

106TH CONGRESS  
2D SESSION

# H. R. 4541

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2000

Mr. EWING introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Banking and Financial Services, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
- Sec. 5. Legal certainty for excluded derivative transactions.
- Sec. 6. Excluded electronic trading facilities.
- Sec. 7. Hybrid instruments.
- Sec. 8. Futures on securities.
- Sec. 9. Transactions in exempt commodities.
- Sec. 10. Protection of the public interest.
- Sec. 11. Prohibited transactions.
- Sec. 12. Designation of boards of trade as contract markets.
- Sec. 13. Derivatives transaction execution facilities.
- Sec. 14. Derivatives clearing organizations.
- Sec. 15. Common provisions applicable to registered entities.
- Sec. 16. Exempt boards of trade.
- Sec. 17. Suspension or revocation of designation as contract market.
- Sec. 18. Authorization of appropriations.
- Sec. 19. Preemption.
- Sec. 20. Predispute resolution agreements for institutional customers.
- Sec. 21. Consideration of costs and benefits and antitrust laws.
- Sec. 22. Contract enforcement between eligible counterparties.
- Sec. 23. Rule of construction.
- Sec. 24. Technical and conforming amendments.
- Sec. 25. Effective date.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to reauthorize the Commodity Exchange Act

4 (7 U.S.C. 1 et seq.);

5 (2) to streamline and eliminate unnecessary

6 regulation for the commodity futures exchanges and

7 other entities regulated under the Commodity Ex-

8 change Act;

9 (3) to transform the role of the Commodity Fu-

10 tures Trading Commission in its oversight of the fu-

11 tures markets;

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

4           (5) to provide the Commission jurisdiction over  
5 the retail foreign exchange market and bucket shops  
6 that are not otherwise regulated;

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

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

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

19 **SEC. 3. DEFINITIONS.**

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

22           (1) by redesignating paragraphs (8) through  
23 (12), (13) through (15), and (16) as paragraphs  
24 (16) through (20), (22) through (24), and (29), re-  
25 spectively;

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

3           “(8) DERIVATIVES CLEARING ORGANIZATION.—

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

11           “(i) enables each party to the deriva-  
12          tive agreement, contract, or transaction to  
13          substitute, through novation or otherwise,  
14          the credit of the derivatives clearing orga-  
15          nization for the credit of the parties;

16           “(ii) arranges or provides, on a multi-  
17          lateral basis, for the settlement or netting  
18          of obligations resulting from such agree-  
19          ments, contracts, or transactions executed  
20          by parties in the derivatives clearing orga-  
21          nization; or

22           “(iii) otherwise provides clearing serv-  
23          ices or arrangements that mutualize or  
24          transfer among parties in the derivatives  
25          clearing organization the credit risk arising

1 from such agreements, contracts, or trans-  
2 actions executed by the parties.

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

7 “(i) settlement, netting, or novation of  
8 obligations resulting from agreements, con-  
9 tracts, or transactions, on a bilateral basis  
10 and without a centralized counterparty;

11 “(ii) settlement or netting of cash  
12 payments through an interbank payment  
13 system; or

14 “(iii) settlement, netting, or novation  
15 of obligations resulting from a sale of a  
16 commodity in a transaction in the spot  
17 market for the commodity.

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

21 “(A) operates by means of an electronic  
22 network; and

23 “(B) maintains a real-time audit trail of  
24 bids, offers, and the matching of orders or the  
25 execution of transactions.

1           “(10) ELIGIBLE CONTRACT PARTICIPANT.—The  
2 term ‘eligible contract participant’ means—

3           “(A) acting for its own account—

4                   “(i) a financial institution;

5                   “(ii) an insurance company regulated  
6 by a State (including a subsidiary or affil-  
7 iate of such an insurance company);

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

17                   “(iv) a commodity pool that—

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

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

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

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

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

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

17 “(III) that—

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

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

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

5                   “(vi) an employee benefit plan subject  
6                   to the Employee Retirement Income Secu-  
7                   rity Act of 1974 (29 U.S.C. 1001 et seq.)  
8                   or a foreign person performing a similar  
9                   role or 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 advisor  
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 regulated by a State (including a  
5 subsidiary or affiliate of such an  
6 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 “(viii) a broker or dealer subject to  
17 regulation under the Securities Exchange  
18 Act of 1934 (15 U.S.C. 78a et seq.) or a  
19 foreign person performing a similar role or  
20 function subject as such to foreign regula-  
21 tion, except that, if the broker or dealer or  
22 foreign person is a natural person or pro-  
23 prietorship, the broker or dealer or foreign  
24 person shall not be considered to be an eli-  
25 gible contract participant unless the broker

1 or dealer or foreign person also meets the  
2 requirements of clause (v) or (xi);

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

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

22 “(xi) a natural person with total as-  
23 sets exceeding \$10,000,000;

24 “(B)(i) a person described in any of  
25 clauses (i) through (x) of subparagraph (A) or

1 in subparagraph (C), acting as broker or per-  
2 forming an equivalent agency function on behalf  
3 of another person described in subparagraph  
4 (A) or (C); or

5 “(ii) an investment adviser subject to regu-  
6 lation under the Investment Advisors Act of  
7 1940, a commodity trading advisor subject to  
8 regulation under this Act, a foreign person per-  
9 forming a similar role or function subject as  
10 such to foreign regulation, or a person de-  
11 scribed in any of clauses (i) through (x) of sub-  
12 paragraph (A) or in subparagraph (C), in any  
13 such case acting as investment manager or fi-  
14 duciary (but excluding a person acting as  
15 broker or performing an equivalent agency  
16 function) for another person described in sub-  
17 paragraph (A) or (C) and who is authorized by  
18 such person to commit such person to the  
19 transaction;

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

23 “(11) ENERGY COMMODITY.—The term ‘energy  
24 commodity’ means coal, condensates, crude oil, elec-  
25 tricity, natural gas, or natural gas liquids.

1           “(12) EXCLUDED COMMODITY.—The term ‘ex-  
2           cluded commodity’ means any commodity other than  
3           an agricultural commodity enumerated in paragraph  
4           (3) or an exempt commodity.

5           “(13) EXEMPT COMMODITY.—The term ‘exempt  
6           commodity’ means an energy commodity or a metal  
7           commodity.

8           “(14) FINANCIAL COMMODITY.—The term ‘fi-  
9           nancial commodity’ means—

10                   “(A) an interest rate, exchange rate, cur-  
11                   rency, security, security index, credit risk, debt  
12                   or equity instrument, or widely published index  
13                   or measure of inflation; or

14                   “(B) any other rate, differential, index, or  
15                   measure of economic risk, return, or value (ex-  
16                   cluding any rate, differential, index, or measure  
17                   based on a commodity not described in subpara-  
18                   graph (A) that has a finite supply).

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

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

1           “(B) a corporation organized under section  
2           25A of the Federal Reserve Act (12 U.S.C. 611  
3           et seq.), commonly known as an ‘Edge Act cor-  
4           poration’;

5           “(C) an institution that is regulated by the  
6           Farm Credit Administration;

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

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

13           “(F) a foreign bank or a branch or agency  
14           of a foreign bank (each as defined in section  
15           1(b) of the International Banking Act of 1978  
16           (12 U.S.C. 3101(b)));

17           “(G) a trust company; or

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

21           (3) by inserting after paragraph (20) (as reded-  
22           signed by paragraph (1)) the following:

23           “(21) HYBRID INSTRUMENT.—The term ‘hybrid  
24           instrument’ means a deposit (as defined in section 3  
25           of the Federal Deposit Insurance Act (12 U.S.C.

1 1813)) offered by a financial institution, or a secu-  
2 rity, having 1 or more payments indexed to the  
3 value, level, or rate of 1 or more commodities.”;

4 (4) by inserting after paragraph (24) (as redesi-  
5 gnated by paragraph (1)) the following:

6 “(25) METAL COMMODITY.—The term ‘metal  
7 commodity’ means aluminum, copper, gold, palla-  
8 dium, platinum, or silver.

9 “(26) NONEXEMPT SECURITY.—The term ‘non-  
10 exempt security’ means a security that is not an ex-  
11 empted security under section 3 of the Securities  
12 Act of 1933 or section 3(a)(12) of the Securities Ex-  
13 change Act of 1934 (other than any municipal secu-  
14 rity, as defined in section 3(a)(29) of the Securities  
15 Exchange Act of 1934).

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

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

24 “(A) permits trading—

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

3 “(ii) by persons other than on a bona  
4 fide principal-to-principal basis; or

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

7 “(i) govern the conduct of partici-  
8 pants, other than rules that govern the  
9 submission of orders or execution of trans-  
10 actions on the trading system; or

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

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

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

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

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

21 “(C) a derivatives clearing organization  
22 registered under section 5b.

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

1 “(32) TRADING FACILITY.—

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

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

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

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



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

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

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

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

22 “(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS  
23 IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND  
24 CERTAIN OTHER COMMODITIES.—

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

5           “(A) foreign currency;

6           “(B) government securities;

7           “(C) security warrants;

8           “(D) security rights;

9           “(E) resales of installment loan contracts;

10           “(F) repurchase transactions in a financial  
11 commodity; or

12           “(G) mortgages or mortgage purchase  
13 commitments.

14           “(2) COMMISSION JURISDICTION.—

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

21           “(i) a contract of sale of a commodity  
22 for future delivery (or an option thereon),  
23 or an option on a commodity (other than  
24 foreign currency or a security), that is exe-

1           cuted or traded on an organized exchange;

2           or

3           “(ii) an option on foreign currency  
4           and is executed or traded on an organized  
5           exchange that is not a national securities  
6           exchange.

7           “(B) AGREEMENTS, CONTRACTS, AND  
8           TRANSACTIONS IN RETAIL FOREIGN CUR-  
9           RENCY.—This Act applies to, and the Commis-  
10          sion shall have jurisdiction over, an agreement,  
11          contract, or transaction in foreign currency  
12          that—

13               “(i) is a contract of sale for future de-  
14               livery (or an option on such a contract);  
15               and

16               “(ii) is offered to, or entered into  
17               with, a person that is not an eligible con-  
18               tract participant, unless the counterparty,  
19               or the person offering to be the  
20               counterparty, of the person is—

21                       “(I) a financial institution;

22                       “(II) a broker or dealer reg-  
23                       istered under section 15(b) or 15C of  
24                       the Securities Exchange Act of 1934  
25                       (15 U.S.C. 78o(b), 78o-5);

1           “(III) an associated person of a  
2 broker or dealer registered under sec-  
3 tion 15(b) or 15C of the Securities  
4 Exchange Act of 1934 (15 U.S.C.  
5 78o(b), 78o–5) concerning the finan-  
6 cial or securities activities of which  
7 the registered person makes and  
8 keeps records under section 15C(b) or  
9 17(h) of the Securities Exchange Act  
10 of 1934 (15 U.S.C. 78o–5(b), 78q(h))  
11 or section 4f(c)(2)(B) of this Act;

12           “(IV) an insurance company that  
13 is subject to State regulation (includ-  
14 ing a subsidiary or affiliate of such an  
15 insurance company);

16           “(V) a financial holding company  
17 (as defined in section 2 of the Bank  
18 Holding Company Act of 1956); or

19           “(VI) an investment bank hold-  
20 ing company (as defined in section  
21 17(i) of the Securities Exchange Act  
22 of 1934).”.

1 **SEC. 5. 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) (as amended by section 4) is amended  
5 by adding at the end 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 5b or  
21 12(e)(2)(B)) governs or applies to an agreement,  
22 contract, or transaction in an excluded commodity  
23 if—

24 “(A) the agreement, contract, or trans-  
25 action is entered into on a bona fide principal-  
26 to-principal basis between parties trading for

1           their own accounts or as described in section  
2           1a(10)(B)(ii) of this Act;

3           “(B) the agreement, contract, or trans-  
4           action is entered into only between persons that  
5           are eligible contract participants (as defined in  
6           sections 1a(10)(A), (B)(ii), and (C)) at the time  
7           at which the persons enter into the agreement,  
8           contract, or transaction; and

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

12 **SEC. 6. EXCLUDED ELECTRONIC TRADING FACILITIES.**

13          Section 2 of the Commodity Exchange Act (7 U.S.C.  
14          2, 2a, 3, 4, 4a) (as amended by section 5) is amended  
15          by adding at the end the following:

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

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

24                 “(2) EFFECT ON AUTHORITY TO ESTABLISH  
25                 AND OPERATE.—Nothing in this Act shall prohibit a

1 board of trade designated by the Commission as a  
2 contract market or derivatives transaction execution  
3 facility, or an exempt board of trade, from estab-  
4 lishing and operating an excluded electronic trading  
5 facility excluded under this Act pursuant to para-  
6 graph (1).”.

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

8 Section 2 of the Commodity Exchange Act (7 U.S.C.  
9 2, 2a, 3, 4, 4a) (as amended by section 6) is amended  
10 by adding at the end the following:

11 “(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-  
12 MENTS.—

13 “(1) IN GENERAL.—Nothing in this Act (other  
14 than section 12(e)(2)(B)) governs or is applicable to  
15 a hybrid instrument that is predominantly a security  
16 or depository instrument.

17 “(2) PREDOMINANCE.—A hybrid instrument  
18 shall be considered to be predominantly a security or  
19 depository instrument if—

20 “(A) the issuer of the hybrid instrument  
21 receives payment in full of the purchase price of  
22 the hybrid instrument, substantially contem-  
23 poraneously with delivery of the hybrid instru-  
24 ment;

1           “(B) the purchaser or holder of the hybrid  
2 instrument is not required to make any pay-  
3 ment to the issuer in addition to the purchase  
4 price paid under subparagraph (A), whether as  
5 margin, settlement payment, or otherwise, dur-  
6 ing the life of the hybrid instrument or at ma-  
7 turity;

8           “(C) the issuer of the hybrid instrument is  
9 not subject by the terms of the instrument to  
10 mark-to-market margining requirements; and

11           “(D) the hybrid instrument is not mar-  
12 keted as a contract of sale for future delivery  
13 of a commodity (or option on such a contract)  
14 subject to this Act.

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



1 **SEC. 8. FUTURES ON SECURITIES.**

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

5 “(g) Notwithstanding any other provision of law:

6 “(1) This Act shall not apply to and the Com-  
7 mission shall have no jurisdiction to designate a  
8 board of trade as a contract market for any trans-  
9 action whereby any party to the transaction acquires  
10 a put, call, or other option on 1 or more securities  
11 (as defined in section 2(a)(1) of the Securities Act  
12 of 1933 or section 3(a)(10) of the Securities Ex-  
13 change Act of 1934, on the date of enactment of the  
14 Futures Trading Act of 1982), including any group  
15 or index of securities and any interest in or based  
16 on the value of securities.

17 “(2) Nothing in this subsection governs or ap-  
18 plies to—

19 “(A) an agreement, contract, or trans-  
20 action in a commodity that is excluded under  
21 subsection (c) or (d); or

22 “(B) a hybrid instrument that is covered  
23 by an exclusion under subsection (f) or an ex-  
24 emption granted by the Commission under sec-  
25 tion 4(c) (whether or not the hybrid instrument  
26 is otherwise subject to this Act).

1           “(3) Except as provided in paragraph (4) of  
2 this subsection, or unless excluded by paragraph (2)  
3 of this subsection, a person shall not offer to enter  
4 into, enter into, or confirm the execution of any con-  
5 tract of sale (or option on the contract) for future  
6 delivery of any security or interest in or based on  
7 the value of a nonexempt security.

8           “(4)(A) Except as excluded by paragraph (2) of  
9 this subsection, this Act shall apply to and the Com-  
10 mission shall have exclusive jurisdiction with respect  
11 to accounts, agreements (including any transaction  
12 which is of the character of, or is commonly known  
13 to the trade as an option, privilege, indemnity, bid,  
14 offer, put, call, advance guaranty, or decline guar-  
15 anty), and transactions involving, and may designate  
16 a board of trade as a contract market under section  
17 5 or register the board of trade as a derivatives  
18 transaction execution facility under section 5a in,  
19 contracts of sale (or options on the contracts) for fu-  
20 ture delivery of 1 or more securities (as defined in  
21 section 2(a)(1) of the Securities Act of 1933 or sec-  
22 tion 3(a)(10) of the Securities Exchange Act of  
23 1934), including any group or index of securities  
24 and any interest in or based on the value of securi-  
25 ties.

1           “(B) The Commission shall not designate a  
2 board of trade as a contract market under section  
3 5 or register a board of trade as a derivatives trans-  
4 action execution facility under section 5a with re-  
5 spect to any such contracts of sale (or options on the  
6 contracts) for future delivery unless the board of  
7 trade demonstrates and the Commission expressly  
8 finds that the specific contract (or option on the  
9 contract) with respect to which the application for  
10 the designation or recognition has been made meets  
11 the following requirements:

12                   “(i) Settlement of or delivery on the con-  
13 tract (or option on the contract) shall be ef-  
14 fected in cash or by means other than the  
15 transfer or receipt of a nonexempt security.

16                   “(ii) SUSCEPTIBILITY TO PRICE MANIPULA-  
17 TION.—Trading in a contract (or option on  
18 such a contract) described in subparagraph (A)  
19 shall not be readily susceptible to—

20                           “(I) manipulation of the price of the  
21 contract (or option on such a contract); or

22                           “(II) causing or being used in the ma-  
23 nipulation of the price of any underlying  
24 security, option on a security, or option on  
25 a group or index that includes a security.

1           “(iii) If the contract is based on a single  
2 nonexempt security, an option on the security  
3 underlying the contract would meet all Securities  
4 and Exchange Commission requirements  
5 for listing on a national securities exchange.

6           “(iv) If the contract is based on any group  
7 or index of nonexempt securities comprised of  
8 fewer than 5 securities, or on an index in which  
9 a single nonexempt security predominates, an  
10 option on each security comprising the group or  
11 index would meet all requirements for listing on  
12 a national securities exchange.

13           “(v) The contract will be traded on a  
14 board of trade that establishes the level of mar-  
15 gin for futures contracts (or options on the con-  
16 tracts) based on a single nonexempt security,  
17 an index of fewer than 5 nonexempt securities,  
18 or an index in which a single nonexempt secu-  
19 rity predominates, that are no less than the  
20 level of margin on comparable option contracts  
21 listed on any national securities exchange.

22           “(vi) The contract will be traded on a  
23 board of trade that prohibits a person who acts  
24 as a floor broker for any contract of sale (or op-  
25 tions on the contract) for future delivery of a

1 nonexempt security, an index based on fewer  
2 than 5 nonexempt securities, or an index in  
3 which a single nonexempt security predomi-  
4 nates, from trading that contract for the bro-  
5 ker's own account during the same trading ses-  
6 sion.

7 “(vii) The contract will be traded on a  
8 board of trade that collects, maintains, and  
9 promptly provides to the Securities and Ex-  
10 change Commission such information as the  
11 Commission and the Securities and Exchange  
12 Commission jointly consider necessary to per-  
13 form the enforcement responsibilities described  
14 in paragraph (6).

15 “(5) The Commission shall consult with the Se-  
16 curities and Exchange Commission with respect to  
17 any application submitted by a board of trade for  
18 designation as a contract market or derivatives  
19 transaction execution facility with respect to any  
20 contract of sale (or option on the contract) for fu-  
21 ture delivery of a nonexempt security or a group or  
22 index of such securities. If, not later than 15 days  
23 after the consultation, the Securities and Exchange  
24 Commission objects to the designation of a board of  
25 trade as a contract market or derivatives transaction

1 execution facility in the contract (or option on the  
2 contract) on the ground that any requirement of  
3 paragraph (3) is not met, the Commission shall af-  
4 ford the Securities and Exchange Commission an op-  
5 portunity for an oral hearing to be transcribed be-  
6 fore the Commission, and shall give appropriate  
7 weight to the views of the Securities and Exchange  
8 Commission. The oral hearing shall be held before  
9 Commission action upon the application for the des-  
10 ignation, and not less than 30 nor more than 45  
11 days after the Securities and Exchange Commission  
12 has objected. If such an oral hearing is held, the  
13 Securities and Exchange Commission fails to with-  
14 draw its objections, and the Commission issues an  
15 order designating a board of trade as a contract  
16 market or recognizes the board of trade as a deriva-  
17 tives transaction execution facility with respect to  
18 any such contract (or option on the contract), the  
19 Securities and Exchange Commission may seek judi-  
20 cial review of the order in accordance with the proce-  
21 dural requirements set forth in section 6(c). If, pur-  
22 suant to section 6, there is a hearing on the record  
23 with respect to an application for such designation,  
24 the Securities and Exchange Commission may par-  
25 ticipate in that hearing as an interested party.

1           “(6) Notwithstanding any other provision of  
2 this Act, the Securities and Exchange Commission  
3 may enforce against a person that purchases or sells  
4 any contract of sale (or option on the contract) for  
5 future delivery of any nonexempt security, any index  
6 comprised of fewer than 5 nonexempt securities, or  
7 any index in which a single nonexempt security pre-  
8 dominates to the same extent as if the person had  
9 purchased or sold an option on the security or index  
10 under the following provisions of the securities laws  
11 and regulations with respect to the following cat-  
12 egories of conduct:

13           “(A) Section 10(b) and 21A of the Securi-  
14 ties Exchange Act of 1934 (15 U.S.C. 78j(b),  
15 78u–1) with respect to insider trading.

16           “(B) Section 16(b) of such Act (15 U.S.C.  
17 78p(b)) with respect to unfair use of informa-  
18 tion in short swing trading by a corporate in-  
19 sider.

20           “(C) Section 9 of such Act (15 U.S.C. 78i)  
21 with respect to manipulation of securities  
22 prices.

23           “(D) Section 10(b) of such Act (15 U.S.C.  
24 78J(b)) and section 204A of the Investment

1           Adviser’s Act of 1940 (15 U.S.C. 80b–4a) with  
2           respect to frontrunning.

3           “(E) Section 14 of the Securities Ex-  
4           change Act of 1934 (15 U.S.C. 78n) with re-  
5           spect to the pricing and integrity of tender of-  
6           fers.

7           “(F) Rule 144 of the rules of the Securi-  
8           ties and Exchange Commission (17 C.F.R.  
9           230.144) with respect to trading in restricted  
10          securities.

11          “(7)(A) Notwithstanding any other provision of  
12          this Act, any contract market or derivatives trans-  
13          action execution facility in a stock or stock index fu-  
14          tures contract (or option thereon) shall file with the  
15          Board of Governors of the Federal Reserve System  
16          any rule establishing or changing the levels of mar-  
17          gin (initial and maintenance) for the nonexempt  
18          stock or stock index futures contract (or option on  
19          the contract).

20          “(B) The Board may at any time request any  
21          contract market or derivatives transaction execution  
22          facility to set the level of margin for any stock or  
23          stock index futures contract (or option on the con-  
24          tract) at such levels as the Board in its judgment  
25          determines are appropriate to preserve the financial



1 integrity of the contract market or derivatives trans-  
2 action execution facility or its clearing system or to  
3 prevent systemic risk. If the contract market or de-  
4 rivatives transaction execution facility fails to do so  
5 within the time specified by the Board in its request,  
6 the Board may direct the contract market or deriva-  
7 tives transaction execution facility to alter or supple-  
8 ment the rules of the contract market or derivatives  
9 transaction execution facility as specified in the re-  
10 quest.

11 “(C) Subject to such conditions as the Board  
12 may determine, the Board may delegate any or all  
13 of its authority under this paragraph to the Com-  
14 mission or an intermarket margin board as provided  
15 in subparagraph (D).

16 “(D) INTERMARKET MARGIN BOARD.—

17 “(i) ESTABLISHMENT.—With the concur-  
18 rence of the Securities and Exchange Commis-  
19 sion and the Commission, the Board may estab-  
20 lish an intermarket margin board, consisting of  
21 representatives of any or all of the three agen-  
22 cies.

23 “(ii) DUTIES.—The intermarket margin  
24 board may set and maintain margin levels and  
25 rules pertaining to margin for futures on a sin-

1           gle nonexempt security, an index of fewer than  
2           5 nonexempt securities, or an index in which a  
3           single nonexempt security predominates, listed  
4           on a contract market or derivatives transaction  
5           execution facility.

6           “(E) This paragraph shall not be construed to  
7           supersede or limit the authority granted to the Com-  
8           mission in section 8a(9) to direct a contract market  
9           or derivatives transaction execution facility, on find-  
10          ing an emergency to exist, to raise temporary emer-  
11          gency margin levels on any futures contract or op-  
12          tion on the contract covered by this paragraph.

13          “(F) Any action taken by the Board under this  
14          paragraph, or by the Commission acting under the  
15          delegation of authority under subparagraph (C), di-  
16          recting a contract market or derivatives transaction  
17          execution facility to alter or supplement a contract  
18          market or derivatives transaction execution facility  
19          rule shall be subject to review only in the United  
20          States Court of Appeals for the judicial circuit in  
21          which the party seeking review resides or has its  
22          principal place of business, or in the United States  
23          Court of Appeals for the District of Columbia Cir-  
24          cuit. The review shall be based on the examination  
25          of all information before the Board or the Commis-

1 sion, as the case may be, at the time the determina-  
2 tion was made. The court reviewing the action of  
3 the Board or the Commission shall not enter a stay  
4 or order of mandamus unless the court determines,  
5 after notice and a hearing before a panel of the  
6 court, that the agency action complained of was ar-  
7 bitrary, capricious, an abuse of discretion, or other-  
8 wise not in accordance with law.

9 “(8) This subsection shall not be construed to  
10 prohibit—

11 “(A) an agreement, contract, or trans-  
12 action excluded from this Act by paragraph (2);  
13 or

14 “(B) any hybrid instrument that is covered  
15 by the terms of any exemption granted by the  
16 Commission under section 4(c) (whether or not  
17 any such hybrid instrument is otherwise subject  
18 to this Act).

19 “(9)(A) No futures commission merchant or in-  
20 troducing broker shall recommend to any customer  
21 the purchase or sale of any contract of sale for fu-  
22 ture delivery of a single nonexempt security, an  
23 index of fewer than 5 nonexempt securities, or an  
24 index in which a single nonexempt security predomi-  
25 nates, unless the futures commission merchant or in-

1        introducing broker complies with the rules described in  
2        subparagraph (B) of a registered futures association  
3        of which such person is a member.

4            “(B) Within 9 months of the date of enactment  
5        of the Commodity Futures Modernization Act of  
6        2000 a registered futures association shall adopt  
7        rules requiring a futures commission merchant or an  
8        introducing broker which recommends to any cus-  
9        tomer the purchase or sale of any contract of sale  
10       for future delivery of a single nonexempt security, an  
11       index of fewer than 5 nonexempt securities, or an  
12       index in which a single nonexempt security predomi-  
13       nates to ascertain through reasonable due diligence  
14       that the recommendation is suitable for that cus-  
15       tomer in light of the customer’s financial position  
16       and trading goals. The registered futures association  
17       shall consult with the Commission and the Securities  
18       and Exchange Commission prior to the adoption of  
19       any such rule, and shall submit any such rule to the  
20       Commission for approval in the manner and accord-  
21       ing to the procedures described in section 17(j) of  
22       this Act, provided, that in such case the rule shall  
23       become effective if the Commission fails to dis-  
24       approve such rule within 90 days of submission.”.

1 **SEC. 9. TRANSACTIONS IN EXEMPT COMMODITIES.**

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

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

7 “(1) Except as provided in paragraph (2) of  
8 this subsection, nothing in this Act shall apply to a  
9 contract, agreement or transaction in an exempt  
10 commodity which—

11 “(A)(i) is entered into between persons  
12 that are eligible contract participants at the  
13 time they enter into the agreement, contract, or  
14 transaction; and

15 “(ii) is not entered into on a trading facil-  
16 ity; or

17 “(B)(i) is entered into on a bona fide prin-  
18 cipal-to-principal basis between parties trading  
19 for their own accounts (or as described in sec-  
20 tion 1a(10)(B)(ii) of this Act);

21 “(ii) is entered into between persons that  
22 are eligible contract participants (as defined in  
23 sections 1a(10)(A), (B)(ii) or (C) of this Act) at  
24 the time at which the persons enter into the  
25 agreement, contract, or transaction; and

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

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

6           “(A) sections 5b and 12(e)(2)(B) of this  
7 Act;

8           “(B) sections 4b and 4n of this Act and  
9 the regulations of the Commission pursuant to  
10 section 4e(b) of this Act proscribing fraud in  
11 connection with commodity option transactions;

12           “(C) sections 6(c) and 9(a)(2) of this Act  
13 to the extent these provisions prohibit manipu-  
14 lation of the market price of any commodity in  
15 interstate commerce; and

16           “(D) such rules and regulations as the  
17 Commission may prescribe in the case of any  
18 agreement, contract, or transaction described in  
19 paragraph (1)(B) of this subsection, if nec-  
20 essary to ensure timely dissemination by the  
21 electronic trading facility of price, trading vol-  
22 ume, and other trading data to the extent ap-  
23 propriate to the exempt commodity and elec-  
24 tronic trading facility, if the Commission deter-  
25 mines the electronic trading facility performs a

1           significant price discovery function for related  
2           transactions in the exempt commodity under-  
3           lying the agreement, contract, or transaction.”.

4 **SEC. 10. PROTECTION OF THE PUBLIC INTEREST.**

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

7 **“SEC. 3. FINDINGS AND PURPOSE.**

8           “(a) FINDINGS.—The futures contracts and options  
9 contracts that are subject to this Act are entered into reg-  
10 ularly in interstate and international commerce and are  
11 affected with a national public interest by providing a  
12 means for managing and assuming price risks, discovering  
13 prices, and disseminating pricing information through  
14 trading in liquid, fair and financially secure trading facili-  
15 ties.

16           “(b) PURPOSE.—It is the purpose of this Act to serve  
17 the public interests described in subsection (a) through a  
18 system of effective self-regulation of trading facilities,  
19 clearing systems, market participants and market profes-  
20 sionals under the oversight of the Commission. To foster  
21 these public interests, it is further the purpose of this Act  
22 to authorize the Commission to deter and prevent price  
23 manipulation or any other disruptions to market integrity;  
24 to ensure the financial integrity of all transactions subject  
25 to this Act and the avoidance of systemic risk; to protect

1 all market participants from fraudulent or other abusive  
2 sales practices and misuses of customer assets; and to pro-  
3 mote responsible innovation and fair competition among  
4 boards of trade, other markets and market participants.”.

5 **SEC. 11. PROHIBITED TRANSACTIONS.**

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

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

10 “(a) IN GENERAL.—

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

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

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

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



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

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

6                   “(ii) is a fictitious sale; or

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

10           “(3) EFFECT OF SUBSECTION.—Nothing in this  
11 subsection—

12                   “(A) makes unlawful an exchange of—

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

15                           “(ii) futures for cash commodities;

16                           “(iii) transfer trades or office trades;

17                   or

18                           “(iv) futures for swaps;

19 if the exchange is made in accordance with  
20 rules of the contract market or derivatives  
21 transaction execution facility that apply to such  
22 transactions, and those rules have been ap-  
23 proved by the Commission; or

24                   “(B) makes it unlawful for a futures com-  
25 mission merchant, acting as principal or agent,

1 to enter into, execute, or confirm the execution  
2 of a contract for the purchase or sale of a com-  
3 modity for future delivery if the contract is en-  
4 tered into, executed, reported, recorded, and  
5 cleared in accordance with the rules of a con-  
6 tract market or derivatives transaction execu-  
7 tion facility.”.

8 **SEC. 12. DESIGNATION OF BOARDS OF TRADE AS CON-**  
9 **TRACT MARKETS.**

10 The Commodity Exchange Act is amended—

11 (1) by redesignating section 5b (7 U.S.C. 7b)  
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.

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

18 “(A) establish and enforce rules defining,  
19 or specifications detailing, the manner of oper-  
20 ation of the trade execution facility maintained  
21 by the board of trade, including rules or speci-  
22 fications describing the operation of any elec-  
23 tronic matching platform; and

1           “(B) demonstrate that the trading facility  
2           operates in accordance with the rules or speci-  
3           fications.

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

9           “(6) DISCIPLINARY PROCEDURES.—The board  
10          of trade shall establish and enforce disciplinary pro-  
11          cedures that authorize the board of trade to dis-  
12          cipline, suspend, or expel members or market par-  
13          ticipants that violate the rules of the board of trade,  
14          or similar methods for performing the same func-  
15          tions, including delegation of the functions to third  
16          parties.

17          “(7) PUBLIC ACCESS.—The board of trade shall  
18          provide the public with access to the rules, regula-  
19          tions, and contract specifications of the board of  
20          trade.

21          “(8) ABILITY TO OBTAIN INFORMATION.—The  
22          board of trade shall establish and enforce rules that  
23          will allow the board of trade to obtain any necessary  
24          information to perform any of the functions de-  
25          scribed in this subsection, including the capacity to

1 carry out such international information-sharing  
2 agreement as the Commission may require.

3 “(c) EXISTING CONTRACT MARKETS.—A board of  
4 trade that is designated as a contract market on the effec-  
5 tive date of the Commodity Futures Modernization Act of  
6 2000 shall be considered to be a designated contract mar-  
7 ket under this section.

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

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

13 “(2) COMPLIANCE WITH RULES.—The board of  
14 trade shall monitor and enforce compliance with the  
15 rules of the contract market, including the terms  
16 and conditions of any contracts to be traded and any  
17 limitations on access to the contract market.

18 “(3) CONTRACTS NOT READILY SUBJECT TO  
19 MANIPULATION.—The board of trade shall list on  
20 the contract market only contracts that are not  
21 readily susceptible to manipulation.

22 “(4) MONITORING OF TRADING.—The board of  
23 trade shall monitor trading to prevent manipulation,  
24 price distortion, and disruptions of the delivery or  
25 cash-settlement process.

1           “(5) POSITION LIMITATIONS OR ACCOUNT-  
2 ABILITY.—To reduce the potential threat of market  
3 manipulation or congestion, especially during trading  
4 in the delivery month, the board of trade shall adopt  
5 position limitations or position accountability for  
6 speculators, where necessary and appropriate.

7           “(6) EMERGENCY AUTHORITY.—The board of  
8 trade shall adopt rules to provide for the exercise of  
9 emergency authority, in consultation or cooperation  
10 with the Commission, where necessary and appro-  
11 priate, including the authority to—

12                   “(A) liquidate or transfer open positions in  
13 any contract;

14                   “(B) suspend or curtail trading in any con-  
15 tract; and

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

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

22                   “(A) the terms and conditions of the con-  
23 tracts of the contract market; and

1           “(B) the mechanisms for executing trans-  
2           actions on or through the facilities of the con-  
3           tract market.

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

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

13          “(10) TRADE INFORMATION.—The board of  
14          trade shall maintain rules and procedures to provide  
15          for the recording and safe storage of all identifying  
16          trade information in a manner that enables the con-  
17          tract market to use the information for purposes of  
18          assisting in the prevention of customer and market  
19          abuses and providing evidence of any violations of  
20          the rules of the contract market.

21          “(11) FINANCIAL INTEGRITY OF CONTRACTS.—  
22          The board of trade shall establish and enforce rules  
23          providing for the financial integrity of any contracts  
24          traded on the contract market, including rules to en-  
25          sure the financial integrity of any futures commis-

1 sion merchants and introducing brokers and the pro-  
2 tection of customer funds.

3 “(12) PROTECTION OF MARKET PARTICI-  
4 PANTS.—The board of trade shall establish and en-  
5 force rules to protect market participants from any  
6 abusive practices committed by any party acting as  
7 an agent for the participants.

8 “(13) DISPUTE RESOLUTION.—The board of  
9 trade shall establish and enforce rules regarding and  
10 provide facilities for alternative dispute resolution as  
11 appropriate for market participants and any market  
12 intermediaries.

13 “(14) GOVERNANCE FITNESS STANDARDS.—  
14 The board of trade shall establish and enforce ap-  
15 propriate fitness standards for directors, members of  
16 any disciplinary committee, members of the contract  
17 market, and any other persons with direct access to  
18 the facility (including any parties affiliated with any  
19 of the persons described in this paragraph).

20 “(15) CONFLICTS OF INTEREST.—The board of  
21 trade shall establish and enforce rules to minimize  
22 conflicts of interest in the decisionmaking process of  
23 the contract market and establish a process for re-  
24 solving such conflicts of interest.



1           “(16) COMPOSITION OF BOARDS OF MUTUALLY  
2 OWNED CONTRACT MARKETS.—In the case of a mu-  
3 tually owned contract market, the board of trade  
4 shall ensure that the composition of the governing  
5 board reflects market participants.

6           “(17) RECORDKEEPING.—The board of trade  
7 shall—

8                   “(A) maintain full records of all activities  
9 related to the business of the contract market  
10 in a form and manner acceptable to the Com-  
11 mission for a period of at least 5 years;

12                   “(B) make the records readily available  
13 during at least the first 2 years of the 5-year  
14 period and provide the records to the Commis-  
15 sion at the expense of the person required to  
16 maintain the records; and

17                   “(C) keep the records open to inspection  
18 by any representative of the Commission or the  
19 Department of Justice.

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

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

4           “(B) imposing any material anticompeti-  
5           tive burden on trading on the contract mar-  
6           ket.”.

7 **SEC. 13. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
8 **TIES.**

9           The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
10 is amended by inserting after section 5 (as amended by  
11 section 12(2)) the following:

12 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
13 **TIES.**

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

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

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

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

24           “(1) IN GENERAL.—A registered derivatives  
25           transaction execution facility under subsection (a)

1 may trade any futures contract (or option on such  
2 a contract) on a security on or through the facility  
3 only by satisfying the requirements of this section.

4 “(2) REQUIREMENTS FOR UNDERLYING COM-  
5 MODITIES.—A registered derivatives transaction exe-  
6 cution facility may trade any futures contract only  
7 if—

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

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

14 “(C) the underlying commodity has no  
15 cash market; or

16 “(D) the Commission determines, based on  
17 the market characteristics, surveillance history,  
18 self-regulatory record, and capacity of the facil-  
19 ity that trading in the futures contract is highly  
20 unlikely to be susceptible to the threat of ma-  
21 nipulation.

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

1           “(A) be authorized by the board of trade  
2 to trade on the facility; and

3           “(B)(i) be an eligible contract participant;  
4 or

5           “(ii) be a person trading through a futures  
6 commission merchant that—

7           “(I) is registered with the Commis-  
8 sion;

9           “(II) is a member of a futures self-  
10 regulatory organization;

11           “(III) is a clearing member of a de-  
12 rivatives clearing organization; and

13           “(IV) has net capital of at least  
14 \$20,000,000.

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

20           “(A) provide a physical location for the  
21 contract market trading of the board of trade  
22 that is separate from trading on the derivatives  
23 transaction execution facility of the board of  
24 trade; or

1           “(B) if the board of trade uses the same  
2           electronic trading system for trading on the  
3           contract market and derivatives transaction  
4           execution facility of the board of trade, identify  
5           whether the electronic trading is taking place  
6           on the contract market or the derivatives trans-  
7           action execution facility.

8           “(c) CRITERIA FOR REGISTRATION.—

9           “(1) IN GENERAL.—To be registered as a reg-  
10          istered derivatives transaction execution facility, the  
11          board of trade shall demonstrate to the Commission  
12          that the board of trade meets the criteria specified  
13          in this paragraph.

14          “(2) DETERRENCE OF ABUSES.—The board of  
15          trade shall establish and enforce trading rules that  
16          will deter abuses and has the capacity to detect, in-  
17          vestigate, and enforce those rules, including means  
18          to—

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

21                 or

22                 “(B) use technological means to—

23                         “(i) provide market participants with  
24                         impartial access to the market; and

1                   “(ii) capture information that may be  
2                   used in establishing whether rule violations  
3                   have occurred.

4                   “(3) TRADING PROCEDURES.—The board of  
5                   trade shall establish and enforce rules or terms and  
6                   conditions defining, or specifications detailing, trad-  
7                   ing procedures to be used in entering and executing  
8                   orders traded on the facilities of the board of trade.

9                   “(4) FINANCIAL INTEGRITY OF TRANS-  
10                  ACTIONS.—The board of trade shall establish and  
11                  enforce rules or terms and conditions providing for  
12                  the financial integrity of transactions entered on or  
13                  through the facilities of the board of trade, including  
14                  rules or terms and conditions to ensure the financial  
15                  integrity of any futures commission merchants and  
16                  introducing brokers and the protection of customer  
17                  funds.

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

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

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

1       cility, including any terms and conditions of any  
2       contracts traded on or through the facility and any  
3       limitations on access to the facility.

4               “(3) MONITORING OF TRADING.—The board of  
5       trade shall monitor trading in the contracts of the  
6       facility to ensure orderly trading in the contract and  
7       to maintain an orderly market while providing any  
8       necessary trading information to the Commission to  
9       allow the Commission to discharge the responsibil-  
10      ities of the Commission under the Act.

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

14                      “(A) contract terms and conditions;

15                      “(B) trading conventions, mechanisms, and  
16      practices;

17                      “(C) financial integrity protections; and

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

20              “(5) PROVISION OF TRADING INFORMATION.—  
21      The board of trade shall provide to market partici-  
22      pants on a fair, equitable, and timely basis—

23                      “(A) information regarding prices, bids,  
24      and offers; and

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

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

10          “(7) CONFLICTS OF INTEREST.—The board of  
11          trade shall establish and enforce rules to minimize  
12          conflicts of interest in the decisionmaking process of  
13          the derivatives transaction execution facility and es-  
14          tablish a process for resolving such conflicts of inter-  
15          est.

16          “(8) RECORDKEEPING.—The board of trade  
17          shall—

18                 “(A) maintain full records of all activities  
19                 related to the business of the derivatives trans-  
20                 action execution facility in a form and manner  
21                 acceptable to the Commission for a period of at  
22                 least 5 years;

23                 “(B) make the records readily available  
24                 during at least the first 2 years of the 5-year  
25                 period and provide the records to the Commis-



1           sion at the expense of the person required to  
2           maintain the records; and

3           “(C) keep the records open to inspection  
4           by any representatives of the Commission or the  
5           Department of Justice.

6           “(9) ANTITRUST CONSIDERATIONS.—Unless  
7           necessary or appropriate to achieve the purposes of  
8           this Act, the board of trade shall endeavor to  
9           avoid—

10           “(A) adopting any rules or taking any ac-  
11           tions that result in any unreasonable restraint  
12           of trade; or

13           “(B) imposing any material anticompeti-  
14           tive burden on trading on the derivatives trans-  
15           action execution facility.

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

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

22           “(A) act as an intermediary in trans-  
23           actions executed on the facility on behalf of cus-  
24           tomers of the broker-dealer or depository insti-  
25           tution; and

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

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

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

11          “(B) if a broker-dealer or depository insti-  
12          tution carries or holds customer accounts or  
13          funds for transactions on the derivatives trans-  
14          action execution facility for more than 1 busi-  
15          ness day, the broker-dealer or depository insti-  
16          tution is registered as a futures commission  
17          merchant and is a member of a registered fu-  
18          tures association.

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

1       “(f) SEGREGATION OF CUSTOMER FUNDS.—Not  
2 later than 180 days after the effective date of the Com-  
3 modity Futures Modernization Act of 2000, consistent  
4 with regulations adopted by the Commission, a registered  
5 derivatives transaction execution facility may authorize a  
6 futures commission merchant to offer any customer of the  
7 futures commission merchant that is an eligible contract  
8 participant the right to not segregate the customer funds  
9 of the futures commission merchant for purposes of trad-  
10 ing on or through the facilities of the registered derivatives  
11 transaction execution facility.

12       “(g) ELECTION TO TRADE EXCLUDED COMMOD-  
13 ITIES.—

14               “(1) IN GENERAL.—A board of trade that is a  
15 registered derivatives transaction execution facility  
16 may trade on the facility any agreements, contracts,  
17 or transactions involving excluded commodities that  
18 are otherwise excluded from this Act under section  
19 2(c) or 2(d).

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

1 **SEC. 14. DERIVATIVES CLEARING ORGANIZATIONS.**

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

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

6 “(a) APPLICATION.—A derivatives clearing organiza-  
7 tion for a board of trade that is designated as a contract  
8 market under section 5 or is registered as a derivatives  
9 transaction execution facility under section 5b, or for an  
10 exempt board of trade, or a derivatives clearing organiza-  
11 tion for transactions excluded by subsection (c), (d) or (h)  
12 of section 2, desiring to be registered with the Commission  
13 as a registered derivatives clearing organization may sub-  
14 mit to the Commission an application for such registration  
15 which shall be in such form and in accordance with such  
16 procedures as the Commission may prescribe by regula-  
17 tion, and which shall contain the rules of the derivatives  
18 clearing organization and such other information and doc-  
19 uments as the Commission may prescribe by regulation.  
20 An applicant may withdraw an application submitted  
21 under this subsection by filing with the Commission a  
22 written notice of withdrawal.

23 “(b) QUALIFICATIONS.—The Commission shall not  
24 approve an application submitted under subsection (a),  
25 unless the Commission determines that—

1           “(1) the rules of the applicant are in accord-  
2           ance with such rules as the Commission may adopt  
3           with respect to—

4                   “(A) standards of financial responsibility,  
5                   operational capability, experience, competence,  
6                   and conduct applicable to participants in de-  
7                   rivatives clearing organizations;

8                   “(B) governance of derivatives clearing or-  
9                   ganizations;

10                   “(C) qualifications of management of de-  
11                   rivatives clearing organization;

12                   “(D) dues, fees, and other charges imposed  
13                   by derivatives clearing organizations; and

14                   “(E) procedures for resolving disputes and  
15                   redressing grievances;

16           “(2) the applicant—

17                   “(A) has sufficient financial resources,  
18                   standards for participant eligibility, and ade-  
19                   quate risk management policies and procedures  
20                   to protect the financial integrity of the appli-  
21                   cant, consistent with international standards;

22                   “(B) has adequate operational systems and  
23                   settlement and default procedures designed to  
24                   ensure orderly settlement of contracts;

1           “(C) has procedures and mechanisms to  
2           ensure the performance of obligations in the  
3           event of participant default;

4           “(D) has such other resources and mecha-  
5           nisms as are necessary to ensure compliance  
6           with this Act; and

7           “(E) meets such other requirements as the  
8           Commission may prescribe by rule or order; and

9           “(3) the operation of the applicant would not be  
10          inconsistent with the public interest protected by the  
11          antitrust laws.

12          “(c) PUBLICATION OF NOTICE OF APPLICATION.—  
13          On the filing of an application under subsection (a), the  
14          Commission shall publish notice of the filing and afford  
15          interested persons an opportunity to submit written data,  
16          views, and arguments concerning the application.

17          “(d) DISPOSITION OF APPLICATION.—

18                 “(1) IN GENERAL.—Within 90 days after the  
19                 publication of a notice under subsection (c) (or with-  
20                 in such longer period as the applicant may agree to),  
21                 the Commission shall—

22                         “(A) by order, approve the application; or

23                         “(B) institute proceedings to determine  
24                         whether to disapprove the application.

1           “(2) RULES APPLICABLE TO ADMINISTRATIVE  
2 DISPOSITION PROCEEDINGS.—

3           “(A) The proceedings referred to in para-  
4 graph (1)(B) shall include notice of the grounds  
5 for disapproval under consideration and shall  
6 provide an opportunity for a hearing, and shall  
7 be concluded within 180 days after the filing of  
8 the application for registration.

9           “(B) At the conclusion of the proceedings,  
10 the Commission, by order, shall approve or dis-  
11 approve the application.

12           “(C) The Commission shall approve the  
13 application unless the Commission determines  
14 that the applicant does not meet the qualifica-  
15 tions set forth in subsection (b).

16           “(3) JUDICIAL REVIEW OF APPLICATION DIS-  
17 APPROVAL.—An applicant whose application sub-  
18 mitted under subsection (a) is disapproved may ap-  
19 peal the disapproval to the United States Court of  
20 Appeals for the judicial circuit in which the appli-  
21 cant has its principal place of business, in accord-  
22 ance with the procedural requirements set forth in  
23 section 6(b).

24           “(e) REVOCATION OF REGISTRATION.—

1           “(1) NOTICE.—If the Commission makes a pre-  
2           liminary determination that finds that a registered  
3           derivatives clearing organization has ceased to exist  
4           or is operating in violation of this Act, the Commis-  
5           sion shall notify the registered derivatives clearing  
6           organization in writing of the reasons for the pre-  
7           liminary determination, including any data, mate-  
8           rials, and specific findings the Commission has re-  
9           lied on in reaching the preliminary determination.  
10          The Commission shall allow the registered deriva-  
11          tives clearing organization not fewer than 21 days to  
12          respond in writing to such a notice. The Commission  
13          may, in its discretion, extend the period of time for  
14          filing such a response.

15          “(2) DISCUSSIONS.—After the Commission re-  
16          ceives the response, the Commission shall promptly  
17          initiate discussions with the registered derivatives  
18          clearing organization to attempt to remedy the al-  
19          leged violation in a mutually acceptable manner.

20          “(3) REVOCATION AUTHORITY.—If, after a rea-  
21          sonable period of time, no mutually acceptable reso-  
22          lution is reached, the Commission may make a final  
23          determination to revoke the registration of the reg-  
24          istered derivatives clearing organization under this  
25          section.



1           “(4) JUDICIAL REVIEW.—A derivatives clearing  
2           organization may appeal a final determination to re-  
3           voke its registration under this section to the United  
4           States Court of Appeals for the judicial circuit in  
5           which the derivatives clearing organization has its  
6           principal place of business, in accordance with the  
7           procedural requirements set forth in section 6(b).

8           “(f) RECORDKEEPING AND EXAMINATION.—A reg-  
9           istered derivatives clearing organization shall make and  
10          keep for prescribed periods such records, furnish such cop-  
11          ies of the records, and make and disseminate such reports  
12          as the Commission prescribes by regulation or order.

13          “(g) AUTHORITY TO CLEAR OVER-THE-COUNTER  
14          TRANSACTIONS.—A derivatives clearing organization de-  
15          scribed in subsection (a) of this section may clear an  
16          agreement, contract, or transaction excluded from this Act  
17          by subsection (c), (d) or (h) of section 2.

18          “(h) EXCLUSIVE JURISDICTION OF THE COMMIS-  
19          SION.— The Commission shall have exclusive jurisdiction  
20          with respect to any registered derivatives clearing organi-  
21          zation.

22          “(i) REGISTERED DERIVATIVES CLEARING ORGANI-  
23          ZATION.—In this section, the term ‘registered derivatives  
24          clearing organization’ means a derivatives clearing organi-  
25          zation registered under this section.”.

1 **SEC. 15. 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 14) 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 5b(b)  
14 to describe what would constitute an acceptable busi-  
15 ness 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 any  
9 new contract or other instrument, or may elect to  
10 approve and implement any new rule or rule amend-  
11 ment, by providing to the Commission a written cer-  
12 tification that the new contract, new rule, or rule  
13 amendment complies with this Act (including regula-  
14 tions under this Act).

15           “(2) PRIOR APPROVAL.—

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

20           “(B) PRIOR APPROVAL REQUIRED.—Not-  
21 withstanding any other provision of this section,  
22 for three years from the effective date of the  
23 Commodity Futures Trading Modernization Act  
24 of 2000, a designated contract market shall  
25 submit to the Commission for prior approval

1 each rule amendment that materially changes  
2 the terms and conditions in any contract of sale  
3 for future delivery of a commodity specifically  
4 enumerated in section 1a(3) of this Act (or any  
5 option thereon) traded through its facilities if  
6 such rule amendment applies to contracts and  
7 delivery months which have already been listed  
8 for trading and have substantial open interest.

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

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

21 “(d) VIOLATION OF CORE PRINCIPLES.—

22 “(1) IN GENERAL.—If the Commission has rea-  
23 son to believe that a registered entity is violating  
24 any applicable provision specified in section 5(d),  
25 5a(d), or 5b(b), the Commission shall notify the reg-

1       istered entity in writing of the reasons for the pre-  
2       liminary determination by the Commission of a vio-  
3       lation, including any data, materials, and facts the  
4       Commission relied on in making the preliminary de-  
5       termination.

6               “(2) INJUNCTIVE OR ADMINISTRATIVE AC-  
7       TION.—The Commission may initiate an action for  
8       an injunction under section 6c or an administrative  
9       proceeding, to demonstrate, by the preponderance of  
10      the evidence, that—

11               “(A) the registered entity is violating any  
12              applicable provision specified in section 5(f),  
13              5a(d), or 5b(b); and

14               “(B) the Commission has recommended an  
15              appropriate remedial action to remove the defi-  
16              ciency based on an analysis of the costs and  
17              benefits of the Commission recommendation.

18               “(3) BURDEN OF PROOF.—In making a deter-  
19       mination any that a registered entity is violating any  
20       applicable provision specified in section 5(d), 5a(d),  
21       or 5b(b), the Commission shall have the burden of  
22       proving that the registered entity is violating the ap-  
23       plicable core principle.

24               “(e) RESERVATION OF EMERGENCY AUTHORITY.—  
25       Nothing in this section shall limit or in any way affect

1 the emergency powers of the Commission provided in sec-  
2 tion 8a(9) of this Act.”.

3 **SEC. 16. EXEMPT BOARDS OF TRADE.**

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

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

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

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

19 “(1) that have—

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

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

1           modity highly unlikely to be susceptible to the  
2           threat of manipulation; or

3                   “(C) no cash market; and

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

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

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

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

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

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

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

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

11 **SEC. 17. SUSPENSION OR REVOCATION OF DESIGNATION**  
12 **AS CONTRACT MARKET.**

13 Section 5e of the Commodity Exchange Act (7 U.S.C.  
14 7b) (as redesignated by section 12(1)) is amended to read  
15 as follows:

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

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



1 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

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

5 **SEC. 19. PREEMPTION.**

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

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

14 “(A) in the case of any such agreement,  
15 contract, or transaction—

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

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

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

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

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

10                   “(ii) an agreement, contract, or trans-  
11                   action that is excluded or exempt under  
12                   section 2(c), 2(d), 2(f), or 2(h) or is cov-  
13                   ered by the terms of an exemption granted  
14                   by the Commission under section 4(c) (re-  
15                   gardless of whether any such agreement,  
16                   contract, or transaction is otherwise sub-  
17                   ject to this Act); or”.

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

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

23                   “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR  
24 INSTITUTIONAL CUSTOMERS.—Nothing in this section  
25 prohibits a registered futures commission merchant from

1 requiring a customer that is an eligible contract partici-  
2 pant, as a condition to the commission merchant's con-  
3 ducting a transaction for the customer, to enter into an  
4 agreement waiving the right to file a claim under this sec-  
5 tion.”.

6 **SEC. 21. CONSIDERATION OF COSTS AND BENEFITS AND**  
7 **ANTITRUST LAWS.**

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

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

13 “(a) COSTS AND BENEFITS.—

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

19 “(2) CONSIDERATIONS.—The costs and benefits  
20 of the proposed Commission action shall be evalu-  
21 ated in light of—

22 “(A) considerations of protection of market  
23 participants and the public;

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

4           “(C) considerations of price discovery;

5           “(D) considerations of sound risk manage-  
6           ment practices; and

7           “(E) other public interest considerations.

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

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

13           “(B) An emergency action.

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

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

17 **SEC. 22. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**  
18 **COUNTERPARTIES.**

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

22           “(4) CONTRACT ENFORCEMENT BETWEEN ELI-  
23           GIBLE COUNTERPARTIES.—No agreement, contract,  
24           or transaction between eligible contract participants  
25           shall be void, voidable, or unenforceable, and no

1 such eligible contract participant shall be entitled to  
2 rescind, or recover any payment made with respect  
3 to, such an agreement, contract, or transaction,  
4 under this section based solely on the failure of the  
5 agreement, contract, or transaction to comply with  
6 the terms or conditions of an exemption or exclusion  
7 from any provision of this Act or regulations of the  
8 Commission.”.

9 **SEC. 23. RULE OF CONSTRUCTION.**

10 Except as expressly provided in this Act or an amend-  
11 ment made by this Act, nothing in this Act or an amend-  
12 ment made by the Act supersedes, affects, or otherwise  
13 limits or expands the scope and applicability of laws gov-  
14 erning the Securities and Exchange Commission.

15 **SEC. 24. TECHNICAL AND CONFORMING AMENDMENTS.**

16 (a) COMMODITY EXCHANGE ACT.—

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

19 (A) in paragraphs (4), (5), (8), (9), (12),  
20 and (14), by inserting “or derivatives trans-  
21 action execution facility” after “contract mar-  
22 ket” each place it appears; and

23 (B) in paragraph (15)—

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

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

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

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

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

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

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

18 **“(A) IN GENERAL.—The”;** and

19 **(B) in subsection (a)—**

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

22 (I) by striking subparagraph (B);

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

25 ing “subsection (g)”;

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

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

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

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

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

16 (iii) in paragraph (8)(B)(ii)—

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

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

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

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

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

17 (A) in subsection (a)—

18 (i) in paragraph (1), by striking “des-  
19 igned by the Commission as a ‘contract  
20 market’ for” and inserting “designated or  
21 registered by the Commission as a contract  
22 market or derivatives transaction execution  
23 facility for”;

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



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

4 (B) in subsection (c)—

5 (i) in paragraph (1)—

6 (I) by striking “designated as a  
7 contract market” and inserting “des-  
8 ignated or registered as a contract  
9 market or derivatives transaction exe-  
10 cution facility”; and

11 (II) by striking “section  
12 2(a)(1)(B)” and inserting “section  
13 2(g)”; and

14 (ii) in paragraph (2)(B)(ii), by insert-  
15 ing “or derivatives transaction execution  
16 facility” after “contract market”.

17 (4) Section 4a of the Commodity Exchange Act  
18 (7 U.S.C. 6a) is amended—

19 (A) in subsection (a)—

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

23 (ii) in the second sentence, by insert-  
24 ing “or derivatives transaction execution  
25 facility” after “contract market”;

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

4 (C) in subsection (e)—

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

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

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

16 (5) Section 4b(a) of the Commodity Exchange  
17 Act (7 U.S.C. 6b(a)) is amended by striking “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 4j of the Commodity Exchange  
18          Act (7 U.S.C. 6j) is repealed.

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

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

1 (A) in the third sentence of subsection (a),  
2 by striking “Act or contract markets” and in-  
3 serting “Act, contract markets, or derivatives  
4 transaction execution facilities”; and

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

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

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

14 (A) in subsection (a)—

15 (i) in the first sentence—

16 (I) by striking “board of trade  
17 desiring to be designated a ‘contract  
18 market’ shall make application to the  
19 Commission for such designation” and  
20 inserting “person desiring to be des-  
21 ignated or registered as a contract  
22 market or derivatives transaction exe-  
23 cution facility shall make application  
24 to the Commission for such designa-  
25 tion or registration”;

1 (II) by striking “above condi-  
2 tions” and inserting “conditions set  
3 forth in this Act”; and

4 (III) by striking “above require-  
5 ments” and inserting “the require-  
6 ments of this Act”;

7 (ii) in the second sentence, by striking  
8 “designation as a contract market within  
9 one year” and inserting “designation or  
10 registration as a contract market or de-  
11 rivatives transaction execution facility  
12 within 180 days”;

13 (iii) in the third sentence—

14 (I) by striking “board of trade”  
15 and inserting “person”; and

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

18 (iv) in the last sentence, by striking  
19 “designate as a ‘contract market’ any  
20 board of trade that has made application  
21 therefor, such board of trade” and insert-  
22 ing “designate or register as a contract  
23 market or derivatives transaction execution  
24 facility any person that has made applica-  
25 tion therefor, such person”;

1 (B) in subsection (b)—

2 (i) in the first sentence—

3 (I) by striking “designation of  
4 any board of trade as a ‘contract mar-  
5 ket’ upon” and inserting “designation  
6 or registration of any contract market  
7 or derivatives transaction execution  
8 facility on”;

9 (II) by striking “board of trade”  
10 each place it appears and inserting  
11 “contract market or derivatives trans-  
12 action execution facility”; and

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

17 (ii) in the second sentence—

18 (I) by striking “board of trade”  
19 the first place it appears and inserting  
20 “contract market or derivatives trans-  
21 action execution facility”; and

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

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

4 (C) in subsection (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

3           (A) in the first sentence—

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

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

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

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

14           (B) in the second sentence—

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

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

21           (C) in the last sentence—

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

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

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

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

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

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

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

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

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

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

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

25                  (C) in subsection (b)—

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

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

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

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

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

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

22 (iii) in paragraph (5)—

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

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

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

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

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

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

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

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

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

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

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

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

1           (26) Section 17 of the Commodity Exchange  
2 Act (7 U.S.C. 21) is amended by striking “contract  
3 market” each place it appears and inserting “reg-  
4 istered entity”.

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

7           (A) in subsection (a)—

8           (i) in paragraph (1)—

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

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

16           (ii) in paragraph (2), by striking “sec-  
17 tions 5a(11),” and inserting “sections  
18 5(d)(13), 5b(b)(1)(E),”; and

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

22           (B) in subsection (b)—

23           (i) in paragraph (1)—

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

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

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

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

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

14 (ii) in paragraph (3)—

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

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

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

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

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

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

13 **SEC. 25. EFFECTIVE DATE.**

14 (a) IN GENERAL.—Except as provided in subsection  
15 (b), this Act takes effect on the date of enactment of this  
16 Act.

17 (b) JURISDICTION OF COMMISSION.—Section 8, and  
18 the amendments made by that section, take effect 1 year  
19 after the date of enactment of this Act.

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