
20 dual trading in section 4j of the Commodity Ex-
21 change Act (7 U.S.C. 6j) and the rules and reg-
22 ulations thereunder or the provisions of section
23 11(a) of this title and the rules and regulations
24 thereunder, except to the extent otherwise per-

1 mitted under this title and the rules and regula-
2 tions thereunder;

3 “(H) require that trading in the security
4 futures product not be readily susceptible to
5 manipulation of the price of such security fu-
6 tures product, nor to causing or being used in
7 the manipulation of the price of any underlying
8 security, option on such security, or option on
9 a group or index including such securities;

10 “(I) require that procedures be in place for
11 coordinated surveillance among the market on
12 which the security futures product is traded,
13 any market on which any security underlying
14 the security futures product is traded, and
15 other markets on which any related security is
16 traded to detect manipulation and insider trad-
17 ing;

18 “(J) require that the market on which the
19 security futures product is traded has in place
20 audit trails necessary or appropriate to facili-
21 tate the coordinated surveillance required in
22 subparagraph (I);

23 “(K) require that the market on which the
24 security futures product is traded has in place
25 procedures to coordinate trading halts between

1 such market and any market on which any se-
2 curity underlying the security futures product is
3 traded and other markets on which any related
4 security is traded; and

5 “(L) require that the margin requirements
6 for a security futures product comply with the
7 regulations prescribed pursuant to section
8 7(e)(2)(B), except that nothing in this subpara-
9 graph shall be construed to prevent a national
10 securities exchange or national securities asso-
11 ciation from requiring higher margin levels for
12 a security futures product when it deems such
13 action to be necessary or appropriate.

14 “(4) AUTHORITY TO MODIFY CERTAIN LISTING
15 STANDARD REQUIREMENTS.—

16 “(A) AUTHORITY TO MODIFY.—The Com-
17 mission and the Commodity Futures Trading
18 Commission, by rule, regulation, or order, may
19 jointly modify the listing standard requirements
20 specified in subparagraph (A) or (D) of para-
21 graph (3) to the extent such modification fos-
22 ters the development of fair and orderly mar-
23 kets in security futures products, is necessary
24 or appropriate in the public interest, and is con-
25 sistent with the protection of investors.

1 “(B) AUTHORITY TO GRANT EXEMP-
2 TIONS.—The Commission and the Commodity
3 Futures Trading Commission, by order, may
4 jointly exempt any person from compliance with
5 the listing standard requirement specified in
6 subparagraph (E) of paragraph (3) to the ex-
7 tent such exemption fosters the development of
8 fair and orderly markets in security futures
9 products, is necessary or appropriate in the
10 public interest, and is consistent with the pro-
11 tection of investors.

12 “(5) REQUIREMENTS FOR OTHER PERSONS
13 TRADING SECURITY FUTURE PRODUCTS.—It shall be
14 unlawful for any person (other than a national secu-
15 rities exchange or a national securities association
16 registered pursuant to section 15A(a)) to constitute,
17 maintain, or provide a marketplace or facilities for
18 bringing together purchasers and sellers of security
19 future products or to otherwise perform with respect
20 to security future products the functions commonly
21 performed by a stock exchange as that term is gen-
22 erally understood, unless a national securities asso-
23 ciation registered pursuant to section 15A(a) or a
24 national securities exchange of which such person is
25 a member—

1 “(A) has in place procedures for coordi-
2 nated surveillance among such person, the mar-
3 ket trading the securities underlying the secu-
4 rity future products, and other markets trading
5 related securities to detect manipulation and in-
6 sider trading;

7 “(B) has rules to require audit trails nec-
8 essary or appropriate to facilitate the coordi-
9 nated surveillance required in subparagraph
10 (A); and

11 “(C) has rules to require such person to
12 coordinate trading halts with markets trading
13 the securities underlying the security future
14 products and other markets trading related se-
15 curities.

16 “(6) DEFERRAL OF OPTIONS ON SECURITY FU-
17 TURES TRADING.—No person shall offer to enter
18 into, enter into, or confirm the execution of any put,
19 call, straddle, option, or privilege on a security fu-
20 ture, except that, after 3 years after the date of en-
21 actment of this subsection, the Commission and the
22 Commodity Futures Trading Commission may by
23 order jointly determine to permit trading of puts,
24 calls, straddles, options, or privileges on any security

1 future authorized to be traded under the provisions
2 of this Act and the Commodity Exchange Act.

3 “(7) DEFERRAL OF LINKED AND COORDINATED
4 CLEARING.—

5 “(A) Notwithstanding paragraph (2), until
6 the compliance date, a national securities ex-
7 change or national securities association reg-
8 istered pursuant to section 15A(a) may trade a
9 security futures product that does not—

10 “(i) conform with any listing standard
11 promulgated to meet the requirement spec-
12 ified in subparagraph (E) of paragraph
13 (3); or

14 “(ii) meet the criterion specified in
15 section 2(a)(1)(D)(i)(IV) of the Com-
16modity Exchange Act.

17 “(B) The Commission and the Commodity
18 Futures Trading Commission shall jointly pub-
19 lish in the Federal Register a notice of the com-
20 pliance date no later than 165 days before the
21 compliance date.

22 “(C) For purposes of this paragraph, the
23 term ‘compliance date’ means the later of—

24 “(i) 180 days after the end of the
25 first full calendar month period in which

1 the average aggregate comparable share
2 volume for all security futures products
3 based on single equity securities traded on
4 all national securities exchanges, any na-
5 tional securities associations registered
6 pursuant to section 15A(a), and all other
7 persons equals or exceeds 10 percent of the
8 average aggregate comparable share vol-
9 ume of options on single equity securities
10 traded on all national securities exchanges
11 and any national securities associations
12 registered pursuant to section 15A(a); or

13 “(ii) 2 years after the date on which
14 trading in any security futures product
15 commences under this title.”.

16 (b) MARGIN.—Section 7 of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78g) is amended—

18 (1) in subsection (a), by inserting “or a security
19 futures product” after “exempted security”;

20 (2) in subsection (c)(1)(A), by inserting “except
21 as provided in paragraph (2),” after “security,”;

22 (3) by redesignating paragraph (2) of sub-
23 section (c) as paragraph (3) of such subsection; and

24 (4) by inserting after paragraph (1) of such
25 subsection the following:

1 “(2) MARGIN REGULATIONS.—

2 “(A) COMPLIANCE WITH MARGIN RULES
3 REQUIRED.—It shall be unlawful for any
4 broker, dealer, or member of a national securi-
5 ties exchange to, directly or indirectly, extend
6 or maintain credit to or for, or collect margin
7 from any customer on, any security futures
8 product unless such activities comply with the
9 regulations—

10 “(i) which the Board shall prescribe
11 pursuant to subparagraph (B); or

12 “(ii) if the Board determines to dele-
13 gate the authority to prescribe such regula-
14 tions, which the Commission and the Com-
15modity Futures Trading Commission shall
16 jointly prescribe pursuant to subparagraph
17 (B).

18 If the Board delegates the authority to pre-
19 scribe such regulations under clause (ii) and the
20 Commission and the Commodity Futures Trad-
21 ing Commission have not jointly prescribed such
22 regulations within a reasonable period of time
23 after the date of such delegation, the Board
24 shall prescribe such regulations pursuant to
25 subparagraph (B).

1 “(B) CRITERIA FOR ISSUANCE OF
2 RULES.—The Board shall prescribe, or, if the
3 authority is delegated pursuant to subpara-
4 graph (A)(ii), the Commission and the Com-
5 modity Futures Trading Commission shall
6 jointly prescribe, such regulations to establish
7 margin requirements, including the establish-
8 ment of levels of margin (initial and mainte-
9 nance) for security futures products under such
10 terms, and at such levels, as the Board deems
11 appropriate, or as the Commission and the
12 Commodity Futures Trading Commission joint-
13 ly deem appropriate—

14 “(i) to preserve the financial integrity
15 of markets trading security futures prod-
16 ucts;

17 “(ii) to prevent systemic risk;

18 “(iii) to require that—

19 “(I) the margin requirements for
20 a security future product be con-
21 sistent with the margin requirements
22 for comparable option contracts trad-
23 ed on any exchange registered pursu-
24 ant to section 6(a) of this title; and

1 “(II) initial and maintenance
2 margin levels for a security future
3 product not be lower than the lowest
4 level of margin, exclusive of premium,
5 required for any comparable option
6 contract traded on any exchange reg-
7 istered pursuant to section 6(a) of
8 this title, other than an option on a
9 security future;
10 except that nothing in this subparagraph
11 shall be construed to prevent a national se-
12 curities exchange or national securities as-
13 sociation from requiring higher margin lev-
14 els for a security future product when it
15 deems such action to be necessary or ap-
16 propriate; and
17 “(iv) to ensure that the margin re-
18 quirements (other than levels of margin),
19 including the type, form, and use of collat-
20 eral for security futures products, are and
21 remain consistent with the requirements
22 established by the Board, pursuant to sub-
23 paragraphs (A) and (B) of paragraph
24 (1).”.

1 (c) INCORPORATION OF SECURITY FUTURES PROD-
2 UCTS INTO THE NATIONAL MARKET SYSTEM.—Section
3 11A of the Securities Exchange Act of 1934 (15 U.S.C.
4 78k–1) is amended by adding at the end the following:
5 “(e) NATIONAL MARKETS SYSTEM FOR SECURITY
6 FUTURES PRODUCTS.—

7 “(1) CONSULTATION AND COOPERATION RE-
8 QUIRED.—With respect to security futures products,
9 the Commission and the Commodity Futures Trad-
10 ing Commission shall consult and cooperate so that,
11 to the maximum extent practicable, their respective
12 regulatory responsibilities may be fulfilled and the
13 rules and regulations applicable to security futures
14 products may foster a national market system for
15 security futures products if the Commission and the
16 Commodity Futures Trading Commission jointly de-
17 termine that such a system would be consistent with
18 the congressional findings in subsection (a)(1). In
19 accordance with this objective, the Commission shall,
20 at least 15 days prior to the issuance for public com-
21 ment of any proposed rule or regulation under this
22 section concerning security futures products, consult
23 and request the views of the Commodity Futures
24 Trading Commission.

1 “(2) APPLICATION OF RULES BY ORDER OF
2 CFTC.—No rule adopted pursuant to this section
3 shall be applied to any person with respect to the
4 trading of security futures products on an exchange
5 that is registered under section 6(g) unless the Com-
6 modity Futures Trading Commission has issued an
7 order directing that such rule is applicable to such
8 persons.”.

9 (d) INCORPORATION OF SECURITY FUTURES PROD-
10 UCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND
11 SETTLEMENT.—Section 17A(b) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78q–1(b)) is amended by
13 adding at the end the following:

14 “(7)(A) A clearing agency that is regulated directly
15 or indirectly by the Commodity Futures Trading Commis-
16 sion through its association with a designated contract
17 market for security futures products that is a national se-
18 curities exchange registered pursuant to section 6(g), and
19 that would be required to register pursuant to paragraph
20 (1) of this subsection only because it performs the func-
21 tions of a clearing agency with respect to security futures
22 products effected pursuant to the rules of the designated
23 contract market with which such agency is associated, is
24 exempted from the provisions of this section and the rules
25 and regulations thereunder, except that if such a clearing

1 agency performs the functions of a clearing agency with
2 respect to a security futures product that is not cash set-
3 tled, it must have arrangements in place with a registered
4 clearing agency to effect the payment and delivery of the
5 securities underlying the security futures product.

6 “(B) Any clearing agency that performs the functions
7 of a clearing agency with respect to security futures prod-
8 ucts must coordinate with and develop fair and reasonable
9 links with any and all other clearing agencies that perform
10 the functions of a clearing agency with respect to security
11 futures products, in order to permit, as of the compliance
12 date (as defined in section 6(h)(6)(C)), security futures
13 products to be purchased on one market and offset on an-
14 other market that trades such products.”.

15 (e) MARKET EMERGENCY POWERS AND CIRCUIT
16 BREAKERS.—Section 12(k) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78l(k)) is amended—

18 (1) in paragraph (1), by adding at the end the
19 following: “If the actions described in subparagraph
20 (A) or (B) involve a security futures product, the
21 Commission shall consult with and consider the
22 views of the Commodity Futures Trading Commis-
23 sion.”; and

24 (2) in paragraph (2)(B), by inserting after the
25 first sentence the following: “If the actions described

1 in subparagraph (A) involve a security futures prod-
 2 uct, the Commission shall consult with and consider
 3 the views of the Commodity Futures Trading Com-
 4 mission.”.

5 (f) TRANSACTION FEES.—Section 31 of the Securi-
 6 ties Exchange Act of 1934 (15 U.S.C. 78ee) is amended

7 (1) in subsection (a), by inserting “and assess-
 8 ments” after “fees”;

9 (2) in subsections (b), (c), and (d)(1), by strik-
 10 ing “and other evidences of indebtedness” and in-
 11 serting “other evidences of indebtedness, and secu-
 12 rity futures products”;

13 (3) in subsection (f), by inserting “or assess-
 14 ment” after “fee”;

15 (4) in subsection (g), by inserting “and assess-
 16 ment” after “fee”;

17 (5) by redesignating subsections (e), (f), and
 18 (g) as subsections (f), (g), and (h), respectively; and

19 (6) by inserting after subsection (d) the fol-
 20 lowing new subsection:

21 “(e) ASSESSMENTS ON SECURITY FUTURES TRANS-
 22 ACTIONS.—Each national securities exchange and national
 23 securities association shall pay to the Commission an as-
 24 sessment equal to \$0.02 for each round turn transaction
 25 (treated as including one purchase and one sale of a con-

1 tract of sale for future delivery) on a security future trad-
 2 ed on such national securities exchange or by or through
 3 any member of such association otherwise than on a na-
 4 tional securities exchange, except that for fiscal year 2007
 5 or any succeeding fiscal year such assessment shall be
 6 equal to \$0.0075 for each such transaction. Assessments
 7 collected pursuant to this subsection shall be deposited
 8 and collected as general revenue of the Treasury.”.

9 (g) EXEMPTION FROM SHORT SALE PROVISIONS.—
 10 Section 10(a) of the Securities Exchange Act of 1934 (15
 11 U.S.C 78j(a)) is amended—

12 (1) by inserting “(1)” after “(a)”; and

13 (2) by adding at the end the following:

14 “(2) Paragraph (1) of this subsection shall not apply
 15 to security futures products.”.

16 (h) RULEMAKING AUTHORITY TO ADDRESS DUPLI-
 17 CATIVE REGULATION OF DUAL REGISTRANTS.—Section
 18 15(c)(3) of the Securities Exchange Act of 1934 (15
 19 U.S.C. 78o(c)(3))is amended—

20 (1) by inserting “(A)” after “(3)”; and

21 (2) by adding at the end the following:

22 “(B) Consistent with this title, the Commission, in
 23 consultation with the Commodity Futures Trading Com-
 24 mission, shall issue such rules, regulations, or orders as
 25 are necessary to avoid duplicative or conflicting regula-

1 tions applicable to any broker or dealer registered with
 2 the Commission pursuant to section 15(b) (except para-
 3 graph (11) thereof), that is also registered with the Com-
 4modity Futures Trading Commission pursuant to section
 5 4f(a) of the Commodity Exchange Act (except paragraph
 6 (2) thereof), with respect to the application of (i) the pro-
 7 visions of section 8, section 15(c)(3), and section 17 of
 8 this title and the rules and regulations thereunder related
 9 to the treatment of customer funds, securities, or prop-
 10 erty, maintenance of books and records, financial report-
 11 ing, or other financial responsibility rules, involving secu-
 12 rity futures products and (ii) similar provisions of the
 13 Commodity Exchange Act and rules and regulations there-
 14 under involving security futures products.”.

15 (i) OBLIGATION TO ADDRESS DUPLICATIVE REGULA-
 16 TION OF DUAL REGISTRANTS.—Section 6 of the Securi-
 17 ties Exchange Act of 1934 (15 U.S.C 78f) is amended
 18 by inserting after subsection (h), as added by subsection
 19 (a), the following:

20 “(i) Consistent with this title, each national securities
 21 exchange registered pursuant to subsection (a) of this sec-
 22 tion shall issue such rules as are necessary to avoid dupli-
 23 cative or conflicting rules applicable to any broker or deal-
 24 er registered with the Commission pursuant to section
 25 15(b) (except paragraph (11) thereof), that is also reg-

1 istered with the Commodity Futures Trading Commission
 2 pursuant to section 4f(a) of the Commodity Exchange Act
 3 (except paragraph (2) thereof), with respect to the appli-
 4 cation of—

5 (1) rules of such national securities exchange of
 6 the type specified in section 15(c)(3)(B) involving
 7 security futures products; and

8 (2) similar rules of national securities ex-
 9 changes registered pursuant to section 6(g) and na-
 10 tional securities associations registered pursuant to
 11 section 15A(k) involving security futures products.”.

12 (j) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
 13 LATION OF DUAL REGISTRANTS.—Section 15A of the Se-
 14 curities Exchange Act of 1934 (15 U.S.C 78o–3) is
 15 amended by inserting after subsection (k), as added by
 16 section 203, the following:

17 “(l) Consistent with this title, each national securities
 18 association registered pursuant to subsection (a) of this
 19 section shall issue such rules as are necessary to avoid du-
 20 plicative or conflicting rules applicable to any broker or
 21 dealer registered with the Commission pursuant to section
 22 15(b) (except paragraph (11) thereof), that is also reg-
 23 istered with the Commodity Futures Trading Commission
 24 pursuant to section 4f(a) of the Commodity Exchange Act

1 (except paragraph (2) thereof), with respect to the appli-
 2 cation of—

3 “(1) rules of such national securities association
 4 of the type specified in section 15(c)(3)(B) involving
 5 security futures products; and

6 “(2) similar rules of national securities associa-
 7 tions registered pursuant to subsection (k) of this
 8 section and national securities exchanges registered
 9 pursuant to section 6(g) involving security futures
 10 products.”.

11 (k) OBLIGATION TO PUT IN PLACE PROCEDURES
 12 AND ADOPT RULES.—

13 (1) NATIONAL SECURITIES ASSOCIATIONS.—

14 Section 15A of the Securities Exchange Act of 1934
 15 (15 U.S.C. 78o–3) is amended by inserting after
 16 subsection (l), as added by subsection (j) of this sec-
 17 tion, the following new subsection:

18 “(m) PROCEDURES AND RULES FOR SECURITY FU-
 19 TURE PRODUCTS.—A national securities association reg-
 20 istered pursuant to subsection (a) shall, not later than 8
 21 months after the date of enactment of the Commodity Fu-
 22 tures Modernization Act of 2000, implement the proce-
 23 dures specified in section 6(h)(5)(A) of this title and adopt
 24 the rules specified in subparagraphs (B) and (C) of section
 25 6(h)(5) of this title.”.

1 (2) NATIONAL SECURITIES EXCHANGES.—Sec-
2 tion 6 of the Securities Exchange Act of 1934 (15
3 U.S.C. 78o-3) is amended by inserting after sub-
4 section (i), as added by subsection (i) of this section,
5 the following new subsection:

6 “(j) PROCEDURES AND RULES FOR SECURITY FU-
7 TURE PRODUCTS.—A national securities exchange reg-
8 istered pursuant to subsection (a) shall implement the pro-
9 cedures specified in section 6(h)(5)(A) of this title and
10 adopt the rules specified in subparagraphs (B) and (C)
11 of section 6(h)(5) of this title not later than 8 months
12 after the date of receipt of a request from an alternative
13 trading system for such implementation and rules.”.

14 (l) OBLIGATION TO ADDRESS SECURITY FUTURES
15 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section
16 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
17 is amended by adding after subsection (i), as added by
18 subsection (i), the following—

19 “(j)(1) To the extent necessary or appropriate in the
20 public interest, to promote fair competition, and consistent
21 with the protection of investors and the maintenance of
22 fair and orderly markets, the Commission and the Com-
23 modity Futures Trading Commission shall jointly issue
24 such rules, regulations, or orders as are necessary and ap-
25 propriate to permit the offer and sale of a security futures

1 product traded on or subject to the rules of a foreign
2 board of trade to United States persons.

3 “(2) The rules, regulations, or orders adopted under
4 paragraph (1) shall take into account, as appropriate, the
5 nature and size of the markets that the securities under-
6 lying the security futures product reflect.”.

7 **SEC. 207. CLEARANCE AND SETTLEMENT.**

8 Section 17A(b) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78q–1(b)) is amended—

10 (1) in paragraph (3)(A), by inserting “and de-
11 rivative agreements, contracts, and transactions”
12 after “prompt and accurate clearance and settlement
13 of securities transactions”;

14 (2) in paragraph (3)(F), by inserting “and, to
15 the extent applicable, derivative agreements, con-
16 tracts, and transactions” after “designed to promote
17 the prompt and accurate clearance and settlement of
18 securities transactions”; and

19 (3) by inserting after paragraph (7), as added
20 by section 206(d), the following:

21 “(8) A registered clearing agency shall be permitted
22 to provide facilities for the clearance and settlement of any
23 derivative agreements, contracts, or transactions that are
24 excluded from the Commodity Exchange Act, subject to
25 the requirements of this section and to such rules and reg-

ulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”.

SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND DISCLOSURE ISSUES UNDER THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) TREATMENT OF SECURITY FUTURES PRODUCTS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

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

(B) in paragraph (3), by adding at the end the following: “Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.”;

(C) by adding at the end the following:

1 “(16) The terms ‘security future’, ‘narrow-
2 based security index’, and ‘security futures product’
3 have the same meanings as provided in section
4 3(a)(55) of the Securities Exchange Act of 1934.”.

5 (2) EXEMPTION FROM REGISTRATION.—Section
6 3(a) of the Securities Act of 1933 (15 U.S.C.
7 77c(a)) is amended by adding at the end the fol-
8 lowing:

9 “(14) Any security futures product that is—

10 “(A) cleared by a clearing agency reg-
11 istered under section 17A of the Securities Ex-
12 change Act of 1934 or exempt from registration
13 under subsection (b)(7) of such section 17A;
14 and

15 “(B) traded on a national securities ex-
16 change or a national securities association reg-
17 istered pursuant to section 15A(a) of the Secu-
18 rities Exchange Act of 1934.”.

19 (3) CONFORMING AMENDMENT.—Section
20 12(a)(2) of the Securities Act of 1933 (15 U.S.C.
21 77l(a)(2)) is amended by striking “paragraph (2)”
22 and inserting “paragraphs (2) and (14)”.

23 (b) AMENDMENTS TO THE SECURITIES EXCHANGE
24 ACT OF 1934.—

1 (1) EXEMPTION FROM REGISTRATION.—Section
2 12(a) of the Securities Exchange Act of 1934 (15
3 U.S.C. 78l(a)) is amended by adding at the end the
4 following: “The provisions of this subsection shall
5 not apply in respect of a security futures product
6 traded on a national securities exchange.”.

7 (2) EXEMPTIONS FROM REPORTING REQUIRE-
8 MENT.—Section 12(g)(5) of the Securities Exchange
9 Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by
10 adding at the end the following: “For purposes of
11 this subsection, a security futures product shall not
12 be considered a class of equity security of the issuer
13 of the securities underlying the security futures
14 product.”.

15 (3) TRANSACTIONS BY CORPORATE INSIDERS.—
16 Section 16 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78p) is amended by adding at the end
18 the following:

19 “(f) TREATMENT OF TRANSACTIONS IN SECURITY
20 FUTURES PRODUCTS.—The provisions of this section shall
21 apply to ownership of and transactions in security futures
22 products as if they were ownership of and transactions in
23 the underlying equity security. The Commission may
24 adopt such rules and regulations as it deems necessary

1 or appropriate in the public interest to carry out the pur-
2 poses of this section.”.

3 **SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY**
4 **ACT OF 1940 AND THE INVESTMENT ADVIS-**
5 **ERS ACT OF 1940.**

6 (a) DEFINITIONS UNDER THE INVESTMENT COM-
7 PANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT
8 OF 1940.—

9 (1) Section 2(a)(36) of the Investment Com-
10 pany Act of 1940 (15 U.S.C. 80a-2(a)(36)) is
11 amended by inserting “security future,” after
12 “treasury stock,”.

13 (2) Section 202(a)(18) of the Investment Advis-
14 ers Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amend-
15 ed by inserting “security future,” after “treasury
16 stock,”.

17 (3) Section 2(a) of the Investment Company
18 Act of 1940 (15 U.S.C. 80a-2(a)) is amended by
19 adding at the end the following:

20 “(52) The terms ‘security future’ and ‘narrow-
21 based security index’ have the same meanings as
22 provided in section 3(a)(55) of the Securities Ex-
23 change Act of 1934.”.

1 (4) Section 202(a) of the Investment Advisers
2 Act of 1940 (15 U.S.C. 80b–2(a)) is amended by
3 adding at the end the following:

4 “(27) The terms ‘security future’ and ‘narrow-
5 based security index’ have the same meanings as
6 provided in section 3(a)(55) of the Securities Ex-
7 change Act of 1934.”.

8 (b) OTHER PROVISION.—Section 203(b) of the In-
9 vestment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is
10 amended—

11 (1) by striking “or” at the end of paragraph
12 (4);

13 (2) by striking the period at the end of para-
14 graph (5) and inserting “; or”; and

15 (3) by adding at the end the following:

16 “(6) any investment adviser that is registered
17 with the Commodity Futures Trading Commission
18 as a commodity trading advisor whose business does
19 not consist primarily of acting as an investment ad-
20 viser, as defined in section 202(a)(11) of this title,
21 and that does not act as an investment adviser to—

22 “(A) an investment company registered
23 under title I of this Act; or

24 “(B) a company which has elected to be a
25 business development company pursuant to sec-

1 tion 54 of title I of this Act and has not with-
2 drawn its election.”.

3 **SEC. 210. PREEMPTION OF STATE LAWS.**

4 Section 28(a) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78bb(a)) is amended—

6 (1) in the last sentence—

7 (A) by inserting “subject to this title”
8 after “privilege, or other security”; and

9 (B) by striking “any such instrument, if
10 such instrument is traded pursuant to rules and
11 regulations of a self-regulatory organization
12 that are filed with the Commission pursuant to
13 section 19(b) of this Act” and inserting “any
14 such security”; and

15 (2) by adding at the end the following new sen-
16 tence: “No provision of State law regarding the
17 offer, sale, or distribution of securities shall apply to
18 any transaction in a security futures product, except
19 that this sentence shall not be construed as limiting
20 any State antifraud law of general applicability.”.

**Subtitle B—Amendments to the
Commodity Exchange Act**

SEC. 221. JURISDICTION OF SECURITIES AND EXCHANGE

COMMISSION; OTHER PROVISIONS.

**(a) JURISDICTION OF SECURITIES AND EXCHANGE
COMMISSION.—**

(1) Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2a) (as redesignated by section 124(a)(2)(C)) is amended—

(A) in clause (ii)—

(i) by inserting “or register a derivatives transaction execution facility that trades or executes,” after “contract market in,”;

(ii) by inserting after “contracts) for future delivery” the following: “, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery,”;

(iii) by striking “making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made

1 meets” and inserting “or the derivatives
2 transaction execution facility, and the ap-
3 plicable contract, meet”;

4 (iv) by striking subclause (III) of
5 clause (ii) and inserting the following:

6 “(III) Such group or index of securities
7 shall not constitute a narrow-based security
8 index.”;

9 (B) by striking clause (iii);

10 (C) by striking clause (iv) and inserting
11 the following:

12 “(iii) If, in its discretion, the Commission deter-
13 mines that a stock index futures contract, notwith-
14 standing its conformance with the requirements in
15 clause (ii) of this subparagraph, can reasonably be
16 used as a surrogate for trading a security (including
17 a security futures product), it may, by order, require
18 such contract and any option thereon be traded and
19 regulated as security futures products as defined in
20 section 3(a)(56) of the Securities Exchange Act of
21 1934 and section 1a(32) of this Act subject to all
22 rules and regulations applicable to security futures
23 products under this Act and the securities laws as
24 defined in section 3(a)(47) of the Securities Ex-
25 change Act of 1934.”; and

1 (D) by redesignating clause (v) as clause
2 (iv).

3 (2) Section 2(a)(1) of the Commodity Exchange
4 Act (7 U.S.C. 2, 2a, 4) is amended by adding at the
5 end the following:

6 “(D)(i) Notwithstanding any other provision of this
7 Act, the Securities and Exchange Commission shall have
8 jurisdiction and authority over security futures as defined
9 in section 3(a)(55) of the Securities Exchange Act of
10 1934, section 2(a)(16) of the Securities Act of 1933, sec-
11 tion 2(a)(52) of the Investment Company Act of 1940,
12 and section 202(a)(27) of the Investment Advisers Act of
13 1940, options on security futures, and persons effecting
14 transactions in security futures and options thereon, and
15 this Act shall apply to and the Commission shall have ju-
16 risdiction with respect to accounts, agreements (including
17 any transaction which is of the character of, or is com-
18 monly known to the trade as, an ‘option’, ‘privilege’, ‘in-
19 demnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or
20 ‘decline guaranty’) and transactions involving, and may
21 designate a board of trade as a contract market in, or
22 register a derivatives transaction execution facility that
23 trades or executes, a security futures product as defined
24 in section 1a(32) of this Act: *Provided, however,* That, ex-
25 cept as provided in clause (vi) of this subparagraph, no

1 board of trade shall be designated as a contract market
2 with respect to, or registered as a derivatives transaction
3 execution facility for, any such contracts of sale for future
4 delivery unless the board of trade and the applicable con-
5 tract meet the following criteria:

6 “(I) Except as otherwise provided in a rule,
7 regulation, or order issued pursuant to clause (v) of
8 this subparagraph, any security underlying the secu-
9 rity future, including each component security of a
10 narrow-based security index, is registered pursuant
11 to section 12 of the Securities Exchange Act of
12 1934.

13 “(II) If the security futures product is not cash
14 settled, the board of trade on which the security fu-
15 tures product is traded has arrangements in place
16 with a clearing agency registered pursuant to section
17 17A of the Securities Exchange Act of 1934 for the
18 payment and delivery of the securities underlying the
19 security futures product.

20 “(III) Except as otherwise provided in a rule,
21 regulation, or order issued pursuant to clause (v) of
22 this subparagraph, the security future is based upon
23 common stock and such other equity securities as
24 the Commission and the Securities and Exchange
25 Commission jointly determine appropriate.

1 “(IV) The security futures product is cleared by
2 a clearing agency that has in place provisions for
3 linked and coordinated clearing with other clearing
4 agencies that clear security futures products, which
5 permits the security futures product to be purchased
6 on a designated contract market, registered deriva-
7 tives transaction execution facility, national securi-
8 ties exchange registered under section 6(a) of the
9 Securities Exchange Act of 1934, or national securi-
10 ties association registered pursuant to section
11 15A(a) of the Securities Exchange Act of 1934 and
12 offset on another designated contract market, reg-
13 istered derivatives transaction execution facility, na-
14 tional securities exchange registered under section
15 6(a) of the Securities Exchange Act of 1934, or na-
16 tional securities association registered pursuant to
17 section 15A(a) of the Securities Exchange Act of
18 1934.

19 “(V) Only futures commission merchants, intro-
20 ducing brokers, commodity trading advisors, com-
21 modity pool operators or associated persons subject
22 to suitability rules comparable to those of a national
23 securities association registered pursuant to section
24 15A(a) of the Securities Exchange Act of 1934 so-
25 licit, accept any order for, or otherwise deal in any

1 transaction in or in connection with the security fu-
2 tures product.

3 “(VI) The security futures product is subject to
4 a prohibition against dual trading in section 4j of
5 this Act and the rules and regulations thereunder or
6 the provisions of section 11(a) of the Securities Ex-
7 change Act of 1934 and the rules and regulations
8 thereunder, except to the extent otherwise permitted
9 under the Securities Exchange Act of 1934 and the
10 rules and regulations thereunder.

11 “(VII) Trading in the security futures product
12 is not readily susceptible to manipulation of the
13 price of such security futures product, nor to caus-
14 ing or being used in the manipulation of the price
15 of any underlying security, option on such security,
16 or option on a group or index including such securi-
17 ties;

18 “(VIII) The board of trade on which the secu-
19 rity futures product is traded has procedures in
20 place for coordinated surveillance among such board
21 of trade, any market on which any security under-
22 lying the security futures product is traded, and
23 other markets on which any related security is trad-
24 ed to detect manipulation and insider trading, except
25 that, if the board of trade is an alternative trading

1 system, a national securities association registered
2 pursuant to section 15A(a) of the Securities Ex-
3 change Act of 1934 or national securities exchange
4 registered pursuant to section 6(a) of the Securities
5 Exchange Act of 1934 of which such alternative
6 trading system is a member has in place such proce-
7 dures.

8 “(IX) The board of trade on which the security
9 futures product is traded has in place audit trails
10 necessary or appropriate to facilitate the coordinated
11 surveillance required in subclause (VIII), except
12 that, if the board of trade is an alternative trading
13 system, a national securities association registered
14 pursuant to section 15A(a) of the Securities Ex-
15 change Act of 1934 or national securities exchange
16 registered pursuant to section 6(a) of the Securities
17 Exchange Act of 1934 of which such alternative
18 trading system is a member has rules to require
19 such audit trails.

20 “(X) The board of trade on which the security
21 futures product is traded has in place procedures to
22 coordinate trading halts between such board of trade
23 and markets on which any security underlying the
24 security futures product is traded and other markets
25 on which any related security is traded, except that,

1 if the board of trade is an alternative trading sys-
2 tem, a national securities association registered pur-
3 suant to section 15A(a) of the Securities Exchange
4 Act of 1934 or national securities exchange reg-
5 istered pursuant to section 6(a) of the Securities Ex-
6 change Act of 1934 of which such alternative trad-
7 ing system is a member has rules to require such co-
8 ordinated trading halts.

9 “(XI) The margin requirements for a security
10 futures product comply with the regulations pre-
11 scribed pursuant to section 7(c)(2)(B) of the Securi-
12 ties Exchange Act of 1934, except that nothing in
13 this subclause shall be construed to prevent a board
14 of trade from requiring higher margin levels for a
15 security futures product when it deems such action
16 to be necessary or appropriate.

17 “(ii) It shall be unlawful for any person to offer, to
18 enter into, to execute, to confirm the execution of, or to
19 conduct any office or business anywhere in the United
20 States, its territories or possessions, for the purpose of
21 soliciting, or accepting any order for, or otherwise dealing
22 in, any transaction in, or in connection with, a security
23 futures product unless—

24 “(I) the transaction is conducted on or subject
25 to the rules of a board of trade that—

1 “(aa) has been designated by the Commis-
2 sion as a contract market in such security fu-
3 tures product; or

4 “(bb) is a registered derivatives trans-
5 action execution facility for the security futures
6 product that has provided a certification with
7 respect to the security futures product pursuant
8 to clause (vii);

9 “(II) the contract is executed or consummated
10 by, through, or with a member of the contract mar-
11 ket or registered derivatives transaction execution
12 facility; and

13 “(III) the security futures product is evidenced
14 by a record in writing which shows the date, the
15 parties to such security futures product and their
16 addresses, the property covered, and its price, and
17 each contract market member or registered deriva-
18 tives transaction execution facility member shall
19 keep the record for a period of 3 years from the date
20 of the transaction, or for a longer period if the Com-
21 mission so directs, which record shall at all times be
22 open to the inspection of any duly authorized rep-
23 resentative of the Commission.

24 “(iii)(I) Except as provided in subclause (II) but not-
25 withstanding any other provision of this Act, no person

1 shall offer to enter into, enter into, or confirm the execu-
2 tion of any option on a security future.

3 “(II) After 3 years after the date of the enactment
4 of the Commodity Futures Modernization Act of 2000, the
5 Commission and the Securities and Exchange Commission
6 may by order jointly determine to permit trading of op-
7 tions on any security future authorized to be traded under
8 the provisions of this Act and the Securities Exchange Act
9 of 1934.

10 “(iv)(I) All relevant records of a futures commission
11 merchant or introducing broker registered pursuant to
12 section 4f(a)(2), floor broker or floor trader exempt from
13 registration pursuant to section 4f(a)(3), associated per-
14 son exempt from registration pursuant to section 4k(6),
15 or board of trade designated as a contract market in a
16 security futures product pursuant to section 5f shall be
17 subject to such reasonable periodic or special examinations
18 by representatives of the Commission as the Commission
19 deems necessary or appropriate in the public interest, for
20 the protection of investors, or otherwise in furtherance of
21 the purposes of this Act, and the Commission, before con-
22 ducting any such examination, shall give notice to the Se-
23 curities and Exchange Commission of the proposed exam-
24 ination and consult with the Securities and Exchange
25 Commission concerning the feasibility and desirability of

1 coordinating the examination with examinations conducted
2 by the Securities and Exchange Commission in order to
3 avoid unnecessary regulatory duplication or undue regu-
4 latory burdens for the registrant or board of trade.

5 “(II) The Commission shall notify the Securities and
6 Exchange Commission of any examination conducted of
7 any futures commission merchant or introducing broker
8 registered pursuant to section 4f(a)(2), floor broker or
9 floor trader exempt from registration pursuant to section
10 4f(a)(3), associated person exempt from registration pur-
11 suant to section 4k(6), or board of trade designated as
12 a contract market in a security futures product pursuant
13 to section 5f, and, upon request, furnish to the Securities
14 and Exchange Commission any examination report and
15 data supplied to the Commission in connection with the
16 examination.

17 “(III) Before conducting an examination under sub-
18 clause (I), the Commission shall use the reports of exami-
19 nations, unless the information sought is unavailable in
20 the reports, of any futures commission merchant or intro-
21 ducing broker registered pursuant to section 4f(a)(2),
22 floor broker or floor trader exempt from registration pur-
23 suant to section 4f(a)(3), associated person exempt from
24 registration pursuant to section 4k(6), or board of trade
25 designated as a contract market in a security futures

1 product pursuant to section 5f that is made by the Securi-
2 ties and Exchange Commission, a national securities asso-
3 ciation registered pursuant to section 15A(a) of the Secu-
4 rities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a
5 national securities exchange registered pursuant to section
6 6(a) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78f(a)).

8 “(IV) Any records required under this subsection for
9 a futures commission merchant or introducing broker reg-
10 istered pursuant to section 4f(a)(2), floor broker or floor
11 trader exempt from registration pursuant to section
12 4f(a)(3), associated person exempt from registration pur-
13 suant to section 4k(6), or board of trade designated as
14 a contract market in a security futures product pursuant
15 to section 5f, shall be limited to records with respect to
16 accounts, agreements, and transactions involving security
17 futures products.

18 “(v)(I) The Commission and the Securities and Ex-
19 change Commission, by rule, regulation, or order, may
20 jointly modify the criteria specified in subclause (I) or
21 (III) of clause (i), including the trading of security futures
22 based on securities other than equity securities, to the ex-
23 tent such modification fosters the development of fair and
24 orderly markets in security futures products, is necessary

1 or appropriate in the public interest, and is consistent with
2 the protection of investors.

3 “(II) The Commission and the Securities and Ex-
4 change Commission, by order, may jointly exempt any per-
5 son from compliance with the criterion specified in clause
6 (i)(IV) to the extent such exemption fosters the develop-
7 ment of fair and orderly markets in security futures prod-
8 ucts, is necessary or appropriate in the public interest, and
9 is consistent with the protection of investors.

10 “(vi)(I) Notwithstanding clauses (i) and (vii), until
11 the compliance date, a board of trade shall not be required
12 to meet the criterion specified in clause (i)(IV).

13 “(II) The Commission and the Securities and Ex-
14 change Commission shall jointly publish in the Federal
15 Register a notice of the compliance date no later than 165
16 days before the compliance date.

17 “(III) For purposes of this clause, the term ‘compli-
18 ance date’ means the later of—

19 “(aa) 180 days after the end of the first full
20 calendar month period in which the average aggre-
21 gate comparable share volume for all security fu-
22 tures products based on single equity securities trad-
23 ed on all designated contract markets and registered
24 derivatives transaction execution facilities equals or
25 exceeds 10 percent of the average aggregate com-

1 parable share volume of options on single equity se-
 2 curities traded on all national securities exchanges
 3 registered pursuant to section 6(a) of the Securities
 4 Exchange Act of 1934 and any national securities
 5 associations registered pursuant to section 15A(a) of
 6 such Act; or

7 “(bb) 2 years after the date on which trading
 8 in any security futures product commences under
 9 this Act.

10 “(vii) It shall be unlawful for a board of trade to
 11 trade or execute a security futures product unless the
 12 board of trade has provided the Commission with a certifi-
 13 cation that the specific security futures product and the
 14 board of trade, as applicable, meet the criteria specified
 15 in subclauses (I) through (XI) of clause (i), except as oth-
 16 erwise provided in clause (vi).”.

17 (b) MARGIN ON SECURITY FUTURES.—Section
 18 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C.
 19 2a(vi)) (as redesignated by section 124) is amended—

20 (1) by redesignating subclause (V) as subclause
 21 (VI); and

22 (2) by striking “(vi)(I)” and all that follows
 23 through subclause (IV) and inserting the following:

24 “(v)(I) Notwithstanding any other provision of
 25 this Act, any contract market in a stock index fu-

1 tures contract (or option thereon) other than a secu-
2 rity futures product, or any derivatives transaction
3 execution facility on which such contract or option
4 is traded, shall file with the Board of Governors of
5 the Federal Reserve System any rule establishing or
6 changing the levels of margin (initial and mainte-
7 nance) for such stock index futures contract (or op-
8 tion thereon) other than security futures products.

9 “(II) The Board may at any time request any
10 contract market to set the margin for any stock
11 index futures contract (or option thereon), other
12 than for any security futures product, at such levels
13 as the Board in its judgment determines are appro-
14 priate to preserve the financial integrity of the con-
15 tract market or its clearing system or to prevent sys-
16 temic risk. If the contract market or derivatives
17 transaction execution facility fails to do so within
18 the time specified by the Board in its request, the
19 Board may direct the contract market to alter or
20 supplement the rules of the contract market as spec-
21 ified in the request.

22 “(III) Subject to such conditions as the Board
23 may determine, the Board may delegate any or all
24 of its authority, relating to margin for any stock
25 index futures contract (or option thereon), other

1 than security futures products, under this clause to
2 the Commission.

3 “(IV) It shall be unlawful for any futures com-
4 mission merchant to, directly or indirectly, extend or
5 maintain credit to or for, or collect margin from any
6 customer on any security futures product unless
7 such activities comply with the regulations pre-
8 scribed pursuant to section 7(c)(2)(B) of the Securi-
9 ties Exchange Act of 1934.

10 “(V) Nothing in this clause shall supersede or
11 limit the authority granted to the Commission in
12 section 8a(9) to direct a contract market or reg-
13 istered derivatives transaction execution facility, on
14 finding an emergency to exist, to raise temporary
15 margin levels on any futures contract, or option on
16 the contract covered by this clause, or on any secu-
17 rity futures product.”.

18 (c) DUAL TRADING.—Section 4j of the Commodity
19 Exchange Act (7 U.S.C. 6j) is amended to read as follows:

20 **“SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY**
21 **FUTURES PRODUCTS ON DESIGNATED CON-**
22 **TRACT MARKETS AND REGISTERED DERIVA-**
23 **TIVES TRANSACTION EXECUTION FACILITIES.**

24 “(a) The Commission shall issue regulations to pro-
25 hibit the privilege of dual trading in security futures prod-

1 ucts on each contract market and registered derivatives
2 transaction execution facility. The regulations issued by
3 the Commission under this section—

4 “(1) shall provide that the prohibition of dual
5 trading thereunder shall take effect upon issuance of
6 the regulations; and

7 “(2) shall provide exceptions, as the Commis-
8 sion determines appropriate, to ensure fairness and
9 orderly trading in security futures product markets,
10 including—

11 “(A) exceptions for spread transactions
12 and the correction of trading errors;

13 “(B) allowance for a customer to designate
14 in writing not less than once annually a named
15 floor broker to execute orders for such cus-
16 tomer, notwithstanding the regulations to pro-
17 hibit the privilege of dual trading required
18 under this section; and

19 “(C) other measures reasonably designed
20 to accommodate unique or special characteris-
21 tics of individual boards of trade or contract
22 markets, to address emergency or unusual mar-
23 ket conditions, or otherwise to further the pub-
24 lic interest consistent with the purposes of this
25 section.

1 “(b) As used in this section, the term ‘dual trading’
2 means the execution of customer orders by a floor broker
3 during the same trading session in which the floor broker
4 executes any trade in the same contract market or reg-
5 istered derivatives transaction execution facility for—

6 “(1) the account of such floor broker;

7 “(2) an account for which such floor broker has
8 trading discretion; or

9 “(3) an account controlled by a person with
10 whom such floor broker has a relationship through
11 membership in a broker association.

12 “(c) As used in this section, the term ‘broker associa-
13 tion’ shall include two or more contract market members
14 or registered derivatives transaction execution facility
15 members with floor trading privileges of whom at least one
16 is acting as a floor broker, who—

17 “(1) engage in floor brokerage activity on be-
18 half of the same employer,

19 “(2) have an employer and employee relation-
20 ship which relates to floor brokerage activity,

21 “(3) share profits and losses associated with
22 their brokerage or trading activity, or

23 “(4) regularly share a deck of orders.”.

24 (d) EXEMPTION FROM REGISTRATION FOR INVEST-
25 MENT ADVISERS.—Section 4m of the Commodity Ex-

1 change Act (7 U.S.C. 6m) is amended by adding at the
2 end the following:

3 “(3) Subsection (1) of this section shall not apply to
4 any commodity trading advisor that is registered with the
5 Securities and Exchange Commission as an investment ad-
6 viser whose business does not consist primarily of acting
7 as a commodity trading advisor, as defined in section
8 1a(6), and that does not act as a commodity trading advi-
9 sor to any investment trust, syndicate, or similar form of
10 enterprise that is engaged primarily in trading in any com-
11 modity for future delivery on or subject to the rules of
12 any contract market or registered derivatives transaction
13 execution facility.”.

14 (e) EXEMPTION FROM INVESTIGATIONS OF MARKETS
15 IN UNDERLYING SECURITIES.—Section 16 of the Com-
16 modity Exchange Act (7 U.S.C. 20) is amended by adding
17 at the end the following:

18 “(e) This section shall not apply to investigations in-
19 volving any security underlying a security futures prod-
20 uct.”.

21 (f) RULEMAKING AUTHORITY TO ADDRESS DUPLI-
22 CATIVE REGULATION OF DUAL REGISTRANTS.—Section
23 4d of the Commodity Exchange Act (7 U.S.C. 6d) is
24 amended—

1 (1) by inserting “(a)” before the first undesig-
2 nated paragraph;

3 (2) by inserting “(b)” before the second undes-
4 ignated paragraph; and

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

6 “(c) Consistent with this Act, the Commission, in
7 consultation with the Securities and Exchange Commis-
8 sion, shall issue such rules, regulations, or orders as are
9 necessary to avoid duplicative or conflicting regulations
10 applicable to any futures commission merchant registered
11 with the Commission pursuant to section 4f(a) (except
12 paragraph (2) thereof), that is also registered with the Se-
13 curities and Exchange Commission pursuant to section
14 15(b) of the Securities Exchange Act (except paragraph
15 (11) thereof), involving the application of—

16 “(1) section 8, section 15(c)(3), and section 17
17 of the Securities Exchange Act of 1934 and the
18 rules and regulations thereunder related to the treat-
19 ment of customer funds, securities, or property,
20 maintenance of books and records, financial report-
21 ing or other financial responsibility rules (as defined
22 in section 3(a)(40) of the Securities Exchange Act
23 of 1934), involving security futures products; and

1 “(2) similar provisions of this Act and the rules
2 and regulations thereunder involving security futures
3 products.”.

4 (g) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
5 LATION OF DUAL REGISTRANTS.—Section 17 of the Com-
6 modity Exchange Act (7 U.S.C. 21) is amended by adding
7 at the end the following:

8 “(r) Consistent with this Act, each futures associa-
9 tion registered under this section shall issue such rules
10 as are necessary to avoid duplicative or conflicting rules
11 applicable to any futures commission merchant registered
12 with the Commission pursuant to section 4f(a) of this Act
13 (except paragraph (2) thereof), that is also registered with
14 the Securities and Exchange Commission pursuant to sec-
15 tion 15(b) of the Securities and Exchange Act of 1934
16 (except paragraph (11) thereof), with respect to the appli-
17 cation of—

18 “(1) rules of such futures association of the
19 type specified in section 4d(3) of this Act involving
20 security futures products; and

21 “(2) similar rules of national securities associa-
22 tions registered pursuant to section 15A(a) of the
23 Securities and Exchange Act of 1934 involving secu-
24 rity futures products.”.

1 (h) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
2 LATION OF DUAL REGISTRANTS.—Section 5c of the Com-
3modity Exchange Act (as added by section 114) is amend-
4ed by adding at the end the following new subsection:

5 “(f) Consistent with this Act, each designated con-
6tract market and registered derivatives transaction execu-
7tion facility shall issue such rules as are necessary to avoid
8duplicative or conflicting rules applicable to any futures
9commission merchant registered with the Commission pur-
10suant to section 4f(a) of this Act (except paragraph (2)
11thereof), that is also registered with the Securities and Ex-
12change Commission pursuant to section 15(b) of the Secu-
13rities Exchange Act of 1934 (except paragraph (11) there-
14of) with respect to the application of—

15 “(1) rules of such designated contract market
16or registered derivatives transaction execution facil-
17ity of the type specified in section 4d(3) of this Act
18involving security futures products; and

19 “(2) similar rules of national securities associa-
20tions registered pursuant to section 15A(a) of the
21Securities Exchange Act of 1934 and national secu-
22rities exchanges registered pursuant to section 6(g)
23of such Act involving security futures products.”.

24 (i) OBLIGATION TO ADDRESS SECURITY FUTURES
25 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section

1 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a,
2 and 4)) is amended by adding at the end the following:

3 “(E)(i) To the extent necessary or appropriate in the
4 public interest, to promote fair competition, and consistent
5 with the protection of investors and the maintenance of
6 fair and orderly markets, the Commission and the Securi-
7 ties and Exchange Commission shall jointly issue such
8 rules, regulations, or orders as are necessary and appro-
9 priate to permit the offer and sale of a security futures
10 product traded on or subject to the rules of a foreign
11 board of trade to United States persons.

12 “(ii) The rules, regulations, or orders adopted under
13 clause (i) shall take into account, as appropriate, the na-
14 ture and size of the markets that the securities underlying
15 the security futures product reflects.”.

16 (j) SECURITY FUTURES PRODUCTS TRADED ON FOR-
17 EIGN BOARDS OF TRADE.—Section 2(a)(1) of the Com-
18 modity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended
19 by adding at the end the following:

20 “(F)(i) Nothing in this Act is intended to prohibit
21 a futures commission merchant from carrying security fu-
22 tures products traded on or subject to the rules of a for-
23 eign board of trade in the accounts of persons located out-
24 side of the United States.

1 “(ii) Nothing in this Act is intended to prohibit any
 2 person located in the United States from purchasing or
 3 carrying securities futures products traded on or subject
 4 to the rules of a foreign board of trade, exchange, or mar-
 5 ket to the same extent such person may be authorized to
 6 purchase or carry other securities traded on a foreign
 7 board of trade, exchange, or market.”.

8 **SEC. 222. APPLICATION OF THE COMMODITY EXCHANGE**
 9 **ACT TO NATIONAL SECURITIES EXCHANGES**
 10 **AND NATIONAL SECURITIES ASSOCIATIONS**
 11 **THAT TRADE SECURITY FUTURES.**

12 (a) NOTICE DESIGNATION OF NATIONAL SECURITIES
 13 EXCHANGES AND NATIONAL SECURITIES ASSOCIA-
 14 TIONS.—The Commodity Exchange Act is amended by in-
 15 serting after section 5e (7 U.S.C. 7b), as redesignated by
 16 section 111(1), the following:

17 **“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND**
 18 **ASSOCIATIONS AS CONTRACT MARKETS.**

19 “(a) Any board of trade that is registered with the
 20 Securities and Exchange Commission as a national securi-
 21 ties exchange, is a national securities association reg-
 22 istered pursuant to section 15A(a) of the Securities Ex-
 23 change Act of 1934, or is an alternative trading system
 24 shall be a designated contract market in security futures
 25 products if—

1 “(1) such national securities exchange, national
2 securities association, or alternative trading system
3 lists or trades no other contracts of sale for future
4 delivery, except for security futures products;

5 “(2) such national securities exchange, national
6 securities association, or alternative trading system
7 files written notice with the Commission in such
8 form as the Commission, by rule, may prescribe con-
9 taining such information as the Commission, by rule,
10 may prescribe as necessary or appropriate in the
11 public interest or for the protection of customers;
12 and

13 “(3) the registration of such national securities
14 exchange, national securities association, or alter-
15 native trading system is not suspended pursuant to
16 an order by the Securities and Exchange Commis-
17 sion.

18 Such designation shall be effective contemporaneously
19 with the submission of notice, in written or electronic
20 form, to the Commission.

21 “(b)(1) A national securities exchange, national secu-
22 rities association, or alternative trading system that is des-
23 ignated as a contract market pursuant to section 5f shall
24 be exempt from the following provisions of this Act and
25 the rules thereunder:

1 “(A) Subsections (c), (e), and (g) of section 4c.

2 “(B) Section 4j.

3 “(C) Section 5.

4 “(D) Section 5c.

5 “(E) Section 6a.

6 “(F) Section 8(d).

7 “(G) Section 9(f).

8 “(H) Section 16.

9 “(2) An alternative trading system that is a des-
10 ignated contract market under this section shall be re-
11 quired to be a member of a futures association registered
12 under section 17 and shall be exempt from any provision
13 of this Act that would require such alternative trading sys-
14 tem to—

15 “(A) set rules governing the conduct of sub-
16 scribers other than the conduct of such subscribers’
17 trading on such alternative trading system; or

18 “(B) discipline subscribers other than by exclu-
19 sion from trading.

20 “(3) To the extent that an alternative trading system
21 is exempt from any provision of this Act pursuant to para-
22 graph (2) of this subsection, the futures association reg-
23 istered under section 17 of which the alternative trading
24 system is a member shall set rules governing the conduct

1 of subscribers to the alternative trading system and dis-
2 cipline the subscribers.

3 “(4)(A) Except as provided in subparagraph (B), but
4 notwithstanding any other provision of this Act, the Com-
5 mission, by rule, regulation, or order, may conditionally
6 or unconditionally exempt any designated contract market
7 in security futures subject to the designation requirement
8 of this section from any provision of this Act or of any
9 rule or regulation thereunder, to the extent such exemp-
10 tion is necessary or appropriate in the public interest and
11 is consistent with the protection of investors.

12 “(B) The Commission shall, by rule or regulation, de-
13 termine the procedures under which an exemptive order
14 under this section is granted and may, in its sole discre-
15 tion, decline to entertain any application for an order of
16 exemption under this section.

17 “(C) An alternative trading system shall not be
18 deemed to be an exchange for any purpose as a result of
19 the designation of such alternative trading system as a
20 contract market under this section.”.

21 (b) NOTICE REGISTRATION OF CERTAIN SECURITIES
22 BROKER-DEALERS; EXEMPTION FROM REGISTRATION
23 FOR CERTAIN SECURITIES BROKER-DEALERS.—Section
24 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a))
25 is amended—

1 (1) by inserting “(1)” after “(a)”; and

2 (2) by adding at the end the following:

3 “(2) Notwithstanding paragraph (1), and except as
4 provided in paragraph (3), any broker or dealer that is
5 registered with the Securities and Exchange Commission
6 shall be registered as a futures commission merchant or
7 introducing broker, as applicable, if—

8 “(A) the broker or dealer limits its solicitation
9 of orders, acceptance of orders, or execution of or-
10 ders, or placing of orders on behalf of others involv-
11 ing any contracts of sale of any commodity for fu-
12 ture delivery, on or subject to the rules of any con-
13 tract market or registered derivatives transaction
14 execution facility to security futures products;

15 “(B) the broker or dealer files written notice
16 with the Commission in such form as the Commis-
17 sion, by rule, may prescribe containing such infor-
18 mation as the Commission, by rule, may prescribe as
19 necessary or appropriate in the public interest or for
20 the protection of investors;

21 “(C) the registration of the broker or dealer is
22 not suspended pursuant to an order of the Securities
23 and Exchange Commission; and

24 “(D) the broker or dealer is a member of a na-
25 tional securities association registered pursuant to

1 section 15A(a) of the Securities Exchange Act of
2 1934.

3 The registration shall be effective contemporaneously with
4 the submission of notice, in written or electronic form, to
5 the Commission.

6 “(3) A floor broker or floor trader shall be exempt
7 from the registration requirements of section 4e and para-
8 graph (1) of this subsection if—

9 “(A) the floor broker or floor trader is a broker
10 or dealer registered with the Securities and Ex-
11 change Commission;

12 “(B) the floor broker or floor trader limits its
13 solicitation of orders, acceptance of orders, or execu-
14 tion of orders, or placing of orders on behalf of oth-
15 ers involving any contracts of sale of any commodity
16 for future delivery, on or subject to the rules of any
17 contract market to security futures products; and

18 “(C) the registration of the floor broker or floor
19 trader is not suspended pursuant to an order of the
20 Securities and Exchange Commission.”.

21 (c) EXEMPTION FOR SECURITIES BROKER-DEALERS
22 FROM CERTAIN PROVISIONS OF THE COMMODITY EX-
23 CHANGE ACT.—Section 4f(a) of the Commodity Exchange
24 Act (7 U.S.C. 6f(a)) is amended by inserting after para-
25 graph (3), as added by subsection (b), the following:

1 “(4)(A) A broker or dealer that is registered as a fu-
2 tures commission merchant or introducing broker pursu-
3 ant to paragraph (2), or that is a floor broker or floor
4 trader exempt from registration pursuant to paragraph
5 (3), shall be exempt from the following provisions of this
6 Act and the rules thereunder:

7 “(i) Subsections (b), (d), (e), and (g) of section
8 4c.

9 “(ii) Sections 4d, 4e, and 4h.

10 “(iii) Subsections (b) and (c) of this section.

11 “(iv) Section 4j.

12 “(v) Section 4k(1).

13 “(vi) Section 4p.

14 “(vii) Section 6d.

15 “(viii) Subsections (d) and (g) of section 8.

16 “(ix) Section 16.

17 “(B)(i) Except as provided in clause (ii) of this sub-
18 paragraph, but notwithstanding any other provision of this
19 Act, the Commission, by rule, regulation, or order, may
20 conditionally or unconditionally exempt any broker or
21 dealer subject to the registration requirement of para-
22 graph (2), or any broker or dealer exempt from registra-
23 tion pursuant to paragraph (3), from any provision of this
24 Act or of any rule or regulation thereunder, to the extent

1 the exemption is necessary or appropriate in the public
2 interest and is consistent with the protection of investors.

3 “(ii) The Commission shall, by rule or regulation, de-
4 termine the procedures under which an exemptive order
5 under this section shall be granted and may, in its sole
6 discretion, decline to entertain any application for an
7 order of exemption under this section.

8 “(C)(i) A broker or dealer that is registered as a fu-
9 tures commission merchant or introducing broker pursu-
10 ant to paragraph (2) or an associated person thereof, or
11 that is a floor broker or floor trader exempt from registra-
12 tion pursuant to paragraph (3), shall not be required to
13 become a member of any futures association registered
14 under section 17.

15 “(ii) No futures association registered under section
16 17 shall limit its members from carrying an account, ac-
17 cepting an order, or transacting business with a broker
18 or dealer that is registered as a futures commission mer-
19 chant or introducing broker pursuant to paragraph (2) or
20 an associated person thereof, or that is a floor broker or
21 floor trader exempt from registration pursuant to para-
22 graph (3).”.

23 (d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SE-
24 CURITIES BROKER-DEALERS.—Section 4k of the Com-
25 modity Exchange Act (7 U.S.C. 6k), is amended by insert-

1 ing after paragraph (4), as added by subsection (c), the
2 following:

3 “(5) Any associated person of a broker or dealer that
4 is registered with the Securities and Exchange Commis-
5 sion, and who limits its solicitation of orders, acceptance
6 of orders, or execution of orders, or placing of orders on
7 behalf of others involving any contracts of sale of any com-
8 modity for future delivery or any option on such a con-
9 tract, on or subject to the rules of any contract market
10 or registered derivatives transaction execution facility to
11 security futures products, shall be exempt from the fol-
12 lowing provisions of this Act and the rules thereunder:

13 “(A) Subsections (b), (d), (e), and (g) of section
14 4c.

15 “(B) Sections 4d, 4e, and 4h.

16 “(C) Subsections (b) and (c) of section 4f.

17 “(D) Section 4j.

18 “(E) Paragraph (1) of this section.

19 “(F) Section 4p.

20 “(G) Section 6d.

21 “(H) Subsections (d) and (g) of section 8.

22 “(I) Section 16.”.

1 **SEC. 223. NOTIFICATION OF INVESTIGATIONS AND EN-**
2 **FORCEMENT ACTIONS.**

3 (a) Section 8(a) of the Commodity Exchange Act (7
4 U.S.C. 12(a)) is amended by adding at the end the fol-
5 lowing:

6 “(3) The Commission shall provide the Securities and
7 Exchange Commission with notice of the commencement
8 of any proceeding and a copy of any order entered by the
9 Commission against any futures commission merchant or
10 introducing broker registered pursuant to section 4f(a)(2),
11 any floor broker or floor trader exempt from registration
12 pursuant to section 4f(a)(3), any associated person exempt
13 from registration pursuant to section 4k(6), or any board
14 of trade designated as a contract market pursuant to sec-
15 tion 5f.”.

16 (b) Section 6 of the Commodity Exchange Act (7
17 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at
18 the end the following:

19 “(g) The Commission shall provide the Securities and
20 Exchange Commission with notice of the commencement
21 of any proceeding and a copy of any order entered by the
22 Commission pursuant to subsections (c) and (d) of this
23 section against any futures commission merchant or intro-
24 ducing broker registered pursuant to section 4f(a)(2), any
25 floor broker or floor trader exempt from registration pur-
26 suant to section 4f(a)(3), any associated person exempt

1 from registration pursuant to section 4k(6), or any board
2 of trade designated as a contract market pursuant to sec-
3 tion 5f.”.

4 (c) Section 6c of the Commodity Exchange Act (7
5 U.S.C. 13a–1) is amended by adding at the end the fol-
6 lowing:

7 “(h) The Commission shall provide the Securities and
8 Exchange Commission with notice of the commencement
9 of any proceeding and a copy of any order entered by the
10 Commission against any futures commission merchant or
11 introducing broker registered pursuant to section 4f(a)(2),
12 any floor broker or floor trader exempt from registration
13 pursuant to section 4f(a)(3), any associated person exempt
14 from registration pursuant to section 4k(6), or any board
15 of trade designated as a contract market pursuant to sec-
16 tion 5f.”.

Passed the House of Representatives October 19,
2000.

Attest:

Clerk.

106TH CONGRESS
2D SESSION

H. R. 4541

AN ACT

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