

Union Calendar No. 477

106TH CONGRESS
2^D SESSION

H. R. 4541

[Report No. 106–711, Parts I, II, and III]

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

IN THE 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

JUNE 29, 2000

Reported from the Committee on Agriculture with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 6, 2000

Reported from the Committee on Banking and Financial Services with amendments
[Strike out all after the enacting clause and insert the part printed in **boldface roman**]

SEPTEMBER 6, 2000

Additional sponsors: Mr. BARRETT of Nebraska, Mr. CHAMBLISS, and Mr. GUTKNECHT

SEPTEMBER 6, 2000

Reported from the Committee on Commerce with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on May 25, 2000]

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 this*
 7 *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. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.

Sec. 24. Rule of construction.

Sec. 25. Technical and conforming amendments.

Sec. 26. Report to Congress.

Sec. 27. Effective date.

Sec. 28. International activities of the Commodity Futures Trading Commission.

1 **SEC. 2. PURPOSES.**

2 *The purposes of this Act are—*

3 *(1) to reauthorize the appropriation for the Com-*
4 *modity Futures Trading Commission;*

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

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

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

14 *(5) to provide the Commission jurisdiction over*
15 *certain retail foreign exchange transactions and buck-*
16 *et shops that may not be otherwise regulated;*

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

21 *(7) to reduce systemic risk and provide greater*
22 *stability to markets during times of market disorder*

1 *by allowing the clearing of transactions in over-the-*
2 *counter derivatives through appropriately regulated*
3 *clearing organizations; and*

4 *(8) to enhance the competitive position of United*
5 *States financial institutions and financial markets.*

6 **SEC. 3. DEFINITIONS.**

7 *Section 1a of the Commodity Exchange Act (7 U.S.C.*
8 *1a) is amended—*

9 *(1) by redesignating paragraphs (8) through*
10 *(12), (13) through (15), and (16) as paragraphs (15)*
11 *through (19), (21) through (23), and (27), respec-*
12 *tively;*

13 *(2) by inserting after paragraph (7) the fol-*
14 *lowing:*

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

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

22 *“(i) enables each party to the deriva-*
23 *tive agreement, contract, or transaction to*
24 *substitute, through novation or otherwise,*

1 *the credit of the derivatives clearing organi-*
2 *zation for the credit of the parties;*

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

9 “(iii) *otherwise provides clearing serv-*
10 *ices or arrangements that mutualize or*
11 *transfer among parties in the derivatives*
12 *clearing organization the credit risk arising*
13 *from such agreements, contracts, or trans-*
14 *actions executed by the parties.*

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

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

23 “(ii) *settlement or netting of cash pay-*
24 *ments through an interbank payment sys-*
25 *tem; or*

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

5 “(9) *ELECTRONIC TRADING FACILITY*.—The term
6 ‘electronic trading facility’ means a trading facility
7 that—

8 “(A) operates by means of an electronic net-
9 work; and

10 “(B) maintains a real-time audit trail of
11 bids, offers, and the matching of orders or the
12 execution of transactions.

13 “(10) *ELIGIBLE COMMERCIAL PARTICIPANT*.—
14 The term ‘eligible commercial participant’ means a
15 party or entity described in paragraph (11)(A)(i),
16 (ii), (v), or (vii) or paragraph (11)(C), who, in con-
17 nection with its business—

18 “(A) has a demonstrable capacity or ability,
19 directly or through separate contractual arrange-
20 ments, to make or take delivery of the underlying
21 physical commodity;

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

1 “(C) is a dealer that regularly provides
2 hedging, risk management, or market-making
3 services to the foregoing entities.

4 “(11) *ELIGIBLE CONTRACT PARTICIPANT*.—The
5 term ‘eligible contract participant’ means—

6 “(A) acting for its own account—

7 “(i) a financial institution;

8 “(ii) an insurance company regulated
9 by a State (including a subsidiary or affil-
10 iate of such an insurance company);

11 “(iii) an investment company subject
12 to regulation under the Investment Com-
13 pany Act of 1940 (15 U.S.C. 80a–1 et seq.)
14 or a foreign person performing a similar
15 role or function subject as such to foreign
16 regulation (regardless of whether each inves-
17 tor in the investment company or the for-
18 eign person is itself an eligible contract par-
19 ticipant);

20 “(iv) a commodity pool that—

21 “(I) has total assets exceeding
22 \$5,000,000; and

23 “(II) is formed and operated by a
24 person subject to regulation under this
25 Act or a foreign person performing a

1 *similar role or function subject as such*
2 *to foreign regulation (regardless of*
3 *whether each investor in the com-*
4 *modity pool or the foreign person is*
5 *itself an eligible contract participant);*

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

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

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

19 “(III) that—

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

22 “(bb) enters into an agree-
23 ment, contract, or transaction in
24 connection with the conduct of the
25 entity’s business or to manage the

1 *risk associated with an asset or li-*
2 *ability owned or incurred or rea-*
3 *sonably likely to be owned or in-*
4 *curring by the entity in the con-*
5 *duct of the entity's business;*

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

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

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

16 “(aa) an investment advisor
17 or commodity trading advisor
18 subject to regulation under the In-
19 vestment Advisers Act of 1940 (15
20 U.S.C. 80b-1 et seq.) or this 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 for-
9 eign government) or political subdivision of
10 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 reg-
17 ulation under the Securities Exchange Act
18 of 1934 (15 U.S.C. 78a et seq.) or a foreign
19 person performing a similar role or func-
20 tion subject as such to foreign regulation,
21 except that, if the broker or dealer or foreign
22 person is a natural person or proprietor-
23 ship, the broker or dealer or foreign person
24 shall not be considered to be an eligible con-
25 tract participant unless the broker or dealer

1 or foreign person also meets the require-
2 ments of clause (v) or (xi);

3 “(ix) a futures commission merchant
4 subject to regulation under this Act or a for-
5 eign 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 regu-
21 larly trades; or

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

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

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

5 “(i) 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 described
11 in any of clauses (i) through (x) of subparagraph
12 (A) or in subparagraph (C), in any such case
13 acting as investment manager or fiduciary (but
14 excluding a person acting as broker or per-
15 forming an equivalent agency function) for an-
16 other person described in subparagraph (A) or
17 (C) and who is authorized by such person to
18 commit such person to the transaction; or

19 “(iii) a commodity trading advisor subject
20 to regulation under this Act, having assets under
21 management of not less than \$25,000,000 and
22 acting as investment manager or fiduciary for
23 another person and authorized by such person to
24 commit such person to the transaction; or

1 “(C) any other person that the Commission
2 determines to be eligible in light of the financial
3 or other qualifications of the person.

4 “(12) *EXCLUDED COMMODITY*.—The term ‘ex-
5 cluded commodity’ means—

6 “(A) an interest rate, exchange rate, cur-
7 rency, security, security index, credit risk or
8 measure, debt or equity instrument, or index or
9 measure of inflation;

10 “(B) any other rate, differential, index, or
11 measure of economic or commercial risk, return,
12 or value that—

13 “(i) is not within the control of any
14 party to the relevant contract, agreement, or
15 transaction; or

16 “(ii) is not based in substantial part
17 on the value of a limited number of com-
18 modities not described in subparagraph (A)
19 that have a finite supply; or

20 “(C) an occurrence, extent of an occurrence,
21 or contingency beyond the control of the parties
22 to the relevant contract, agreement, or trans-
23 action.

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

4 “(14) *FINANCIAL INSTITUTION*.—The term ‘*fi-*
5 *ancial institution*’ means—

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

10 “(B) a corporation organized under section
11 *25A of the Federal Reserve Act (12 U.S.C. 611*
12 *et seq.), commonly known as an ‘Edge Act cor-*
13 *poration’;*

14 “(C) an institution that is regulated by the
15 *Farm Credit Administration;*

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

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

22 “(F) a foreign bank or a branch or agency
23 *of a foreign bank (each as defined in section 1(b)*
24 *of the International Banking Act of 1978 (12*
25 *U.S.C. 3101(b));*

1 “(G) a trust company; or

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

5 (3) by inserting after paragraph (19) (as redes-
6 ignated by paragraph (1)) the following:

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

13 (4) by inserting after paragraph (23) (as redes-
14 ignated by paragraph (1)) the following:

15 “(24) *NONEXEMPT SECURITY*.—The term ‘non-
16 exempt security’ means a security that is not an ex-
17 empted security under section 3 of the Securities Act
18 of 1933 or section 3(a)(12) of the Securities Exchange
19 Act of 1934 (other than any municipal security, as
20 defined in section 3(a)(29) of the Securities Exchange
21 Act of 1934).

22 “(25) *OPTION*.—The term ‘option’ means an
23 agreement, contract, or transaction that is of the
24 character of, or is commonly known to the trade as,

1 *an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’, ‘put’,*
2 *‘call’, ‘advance guaranty’, or ‘decline guaranty’.*

3 *“(26) ORGANIZED EXCHANGE.—The term ‘orga-*
4 *nized exchange’ means a trading facility that—*

5 *“(A) permits trading—*

6 *“(i) by or on behalf of a person that is*
7 *not an eligible contract participant; or*

8 *“(ii) by persons other than on a prin-*
9 *cipal-to-principal basis; or*

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

12 *“(i) govern the conduct of participants,*
13 *other than rules that govern the submission*
14 *of orders or execution of transactions on the*
15 *trading facility; or*

16 *“(ii) include disciplinary sanctions*
17 *other than the exclusion of participants*
18 *from trading.”; and*

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

20 *“(28) REGISTERED ENTITY.—The term ‘reg-*
21 *istered entity’ means—*

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

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

1 “(C) a derivatives clearing organization
2 registered under section 5b.

3 “(29) SECURITY.—The term ‘security’ has the
4 meaning given the term in section 3(a) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C. 78c(a)) as in
6 effect on date of the enactment of this paragraph.

7 “(30) TRADING FACILITY.—

8 “(A) IN GENERAL.—The term ‘trading facil-
9 ity’ means a person or group of persons that
10 constitutes, maintains, or provides a physical or
11 electronic facility or system in which multiple
12 participants have the ability to execute or trade
13 agreements, contracts, or transactions by accept-
14 ing bids and offers made by other participants
15 that are open to multiple participants in the fa-
16 cility or system.

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

19 “(i) a person or group of persons solely
20 because the person or group of persons con-
21 stitutes, maintains, or provides an elec-
22 tronic facility or system that enables par-
23 ticipants to negotiate the terms of and enter
24 into bilateral transactions as a result of
25 communications exchanged by the parties

1 *and not from interaction of multiple orders*
2 *within a predetermined, nondiscretionary*
3 *automated trade matching algorithm;*

4 “(ii) a government securities dealer or
5 government securities broker, to the extent
6 that the dealer or broker executes or trades
7 agreements, contracts, or transactions in
8 government securities, or assists persons in
9 communicating about, negotiating, entering
10 into, executing, or trading an agreement,
11 contract, or transaction in government secu-
12 rities (as the terms ‘government securities
13 dealer’, ‘government securities broker’, and
14 ‘government securities’ are defined in sec-
15 tion 3(a) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78c(a))); or

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

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

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

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

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

8 “(A) *foreign currency;*

9 “(B) *government securities;*

10 “(C) *security warrants;*

11 “(D) *security rights;*

12 “(E) *resales of installment loan contracts;*

13 “(F) *repurchase transactions in an excluded*
14 *commodity; or*

15 “(G) *mortgages or mortgage purchase com-*
16 *mitments.*

17 “(2) *COMMISSION JURISDICTION.*—

18 “(A) *AGREEMENTS, CONTRACTS, AND*
19 *TRANSACTIONS THAT ARE FUTURES TRADED ON*
20 *AN ORGANIZED EXCHANGE.*—*This Act applies to,*
21 *and the Commission shall have jurisdiction over,*
22 *an agreement, contract, or transaction described*
23 *in paragraph (1) that is—*

24 “(i) *a contract of sale of a commodity*
25 *for future delivery (or an option thereon),*

1 *or an option on a commodity (other than*
2 *foreign currency or a security), that is exe-*
3 *cutted or traded on an organized exchange;*
4 *or*

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

9 *“(B) AGREEMENTS, CONTRACTS, AND*
10 *TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—*
11 *This Act applies to, and the Commission shall*
12 *have jurisdiction over, an agreement, contract, or*
13 *transaction in foreign currency that—*

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

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

22 *“(I) a financial institution;*

23 *“(II) a broker or dealer registered*
24 *under section 15(b) or 15C of the Secu-*
25 *rities Exchange Act of 1934 (15 U.S.C.*

1 780(b), 780–5) or a futures commission
2 merchant registered under this Act;

3 “(III) an associated person of a
4 broker or dealer registered under sec-
5 tion 15(b) or 15C of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 780(b),
7 780–5), or an affiliated person of a fu-
8 tures commission merchant registered
9 under this Act, concerning the finan-
10 cial or securities activities of which the
11 registered person makes and keeps
12 records under section 15C(b) or 17(h)
13 of the Securities Exchange Act of 1934
14 (15 U.S.C. 780–5(b), 78q(h)) or section
15 4f(c)(2)(B) of this Act;

16 “(IV) an insurance company that
17 is subject to State regulation (includ-
18 ing a subsidiary or affiliate of such an
19 insurance company);

20 “(V) a financial holding company
21 (as defined in section 2 of the Bank
22 Holding Company Act of 1956); or

23 “(VI) an investment bank holding
24 company (as defined in section 17(i) of
25 the Securities Exchange Act 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 by*
5 *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 excluded*
10 *commodity if—*

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

16 *“(B) the agreement, contract, or transaction*
17 *is not executed or traded on a trading facility.*

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

23 *“(A) the agreement, contract, or transaction*
24 *is entered into on a principal-to-principal basis*
25 *between parties trading for their own accounts*

1 or as described in section 1a(11)(B)(ii) of this
2 Act;

3 “(B) the agreement, contract, or transaction
4 is entered into only between persons that are eli-
5 gible contract participants (as defined in sec-
6 tions 1a(11)(A), (B)(ii), and (C)) at the time at
7 which the persons enter into the agreement, con-
8 tract, or transaction; and

9 “(C) the agreement, contract, or transaction
10 is executed or traded on an electronic trading fa-
11 cility.”.

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 by
15 adding at the end the following:

16 “(e) **EXCLUDED ELECTRONIC TRADING FACILITIES.**—

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

23 “(2) **EFFECT ON AUTHORITY TO ESTABLISH AND**
24 **OPERATE.**—Nothing in this Act shall prohibit a board
25 of trade designated by the Commission as a contract

1 *market or derivatives transaction execution facility,*
2 *or an exempt board of trade, from establishing and*
3 *operating an excluded electronic trading facility ex-*
4 *cluded under this Act pursuant to paragraph (1).”.*

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

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

9 *“(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-*
10 *MENTS.—*

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

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

18 *“(A) the issuer of the hybrid instrument re-*
19 *ceives payment in full of the purchase price of*
20 *the hybrid instrument, substantially contempora-*
21 *neously with delivery of the hybrid instrument;*

22 *“(B) the purchaser or holder of the hybrid*
23 *instrument is not required to make any payment*
24 *to the issuer in addition to the purchase price*
25 *paid under subparagraph (A), whether as mar-*

1 gin, settlement payment, or otherwise, during the
2 life of the hybrid instrument or at maturity;

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

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

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

18 **SEC. 8. FUTURES ON SECURITIES.**

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

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

23 “(1) This Act shall not apply to and the Com-
24 mission shall have no jurisdiction to designate a
25 board of trade as a contract market for any trans-

1 *action whereby any party to the transaction acquires*
2 *a put, call, or other option on 1 or more securities (as*
3 *defined in section 2(a)(1) of the Securities Act of 1933*
4 *or section 3(a)(10) of the Securities Exchange Act of*
5 *1934, on the date of enactment of the Futures Trad-*
6 *ing Act of 1982), including any group or index of se-*
7 *curities and any interest in or based on the value of*
8 *securities.*

9 *“(2) Nothing in this subsection governs or ap-*
10 *plies to—*

11 *“(A) an agreement, contract, or transaction*
12 *in a commodity that is excluded under sub-*
13 *section (c) or (d);*

14 *“(B) an electronic trading facility that is*
15 *excluded under subsection (e); or*

16 *“(C) a hybrid instrument that is covered by*
17 *an exclusion under subsection (f) or an exemp-*
18 *tion granted by the Commission under section*
19 *4(c) (whether or not the hybrid instrument is*
20 *otherwise subject to this Act).*

21 *“(3) Except as provided in paragraph (4) of this*
22 *subsection, or unless excluded by paragraph (2) of*
23 *this subsection, a person shall not offer to enter into,*
24 *enter into, or confirm the execution of any contract*
25 *of sale (or option on the contract) for future delivery*

1 of any security or interest in or based on the value
2 of a nonexempt security.

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

20 “(B) The Commission shall not designate a
21 board of trade as a contract market under section 5
22 or register a board of trade as a derivatives trans-
23 action execution facility under section 5a with respect
24 to any such contracts of sale (or options on the con-
25 tracts) for future delivery unless the board of trade

1 *demonstrates and the Commission expressly finds that*
2 *the specific contract (or option on the contract) with*
3 *respect to which the application for the designation or*
4 *recognition has been made meets the following re-*
5 *quirements:*

6 *“(i) Settlement of or delivery on the con-*
7 *tract (or option on the contract) shall be effected*
8 *in cash or by means other than the transfer or*
9 *receipt of a nonexempt security.*

10 *“(ii) SUSCEPTIBILITY TO PRICE MANIPULA-*
11 *TION.—Trading in a contract (or option on such*
12 *a contract) described in subparagraph (A) shall*
13 *not be readily susceptible to—*

14 *“(I) manipulation of the price of the*
15 *contract (or option on such a contract); or*

16 *“(II) causing or being used in the ma-*
17 *nipulation of the price of any underlying*
18 *security, option on a security, or option on*
19 *a group or index that includes a security.*

20 *“(iii) If the contract is based on a single*
21 *nonexempt security, an option on the security*
22 *underlying the contract would meet all Securities*
23 *and Exchange Commission requirements for list-*
24 *ing on a national securities exchange.*

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

8 “(v) The contract will be traded on a board
9 of trade that establishes the level of margin for
10 futures contracts (or options on the contracts)
11 based on a single nonexempt security, an index
12 of fewer than 5 nonexempt securities, or an index
13 in which a single nonexempt security predomi-
14 nates, at a level consistent with the level of mar-
15 gin on comparable option contracts listed on any
16 national securities exchange.

17 “(vi) The contract will be traded on a board
18 of trade that prohibits a person who acts as a
19 floor broker for any contract of sale (or options
20 on the contract) for future delivery of a non-
21 exempt security, an index based on fewer than 5
22 nonexempt securities, or an index in which a
23 single nonexempt security predominates, from
24 trading that contract for the broker’s own ac-
25 count during the same trading session.

1 “(vii) *The contract will be traded on a*
2 *board of trade that collects, maintains, and*
3 *promptly provides to the Securities and Ex-*
4 *change Commission such information as the*
5 *Commission and the Securities and Exchange*
6 *Commission jointly consider necessary to per-*
7 *form the enforcement responsibilities described in*
8 *paragraph (6).*

9 “(5) *The Commission shall consult with the Se-*
10 *curities and Exchange Commission with respect to*
11 *any application submitted by a board of trade for*
12 *designation as a contract market or derivatives trans-*
13 *action execution facility with respect to any contract*
14 *of sale (or option on the contract) for future delivery*
15 *of a nonexempt security or a group or index of such*
16 *securities. If, not later than 15 days after the con-*
17 *sultation, the Securities and Exchange Commission*
18 *objects to the designation of a board of trade as a con-*
19 *tract market or derivatives transaction execution fa-*
20 *ility in the contract (or option on the contract) on*
21 *the ground that any requirement of paragraph (4)(B)*
22 *is not met, the Commission shall afford the Securities*
23 *and Exchange Commission an opportunity for an*
24 *oral hearing to be transcribed before the Commission,*
25 *and shall give appropriate weight to the views of the*

1 *Securities and Exchange Commission. The oral hear-*
2 *ing shall be held before Commission action upon the*
3 *application for the designation, and not less than 30*
4 *nor more than 45 days after the Securities and Ex-*
5 *change Commission has objected. If such an oral hear-*
6 *ing is held, the Securities and Exchange Commission*
7 *fails to withdraw its objections, and the Commission*
8 *issues an order designating a board of trade as a con-*
9 *tract market or recognizes the board of trade as a de-*
10 *rivatives transaction execution facility with respect to*
11 *any such contract (or option on the contract), the Se-*
12 *curities and Exchange Commission may seek judicial*
13 *review of the order in accordance with the procedural*
14 *requirements set forth in section 6(c). If, pursuant to*
15 *section 6, there is a hearing on the record with respect*
16 *to an application for such designation, the Securities*
17 *and Exchange Commission may participate in that*
18 *hearing as an interested party.*

19 “(6) Notwithstanding any other provision of this
20 *Act, the Securities and Exchange Commission may*
21 *enforce against a person that purchases or sells any*
22 *contract of sale (or option on the contract) for future*
23 *delivery of any nonexempt security, any index com-*
24 *prised of fewer than 5 nonexempt securities, or any*
25 *index in which a single nonexempt security predomi-*

1 *nates to the same extent as if the person had pur-*
2 *chased or sold an option on the security or index*
3 *under the following provisions of the securities laws*
4 *and regulations with respect to the following cat-*
5 *egories of conduct:*

6 *“(A) Section 10(b) and 21A of the Securi-*
7 *ties Exchange Act of 1934 (15 U.S.C. 78j(b),*
8 *78u–1) with respect to insider trading.*

9 *“(B) Section 16(b) of such Act (15 U.S.C.*
10 *78p(b)) with respect to unfair use of information*
11 *in short swing trading by a corporate insider.*

12 *“(C) Section 9 of such Act (15 U.S.C. 78i)*
13 *with respect to manipulation of securities prices.*

14 *“(D) Section 10(b) of such Act (15 U.S.C.*
15 *78J(b)) and section 204A of the Investment Ad-*
16 *viser’s Act of 1940 (15 U.S.C. 80b–4a) with re-*
17 *spect to frontrunning.*

18 *“(E) Section 14 of the Securities Exchange*
19 *Act of 1934 (15 U.S.C. 78n) with respect to the*
20 *pricing and integrity of tender offers.*

21 *“(F) Rule 144 of the rules of the Securities*
22 *and Exchange Commission (17 C.F.R. 230.144)*
23 *with respect to trading in restricted securities.*

24 *“(7)(A) Notwithstanding any other provision of*
25 *this Act, any contract market or derivatives trans-*

1 *action execution facility in a nonexempt security or*
2 *stock index futures contract (or option thereon) shall*
3 *file with the Board of Governors of the Federal Re-*
4 *serve System any rule establishing or changing the*
5 *levels of margin (initial and maintenance) for the*
6 *nonexempt security or stock index futures contract (or*
7 *option on the contract).*

8 *“(B) The Board may at any time request any*
9 *contract market or derivatives transaction execution*
10 *facility to set the level of margin for any nonexempt*
11 *security or stock index futures contract (or option on*
12 *the contract) at such levels as the Board in its judg-*
13 *ment determines are appropriate to preserve the fi-*
14 *nancial integrity of the contract market or derivatives*
15 *transaction execution facility or its clearing system or*
16 *to prevent systemic risk. If the contract market or de-*
17 *rivatives transaction execution facility fails to do so*
18 *within the time specified by the Board in its request,*
19 *the Board may direct the contract market or deriva-*
20 *tives transaction execution facility to alter or supple-*
21 *ment the rules of the contract market or derivatives*
22 *transaction execution facility as specified in the re-*
23 *quest.*

24 *“(C) Subject to such conditions as the Board*
25 *may determine, the Board may delegate any or all of*

1 *its authority under this paragraph to the Commission*
2 *or an intermarket margin board as provided in sub-*
3 *paragraph (D).*

4 “(D) *INTERMARKET MARGIN BOARD.*—

5 “(i) *ESTABLISHMENT.*—*With the concur-*
6 *rence of the Securities and Exchange Commis-*
7 *sion and the Commission, the Board may estab-*
8 *lish an intermarket margin board, consisting of*
9 *representatives of any or all of the three agencies.*

10 “(ii) *DUTIES.*—*The intermarket margin*
11 *board may set and maintain margin levels and*
12 *rules pertaining to margin for futures on a sin-*
13 *gle nonexempt security, an index of fewer than*
14 *5 nonexempt securities, or an index in which a*
15 *single nonexempt security predominates, listed*
16 *on a contract market or derivatives transaction*
17 *execution facility. In discharging these duties,*
18 *the intermarket margin board shall endeavor to*
19 *make the levels of margin for futures and options*
20 *on a single nonexempt security consistent taking*
21 *into account any material differences in such*
22 *contracts, including—*

23 “(I) *the price volatility of the con-*
24 *tracts;*

1 “(II) the frequency with which margin
2 calls are made; and

3 “(III) the period of time within which
4 margin calls must be met.

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

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

1 *The court reviewing the action of the Board or the*
2 *Commission shall not enter a stay or order of man-*
3 *damus unless the court determines, after notice and a*
4 *hearing before a panel of the court, that the agency*
5 *action complained of was arbitrary, capricious, an*
6 *abuse of discretion, or otherwise not in accordance*
7 *with law.*

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

10 “(A) *an agreement, contract, or transaction*
11 *excluded from this Act by paragraph (2); or*

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

17 “(9)(A) *No futures commission merchant, com-*
18 *modity trading advisor, or introducing broker shall*
19 *recommend to any customer the purchase or sale of*
20 *any contract of sale for future delivery of a single*
21 *nonexempt security, an index of fewer than 5 non-*
22 *exempt securities, or an index in which a single non-*
23 *exempt security predominates, unless the futures com-*
24 *mission merchant, commodity trading advisor, or in-*
25 *troducing broker complies with the rules described in*

1 *subparagraph (B) of a registered futures association*
2 *of which such merchant, advisor, or broker is a mem-*
3 *ber.*

4 *“(B) Within 9 months of the date of enactment*
5 *of the Commodity Futures Modernization Act of 2000,*
6 *a registered futures association shall adopt rules re-*
7 *quiring a futures commission merchant, a commodity*
8 *trading advisor, or an introducing broker which rec-*
9 *ommends to any customer the purchase or sale of any*
10 *contract of sale for future delivery of a single non-*
11 *exempt security, an index of fewer than 5 nonexempt*
12 *securities, or an index in which a single nonexempt*
13 *security predominates to ascertain through reasonable*
14 *due diligence that the recommendation is suitable for*
15 *that customer in light of the customer’s financial po-*
16 *sition and trading goals. The registered futures asso-*
17 *ciation shall consult with the Commission and the Se-*
18 *curities and Exchange Commission prior to the adop-*
19 *tion of any such rule, and shall submit any such rule*
20 *to the Commission for approval in the manner and*
21 *according to the procedures described in section 17(j)*
22 *of this Act, provided, that in such case the rule shall*
23 *become effective if the Commission fails to disapprove*
24 *such rule within 90 days of submission.*

1 “(10)(A) *Nothing in this Act shall be construed*
2 *to require or authorize the Commission to review or*
3 *approve, directly or indirectly, any contract, rule,*
4 *regulation, or action adopted by a foreign board of*
5 *trade, exchange, or market, or a clearinghouse for*
6 *such a board of trade, exchange, or market, relating*
7 *to any transaction involving a contract of sale for fu-*
8 *ture delivery (or option on such a contract) in or in-*
9 *volving any security, including any foreign govern-*
10 *ment debt security, or group or index of such securi-*
11 *ties, if—*

12 “(i)(I) *in the case of a contract of sale for*
13 *future delivery (or option on such a contract) in*
14 *or involving a single equity security, the United*
15 *States is not the primary trading market for the*
16 *underlying security; or*

17 “(II) *in the case of a contract of sale for fu-*
18 *ture delivery (or option on such a contract) in*
19 *or involving a group or index of equity securi-*
20 *ties, less than 25 percent of the weighting of the*
21 *group or index is derived from securities for*
22 *which the United States is the primary trading*
23 *market for the securities underlying the contract*
24 *for future delivery (or option on the contract);*
25 *and*

1 “(i) settlement of or delivery on the con-
2 tract for future delivery (or option on such a
3 contract) is to be effected in cash or by means
4 other than the transfer or receipt of a security in
5 the United States other than an exempted secu-
6 rity.

7 “(B) Within 90 days after the date of the enact-
8 ment of this paragraph, the Commission shall adopt
9 such procedures as it deems appropriate pursuant to
10 which, consistent with this Act, the Commission shall
11 authorize the offer and sale in the United States of
12 any contract of sale for future delivery (or option on
13 such a contract) of a security, other than a security
14 of the type described in subparagraph (A)(i)(I) or a
15 group or index of securities of the type described in
16 subparagraph (A)(i)(II), traded on or subject to the
17 rules of a foreign board of trade, exchange, or market,
18 or a clearinghouse for such a board of trade, ex-
19 change, or market, except that such procedures shall
20 not require a foreign board of trade, exchange, or
21 market, or a clearinghouse for such a board of trade,
22 exchange, or market to apply for designation as a
23 contract market under this Act with respect to such
24 a contract for future delivery (or option on such a
25 contract).”.

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 by*
4 *adding at the end the following.*

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

7 *“(1) Except as provided in paragraph (2) of this*
8 *subsection, nothing in this Act shall apply to a con-*
9 *tract, agreement or transaction in an exempt com-*
10 *modity which—*

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

15 *“(B) is not entered into on a trading facil-*
16 *ity.*

17 *“(2) An agreement, contract, or transaction de-*
18 *scribed in paragraph (1) of this subsection shall be*
19 *subject to—*

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

21 *“(B) sections 4b and 4n of this Act and the*
22 *regulations of the Commission pursuant to sec-*
23 *tion 4c(b) of this Act proscribing fraud in con-*
24 *nection with commodity option transactions, to*
25 *the extent such agreement, contract, or trans-*
26 *action is not between eligible commercial partici-*

1 *pants and would otherwise be subject to those*
2 *provisions; and*

3 “(C) *sections 6(c) and 9(a)(2) of this Act to*
4 *the extent they prohibit manipulation of the*
5 *market price of any commodity in interstate*
6 *commerce, to the extent such agreement, contract,*
7 *or transaction would otherwise be subject to those*
8 *provisions.*

9 “(3) *Except as provided in paragraph (4) of this*
10 *subsection, nothing in this Act shall apply to an*
11 *agreement, contract, or transaction in an exempt*
12 *commodity (other than a metal commodity enumer-*
13 *ated in section 1a(3) of this Act) which—*

14 “(A) *is entered into solely between persons*
15 *that are eligible contract participants at the time*
16 *at which the persons enter into the agreement,*
17 *contract, or transaction; and*

18 “(B) *is executed or traded on an electronic*
19 *trading facility.*

20 “(4) *An agreement, contract, or transaction de-*
21 *scribed in paragraph (3) shall be subject to—*

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

23 “(B) *sections 4b and 4n of this Act and the*
24 *regulations of the Commission pursuant to sec-*
25 *tion 4c(b) of this Act proscribing fraud in con-*

1 *nection with commodity option transactions and*
2 *section 6(c) and 9(a)(2) of this Act, to the extent*
3 *these provisions prohibit manipulation of the*
4 *market price of any commodity in interstate*
5 *commerce, to the extent such agreement, contract,*
6 *or transaction would otherwise be subject to those*
7 *provisions; and*

8 *“(C) such rules and regulations as the Com-*
9 *mission may prescribe if necessary to ensure*
10 *timely dissemination by the electronic trading*
11 *facility of price, trading volume, and other trad-*
12 *ing data to the extent appropriate, if the Com-*
13 *mission determines that the electronic trading fa-*
14 *cility performs a significant price discovery*
15 *function for transactions related to the com-*
16 *modity executed or traded on the electronic trad-*
17 *ing facility.”.*

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

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

21 **“SEC. 3. FINDINGS AND PURPOSE.**

22 *“(a) FINDINGS.—The futures contracts and options*
23 *contracts that are subject to this Act are entered into regu-*
24 *larly in interstate and international commerce and are af-*
25 *ected with a national public interest by providing a means*

1 *for managing and assuming price risks, discovering prices,*
2 *and disseminating pricing information through trading in*
3 *liquid, fair and financially secure trading facilities.*

4 “(b) *PURPOSE.—It is the purpose of this Act to serve*
5 *the public interests described in subsection (a) through a*
6 *system of effective self-regulation of trading facilities, clear-*
7 *ing systems, market participants and market professionals*
8 *under the oversight of the Commission. To foster these pub-*
9 *lic interests, it is further the purpose of this Act to deter*
10 *and prevent price manipulation or any other disruptions*
11 *to market integrity; to ensure the financial integrity of all*
12 *transactions subject to this Act and the avoidance of sys-*
13 *temic risk; to protect all market participants from fraudu-*
14 *lent or other abusive sales practices and misuses of customer*
15 *assets; and to promote responsible innovation and fair com-*
16 *petition among boards of trade, other markets and market*
17 *participants.”.*

18 **SEC. 11. PROHIBITED TRANSACTIONS.**

19 *Section 4c of the Commodity Exchange Act (7 U.S.C.*
20 *6c) is amended by striking “SEC. 4c.” and all that follows*
21 *through subsection (a) and inserting the following:*

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

23 “(a) *IN GENERAL.—*

24 “(1) *PROHIBITION.—It shall be unlawful for any*
25 *person to offer to enter into, enter into, or confirm the*

1 *execution of a transaction described in paragraph (2)*
2 *involving any commodity if the transaction is used or*
3 *may be used to—*

4 “(A) *hedge any transaction in interstate*
5 *commerce in the commodity or the product or*
6 *byproduct of the commodity;*

7 “(B) *determine the price basis of any such*
8 *transaction in interstate commerce in the com-*
9 *modity; or*

10 “(C) *deliver any such commodity sold,*
11 *shipped, or received in interstate commerce for*
12 *the execution of the transaction.*

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

15 “(A)(i) *is, is of the character of, or is com-*
16 *monly known to the trade as, a ‘wash sale’ or*
17 *‘accommodation trade’; or*

18 “(ii) *is a fictitious sale; or*

19 “(B) *is used to cause any price to be re-*
20 *ported, registered, or recorded that is not a true*
21 *and bona fide price.”.*

22 **SEC. 12. DESIGNATION OF BOARDS OF TRADE AS CON-**
23 **TRACT MARKETS.**

24 *The Commodity Exchange Act is amended—*

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

3 (2) *by striking sections 5 and 5a (7 U.S.C. 7,*
4 *7a) and inserting the following:*

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

7 “(a) *APPLICATIONS.—A board of trade applying to the*
8 *Commission for designation as a contract market shall sub-*
9 *mit an application to the Commission that includes any*
10 *relevant materials and records the Commission may require*
11 *consistent with this Act.*

12 “(b) *CRITERIA FOR DESIGNATION.—*

13 “(1) *IN GENERAL.—To be designated as a con-*
14 *tract market, the board of trade shall demonstrate to*
15 *the Commission that the board of trade meets the cri-*
16 *teria specified in this subsection.*

17 “(2) *PREVENTION OF MARKET MANIPULATION.—*
18 *The board of trade shall have the capacity to prevent*
19 *market manipulation through market surveillance,*
20 *compliance, and enforcement practices and proce-*
21 *dures, including methods for conducting real-time*
22 *monitoring of trading and comprehensive and accu-*
23 *rate trade reconstructions.*

24 “(3) *FAIR AND EQUITABLE TRADING.—The board*
25 *of trade shall establish and enforce trading rules to*

1 *ensure fair and equitable trading through the facili-*
2 *ties of the contract market, and the capacity to detect,*
3 *investigate, and discipline any person that violates*
4 *the rules. Such rules may authorize—*

5 “(A) *an exchange of—*

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

8 “(ii) *futures for cash commodities;*

9 “(iii) *transfer trades or office trades;*

10 *or*

11 “(iv) *futures for swaps; and*

12 “(B) *a futures commission merchant, acting*
13 *as principal or agent, to enter into or confirm*
14 *the execution of a contract for the purchase or*
15 *sale of a commodity for future delivery if the*
16 *contract is reported, recorded, or cleared in ac-*
17 *cordance with the rules of the contract market or*
18 *a derivatives clearing organization.*

19 “(4) *TRADE EXECUTION FACILITY.—The board of*
20 *trade shall—*

21 “(A) *establish and enforce rules defining, or*
22 *specifications detailing, the manner of operation*
23 *of the trade execution facility maintained by the*
24 *board of trade, including rules or specifications*

1 *describing the operation of any electronic match-*
2 *ing platform; and*

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

6 “(5) *FINANCIAL INTEGRITY OF TRANSACTIONS.—*
7 *The board of trade shall establish and enforce rules*
8 *and procedures for ensuring the financial integrity of*
9 *transactions entered into by or through the facilities*
10 *of the contract market.*

11 “(6) *DISCIPLINARY PROCEDURES.—The board of*
12 *trade shall establish and enforce disciplinary proce-*
13 *dures that authorize the board of trade to discipline,*
14 *suspend, or expel members or market participants*
15 *that violate the rules of the board of trade, or similar*
16 *methods for performing the same functions, including*
17 *delegation of the functions to third parties.*

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

22 “(8) *ABILITY TO OBTAIN INFORMATION.—The*
23 *board of trade shall establish and enforce rules that*
24 *will allow the board of trade to obtain any necessary*
25 *information to perform any of the functions described*

1 *in this subsection, including the capacity to carry out*
2 *such international information-sharing agreements as*
3 *the Commission may require.*

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

9 “(d) *CORE PRINCIPLES FOR CONTRACT MARKETS.—*

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

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

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

23 “(4) *MONITORING OF TRADING.—The board of*
24 *trade shall monitor trading to prevent manipulation,*

1 *price distortion, and disruptions of the delivery or*
2 *cash-settlement process.*

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

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

14 “(A) *liquidate or transfer open positions in*
15 *any contract;*

16 “(B) *suspend or curtail trading in any con-*
17 *tract; and*

18 “(C) *require market participants in any*
19 *contract to meet special margin requirements.*

20 “(7) *AVAILABILITY OF GENERAL INFORMATION.—*
21 *The board of trade shall make available to market au-*
22 *thorities, market participants, and the public infor-*
23 *mation concerning—*

24 “(A) *the terms and conditions of the con-*
25 *tracts of the contract market; and*

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

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

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

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

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

1 *merchants and introducing brokers and the protection*
2 *of customer funds.*

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

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

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

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

1 “(16) *COMPOSITION OF BOARDS OF MUTUALLY*
2 *OWNED CONTRACT MARKETS.*—*In the case of a mutu-*
3 *ally owned contract market, the board of trade shall*
4 *ensure that the composition of the governing board re-*
5 *flects 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 in*
10 *a form and manner acceptable to the Commis-*
11 *sion 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 pe-*
14 *riod and provide the records to the Commission*
15 *at the expense of the person required to maintain*
16 *the records; and*

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

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

23 “(A) *adopting any rules or taking any ac-*
24 *tions that result in any unreasonable restraints*
25 *of trade; or*

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

3 “(e) *CURRENT AGRICULTURAL AND METAL COMMOD-*
4 *ITIES.*—

5 “(1) Subject to paragraph (2), a contract for
6 purchase or sale for future delivery of an agricultural
7 or metal commodity enumerated in section 1a(3) that
8 is available for trade on a contract market, as of the
9 date of the enactment of this subsection, may be trad-
10 ed only on a contract market designated under this
11 section.

12 “(2) In order to promote responsible economic or
13 financial innovation and fair competition, the Com-
14 mission, on application by any person, after notice
15 and public comment and opportunity for hearing,
16 may prescribe rules and regulations to provide for the
17 offer and sale of contracts for future delivery or op-
18 tions thereon to be conducted on a derivatives trans-
19 action execution facility.”.

20 **SEC. 13. DERIVATIVES TRANSACTION EXECUTION FACILI-**
21 **TIES.**

22 *The Commodity Exchange Act (7 U.S.C. 1 et seq.) is*
23 *amended by inserting after section 5 (as amended by section*
24 *12(2)) the following:*

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

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

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

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

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

13 “(1) *IN GENERAL.*—*A registered derivatives*
14 *transaction execution facility under subsection (a)*
15 *may trade any futures contract (or option on such a*
16 *contract) on or through the facility only by satisfying*
17 *the requirements of this section.*

18 “(2) *REQUIREMENTS FOR UNDERLYING COMMOD-*
19 *ITIES.*—*A registered derivatives transaction execution*
20 *facility may trade any futures contract only if—*

21 “(A) *the underlying commodity has a near-*
22 *ly inexhaustible deliverable supply;*

23 “(B) *the underlying commodity has a deliv-*
24 *erable supply that is sufficiently large that the*
25 *contract is highly unlikely to be susceptible to the*
26 *threat of manipulation;*

1 “(C) *the underlying commodity has no cash*
2 *market; or*

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

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

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

14 “(B)(i) *be an eligible contract participant;*
15 *or*

16 “(ii) *be a person trading through a futures*
17 *commission merchant that—*

18 “(I) *is registered with the Commission;*

19 “(II) *is a member of a futures self-reg-*
20 *ulatory organization;*

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

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

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

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

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

17 “(c) *CRITERIA FOR REGISTRATION.*—

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

23 “(2) *DETERRENCE OF ABUSES.*—The board of
24 trade shall establish and enforce trading rules that

1 *will deter abuses and has the capacity to detect, inves-*
2 *tigate, and enforce those rules, including means to—*

3 *“(A) obtain information necessary to per-*
4 *form the functions required under this section; or*

5 *“(B) use technological means to—*

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

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

11 *“(3) TRADING PROCEDURES.—The board of trade*
12 *shall establish and enforce rules or terms and condi-*
13 *tions defining, or specifications detailing, trading*
14 *procedures to be used in entering and executing orders*
15 *traded on the facilities of the board of trade. Such*
16 *rules may authorize—*

17 *“(A) an exchange of—*

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

20 *“(ii) futures for cash commodities;*

21 *“(iii) transfer trades or office trades;*

22 *or*

23 *“(iv) futures for swaps; and*

24 *“(B) a futures commission merchant, acting*
25 *as principal or agent, to enter into or confirm*

1 *the execution of a contract for the purchase or*
2 *sale of a commodity for future delivery if the*
3 *contract is reported, recorded, or cleared in ac-*
4 *cordance with the rules of the registered deriva-*
5 *tives transaction execution facility or a deriva-*
6 *tives clearing organization.*

7 “(4) *FINANCIAL INTEGRITY OF TRANSACTIONS.—*
8 *The board of trade shall establish and enforce rules or*
9 *terms and conditions providing for the financial in-*
10 *tegrity of transactions entered on or through the fa-*
11 *cilities of the board of trade, including rules or terms*
12 *and conditions to ensure the financial integrity of*
13 *any futures commission merchants and introducing*
14 *brokers and the protection of customer funds.*

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

17 “(1) *IN GENERAL.—To maintain the registration*
18 *of a board of trade as a derivatives transaction execu-*
19 *tion facility, a board of trade shall comply with the*
20 *core principles specified in this subsection.*

21 “(2) *COMPLIANCE WITH RULES.—The board of*
22 *trade shall monitor and enforce the rules of the facil-*
23 *ity, including any terms and conditions of any con-*
24 *tracts traded on or through the facility and any limi-*
25 *tations on access to the facility.*

1 “(3) *MONITORING OF TRADING.*—*The board of*
2 *trade shall monitor trading in the contracts of the fa-*
3 *ility to ensure orderly trading in the contract and*
4 *to maintain an orderly market while providing any*
5 *necessary trading information to the Commission to*
6 *allow the Commission to discharge the responsibilities*
7 *of the Commission under the Act.*

8 “(4) *DISCLOSURE OF GENERAL INFORMATION.*—
9 *The board of trade shall disclose publicly and to the*
10 *Commission information concerning—*

11 “(A) *contract terms and conditions;*

12 “(B) *trading conventions, mechanisms, and*
13 *practices;*

14 “(C) *financial integrity protections; and*

15 “(D) *other information relevant to partici-*
16 *pation in trading on the facility.*

17 “(5) *DAILY PUBLICATION OF TRADING INFORMA-*
18 *TION.*—*The board of trade shall make public daily in-*
19 *formation on settlement prices, volume, open interest,*
20 *and opening and closing ranges for actively traded*
21 *contracts on the facility.*

22 “(6) *FITNESS STANDARDS.*—*The board of trade*
23 *shall establish and enforce appropriate fitness stand-*
24 *ards for directors, members of any disciplinary com-*
25 *mittee, members, and any other persons with direct*

1 *access to the facility, including any parties affiliated*
2 *with any of the persons described in this paragraph.*

3 “(7) *CONFLICTS OF INTEREST.*—*The board of*
4 *trade shall establish and enforce rules to minimize*
5 *conflicts of interest in the decisionmaking process of*
6 *the derivatives transaction execution facility and es-*
7 *tablish a process for resolving such conflicts of inter-*
8 *est.*

9 “(8) *RECORDKEEPING.*—*The board of trade*
10 *shall—*

11 “(A) *maintain full records of all activities*
12 *related to the business of the derivatives trans-*
13 *action execution facility in a form and manner*
14 *acceptable to the Commission for a period of at*
15 *least 5 years;*

16 “(B) *make the records readily available*
17 *during at least the first 2 years of the 5-year pe-*
18 *riod and provide the records to the Commission*
19 *at the expense of the person required to maintain*
20 *the records; and*

21 “(C) *keep the records open to inspection by*
22 *any representatives of the Commission or the De-*
23 *partment of Justice.*

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

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

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

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

13 “(1) *IN GENERAL.*—*A registered derivatives*
14 *transaction execution facility may by rule allow a*
15 *broker-dealer, depository institution, or institution of*
16 *the Farm Credit System that meets the requirements*
17 *of paragraph (2) to—*

18 “(A) *act as an intermediary in transactions*
19 *executed on the facility on behalf of customers of*
20 *the broker-dealer, depository institution, or insti-*
21 *tution of the Farm Credit System; and*

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

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

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

7 “(B) *if the broker-dealer, depository institu-*
8 *tion, or institution of the Farm Credit System*
9 *carries or holds customer accounts or funds for*
10 *transactions on the derivatives transaction exe-*
11 *cutio n facility for more than 1 business day, the*
12 *broker-dealer, depository institution, or institu-*
13 *tion of the Farm Credit System is registered as*
14 *a futures commission merchant and is a member*
15 *of a registered futures association.*

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

23 “(f) *SEGREGATION OF CUSTOMER FUNDS.—Not later*
24 *than 180 days after the effective date of the Commodity Fu-*
25 *tures Modernization Act of 2000, consistent with regula-*

1 *tions adopted by the Commission, a registered derivatives*
2 *transaction execution facility may authorize a futures com-*
3 *mission merchant to offer any customer of the futures com-*
4 *mission merchant that is an eligible contract participant*
5 *the right to not segregate the customer funds of the futures*
6 *commission merchant for purposes of trading on or through*
7 *the facilities of the registered derivatives transaction execu-*
8 *tion facility.*

9 “(g) *ELECTION TO TRADE EXCLUDED COMMOD-*
10 *ITIES.—*

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

17 “(2) *EXCLUSIVE JURISDICTION OF THE COMMIS-*
18 *SION.—The Commission shall have exclusive jurisdic-*
19 *tion over agreements, contracts, or transactions de-*
20 *scribed in paragraph (1) to the extent that the agree-*
21 *ments, contracts, or transactions are traded on a de-*
22 *rivatives transaction execution facility.”.*

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

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

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

6 *“(a) REGISTRATION REQUIREMENT.—Except as pro-*
7 *vided in subsection (b), it shall be unlawful for a derivatives*
8 *clearing organization, unless registered with the Commis-*
9 *sion, directly or indirectly to make use of the mails or any*
10 *means or instrumentality of interstate commerce to perform*
11 *the functions of a derivatives clearing organization de-*
12 *scribed in section 1a(8).*

13 *“(b) EXCLUSION OF DERIVATIVES CLEARING ORGANI-*
14 *ZATIONS SUBJECT TO OTHER REGULATORY AUTHORI-*
15 *TIES.—A derivatives clearing organization shall not be re-*
16 *quired to register with the Commission, and the Commis-*
17 *sion shall have no jurisdiction with respect to the deriva-*
18 *tives clearing organization, if the derivatives clearing*
19 *organization—*

20 *“(1)(A) is registered as a clearing agency under*
21 *the Securities Exchange Act of 1934 (15 U.S.C. 78a*
22 *et seq.);*

23 *“(B) is subject to the supervisory jurisdiction of*
24 *a Federal banking agency (as defined in section 3 of*
25 *the Federal Deposit Insurance Act (12 U.S.C. 1813))*
26 *or the National Credit Union Administration; or*

1 “(C) is subject to the supervisory jurisdiction of
2 a foreign regulatory authority that is recognized by
3 the Securities and Exchange Commission, the Board
4 of Governors of the Federal Reserve System, the
5 Comptroller of the Currency, or the Commission as
6 overseeing a system of consolidated supervision com-
7 parable to that provided under applicable United
8 States law; and

9 “(2) does not clear a contract of sale for future
10 delivery, option on a contract of sale for future deliv-
11 ery, or option on a commodity that is not a security
12 (unless the contract or option is excluded under sub-
13 section (c) or (d) of section 2).

14 “(c) *VOLUNTARY REGISTRATION.*—A derivatives clear-
15 ing organization that is exempt from registration under
16 subsection (b) may register with the Commission as a de-
17 rivatives clearing organization.

18 “(d) *REGISTRATION OF DERIVATIVES CLEARING OR-*
19 *GANIZATIONS.*—

20 “(1) *APPLICATION.*—A person desiring to reg-
21 ister as a derivatives clearing organization shall sub-
22 mit to the Commission an application in such form
23 and containing such information as the Commission
24 may require for the purpose of making the determina-
25 tions required for approval under paragraph (2).

1 “(2) *CORE PRINCIPLES.*—

2 “(A) *IN GENERAL.*—*To be registered and to*
3 *maintain registration as a derivatives clearing*
4 *organization, an applicant shall demonstrate to*
5 *the Commission that the applicant complies with*
6 *the core principles specified in this paragraph.*

7 “(B) *FINANCIAL RESOURCES.*—*The appli-*
8 *cant shall demonstrate that the applicant has*
9 *adequate financial, operational, and managerial*
10 *resources to discharge the responsibilities of a de-*
11 *rivatives clearing organization without interrup-*
12 *tion in various market conditions.*

13 “(C) *PARTICIPANT AND PRODUCT ELIGI-*
14 *BILITY.*—*The applicant shall establish—*

15 “(i) *appropriate admission and con-*
16 *tinuing eligibility standards (including ap-*
17 *propriate minimum financial requirements)*
18 *for members of and participants in the or-*
19 *ganization; and*

20 “(ii) *appropriate standards for deter-*
21 *mining eligibility of agreements, contracts,*
22 *or transactions submitted to the applicant.*

23 “(D) *RISK MANAGEMENT.*—*The applicant*
24 *shall have the ability to manage the risks associ-*
25 *ated with discharging the responsibilities of a de-*

1 *derivatives clearing organization through the use of*
2 *appropriate tools and procedures.*

3 “(E) *SETTLEMENT PROCEDURES.*—*The ap-*
4 *plicant shall have the ability to—*

5 “(i) *complete settlements on a timely*
6 *basis under varying circumstances;*

7 “(ii) *maintain an adequate record of*
8 *the flow of funds associated with each trans-*
9 *action that the applicant clears; and*

10 “(iii) *comply with the terms and con-*
11 *ditions of any permitted netting or offset*
12 *arrangements with other clearing organiza-*
13 *tions.*

14 “(F) *TREATMENT OF FUNDS.*—*The appli-*
15 *cant shall have standards and procedures de-*
16 *signed to protect and ensure the safety of member*
17 *and participant funds.*

18 “(G) *DEFAULT RULES AND PROCEDURES.*—
19 *The applicant shall have rules and procedures*
20 *designed to allow for efficient, fair, and safe*
21 *management of events when members or partici-*
22 *pants become insolvent or otherwise default on*
23 *their obligations to the derivatives clearing orga-*
24 *nization.*

1 “(H) *RULE ENFORCEMENT.*—*The applicant*
2 *shall—*

3 “*(i) maintain adequate arrangements*
4 *and resources for the effective monitoring*
5 *and enforcement of compliance with rules of*
6 *the applicant and for resolution of disputes;*
7 *and*

8 “*(ii) have the authority and ability to*
9 *discipline, limit, suspend, or terminate a*
10 *member’s or participant’s activities for vio-*
11 *lations of rules of the applicant.*

12 “(I) *SYSTEM SAFEGUARDS.*—*The applicant*
13 *shall demonstrate that the applicant—*

14 “*(i) has established and will maintain*
15 *a program of oversight and risk analysis to*
16 *ensure that the automated systems of the*
17 *applicant function properly and have ade-*
18 *quate capacity and security; and*

19 “*(ii) has established and will maintain*
20 *emergency procedures and a plan for dis-*
21 *aster recovery, and will periodically test*
22 *backup facilities sufficient to ensure daily*
23 *processing, clearing, and settlement of*
24 *transactions.*

1 “(J) *REPORTING.*—*The applicant shall pro-*
2 *vide to the Commission all information nec-*
3 *essary for the Commission to conduct the over-*
4 *sight function of the applicant with respect to*
5 *the activities of the derivatives clearing organi-*
6 *zation.*

7 “(K) *RECORDKEEPING.*—*The applicant*
8 *shall—*

9 “(i) *maintain full records of all activi-*
10 *ties related to the business of the applicant*
11 *as a derivatives clearing organization in a*
12 *form and manner acceptable to the Commis-*
13 *sion for a period of at least 5 years;*

14 “(ii) *make the records readily available*
15 *during at least the first 2 years of the 5-*
16 *year period and provide the records to the*
17 *Commission at the expense of the person re-*
18 *quired to maintain the records; and*

19 “(iii) *keep the records open to inspec-*
20 *tion by any representative of the Commis-*
21 *sion or the Department of Justice.*

22 “(L) *PUBLIC INFORMATION.*—*The applicant*
23 *shall make information concerning the rules and*
24 *operating procedures governing the clearing and*

1 *settlement systems (including default procedures)*
2 *available to market participants.*

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

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

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

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

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

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

23 “(3) *ORDERS CONCERNING COMPETITION.*—*A de-*
24 *rivatives clearing organization may request the Com-*
25 *mission to issue an order concerning whether a rule*

1 *or practice of the applicant is the least anticompeti-*
2 *tive means of achieving the objectives, purposes, and*
3 *policies of this Act.*

4 *“(e) EXISTING DERIVATIVES CLEARING ORGANIZA-*
5 *TIONS.—A derivatives clearing organization shall be*
6 *deemed to be registered under this section to the extent*
7 *that—*

8 *“(1) the derivatives clearing organization clears*
9 *agreements, contracts, or transactions for a board of*
10 *trade that has been designated by the Commission as*
11 *a contract market for such agreements, contracts, or*
12 *transactions before the date of enactment of this sec-*
13 *tion; and*

14 *“(2) the Commission has reviewed and approved*
15 *the rules of the derivatives clearing organization be-*
16 *fore that date.*

17 *“(f) APPOINTMENT OF TRUSTEE.—*

18 *“(1) IN GENERAL.—If a proceeding under section*
19 *5e results in the suspension or revocation of the reg-*
20 *istration of a derivatives clearing organization, or if*
21 *a derivatives clearing organization withdraws from*
22 *registration, the Commission, on notice to the deriva-*
23 *tives clearing organization, may apply to the appro-*
24 *prate United States district court where the deriva-*

1 *tives clearing organization is located for the appoint-*
2 *ment of a trustee.*

3 “(2) *ASSUMPTION OF JURISDICTION.—If the*
4 *Commission applies for appointment of a trustee*
5 *under paragraph (1)—*

6 “(A) *the court may take exclusive jurisdic-*
7 *tion over the derivatives clearing organization*
8 *and the records and assets of the derivatives*
9 *clearing organization, wherever located; and*

10 “(B) *if the court takes jurisdiction under*
11 *subparagraph (A), the court shall appoint the*
12 *Commission, or a person designated by the Com-*
13 *mission, as trustee with power to take possession*
14 *and continue to operate or terminate the oper-*
15 *ations of the derivatives clearing organization in*
16 *an orderly manner for the protection of partici-*
17 *pants, subject to such terms and conditions as*
18 *the court may prescribe.*

19 “(g) *LINKING OF REGULATED CLEARING FACILI-*
20 *TIES.—*

21 “(1) *IN GENERAL.—The Commission shall facili-*
22 *tate the linking or coordination of derivatives clearing*
23 *organizations registered under this Act with other reg-*
24 *ulated clearance facilities for the coordinated settle-*
25 *ment of cleared transactions.*

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

5 **SEC. 15. COMMON PROVISIONS APPLICABLE TO REG-**
6 **ISTERED ENTITIES.**

7 *The Commodity Exchange Act (7 U.S.C. 1 et seq.) is*
8 *amended by inserting after section 5b (as added by section*
9 *14) the following:*

10 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**
11 **ISTERED ENTITIES.**

12 “(a) *ACCEPTABLE BUSINESS PRACTICES UNDER CORE*
13 *PRINCIPLES.*—

14 “(1) *IN GENERAL.*—*Consistent with the purposes*
15 *of this Act, the Commission may issue interpreta-*
16 *tions, or approve interpretations submitted to the*
17 *Commission, of sections 5(d), 5a(d), and 5b(d)(2) to*
18 *describe what would constitute an acceptable business*
19 *practice under such sections.*

20 “(2) *EFFECT OF INTERPRETATION.*—*An inter-*
21 *pretation issued under paragraph (1) shall not pro-*
22 *vide the exclusive means for complying with such sec-*
23 *tions.*

24 “(b) *DELEGATION OF FUNCTIONS UNDER CORE PRIN-*
25 *CIPLES.*—

1 “(1) *IN GENERAL.*—*A contract market or deriva-*
2 *tives transaction execution facility may comply with*
3 *any applicable core principle through delegation of*
4 *any relevant function to a registered futures associa-*
5 *tion or another registered entity.*

6 “(2) *RESPONSIBILITY.*—*A contract market or de-*
7 *rivatives transaction execution facility that delegates*
8 *a function under paragraph (1) shall remain respon-*
9 *sible for carrying out the function.*

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

12 “(1) *IN GENERAL.*—*Subject to paragraph (2), a*
13 *registered entity may elect to list for trading any new*
14 *contract or other instrument, or may elect to approve*
15 *and implement any new rule or rule amendment, by*
16 *providing to the Commission (and the Secretary of*
17 *the Treasury, in the case of a contract of sale for fu-*
18 *ture delivery of a government security (or option*
19 *thereon) or a rule or rule amendment specifically re-*
20 *lated to such a contract) a written certification that*
21 *the new contract, new rule, or rule amendment com-*
22 *plies with this Act (including regulations under this*
23 *Act).*

24 “(2) *PRIOR APPROVAL.*—

1 “(A) *IN GENERAL.*—A registered entity may
2 request that the Commission grant prior ap-
3 proval to any new contract or other instrument,
4 new rule, or rule amendment.

5 “(B) *PRIOR APPROVAL REQUIRED.*—Not-
6 withstanding any other provision of this section,
7 a designated contract market shall submit to the
8 Commission for prior approval each rule amend-
9 ment that materially changes the terms and con-
10 ditions, as determined by the Commission, in
11 any contract of sale for future delivery of a com-
12 modity specifically enumerated in section 1a(3)
13 of this Act (or any option thereon) traded
14 through its facilities if such rule amendment ap-
15 plies to contracts and delivery months which
16 have already been listed for trading and have
17 open interest.

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

1 “(3) *APPROVAL.*—*The Commission shall approve*
2 *any such new contract or instrument, new rule, or*
3 *rule amendment unless the Commission finds that the*
4 *new contract or instrument, new rule, or rule amend-*
5 *ment would violate this Act.*

6 “(d) *VIOLATION OF CORE PRINCIPLES.*—

7 “(1) *IN GENERAL.*—*If the Commission has rea-*
8 *son to believe that a registered entity is violating any*
9 *applicable provision specified in section 5(d), 5a(d),*
10 *or 5b(d)(2), the Commission shall notify the registered*
11 *entity in writing of the reasons for the preliminary*
12 *determination by the Commission of a violation, in-*
13 *cluding any data, materials, and facts the Commis-*
14 *sion relied on in making the preliminary determina-*
15 *tion.*

16 “(2) *INJUNCTIVE OR ADMINISTRATIVE ACTION.*—
17 *The Commission may initiate an action for an in-*
18 *junction under section 6c or an administrative pro-*
19 *ceeding, to demonstrate, by the preponderance of the*
20 *evidence, that—*

21 “(A) *the registered entity is violating any*
22 *applicable provision specified in section 5(d),*
23 *5a(d), or 5b(d)(2); and*

24 “(B) *the Commission has recommended an*
25 *appropriate remedial action to remove the defi-*

1 *ciency based on an analysis of the costs and ben-*
2 *efits in the public interest of the Commission rec-*
3 *ommendation.*

4 “(3) *BURDEN OF PROOF.*—*In making a deter-*
5 *mination that a registered entity is violating any ap-*
6 *plicable provision specified in section 5(d), 5a(d), or*
7 *5b(d)(2), the Commission shall have the burden of*
8 *proving that the registered entity is violating the ap-*
9 *plicable core principle.*

10 “(e) *RESERVATION OF EMERGENCY AUTHORITY.*—
11 *Nothing in this section shall limit or in any way affect*
12 *the emergency powers of the Commission provided in sec-*
13 *tion 8a(9) of this Act.”.*

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

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

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

19 “(a) *IN GENERAL.*—*Except as otherwise provided in*
20 *this section, a contract of sale (or option on such a contract)*
21 *of a commodity for future delivery traded on or through*
22 *the facilities of an exempt board of trade shall be exempt*
23 *from all provisions of this Act, other than section 2(g).*

24 “(b) *CRITERIA FOR EXEMPTION.*—*To qualify for an*
25 *exemption under subsection (a), a board of trade shall limit*

1 *trading on or through the facilities of the board of trade*
2 *to contracts of sale of a commodity for future delivery (or*
3 *options on such contracts)—*

4 “(1) *that have—*

5 “(A) *a nearly inexhaustible deliverable sup-*
6 *ply;*

7 “(B) *a deliverable supply that is sufficiently*
8 *large, and a cash market sufficiently liquid, to*
9 *render any contract traded on the commodity*
10 *highly unlikely to be susceptible to the threat of*
11 *manipulation; or*

12 “(C) *no cash market;*

13 “(2) *that are entered into only between persons*
14 *that are eligible contract participants at the time at*
15 *which the persons enter into the contract; and*

16 “(3) *that are not contracts of sale (or options on*
17 *the contract) for future delivery of any security, in-*
18 *cluding any group or index of securities or any inter-*
19 *est in, or interest that is based on the value of, any*
20 *security.*

21 “(c) *ANTIMANIPULATION REQUIREMENTS.—A party to*
22 *a futures contract or related option that is traded on an*
23 *exempt board of trade shall be subject to sections 4b, 4n,*
24 *6(c), and 9(a)(2), and the Commission shall enforce those*
25 *provisions with respect to any such trading.*

1 “(d) *PRICE DISCOVERY.*—If the Commission finds that
2 an exempt board of trade is a significant source of price
3 discovery for any underlying commodity in any transaction
4 traded on or through the facilities of the board of trade,
5 the board of trade shall disseminate publicly on a daily
6 basis trading volume, opening and closing price ranges,
7 open interest, and other trading data as appropriate to the
8 market.

9 “(e) *JURISDICTION.*—The Commission shall have ex-
10 clusive jurisdiction over any account, agreement, or trans-
11 action involving a contract of sale of a commodity for future
12 delivery, or related option, to the extent that such account,
13 agreement, or transaction is traded on an exempt board of
14 trade.

15 “(f) *SUBSIDIARIES.*—A board of trade that is des-
16 igned as a contract market or registered as a derivatives
17 transaction execution facility may operate an exempt board
18 of trade by establishing a separate subsidiary or other legal
19 entity and otherwise satisfying the requirements of this sec-
20 tion.”.

21 **SEC. 17. SUSPENSION OR REVOCATION OF DESIGNATION AS**
22 **CONTRACT MARKET.**

23 Section 5e of the Commodity Exchange Act (7 U.S.C.
24 7b) (as redesignated by section 12(1)) is amended to read
25 as follows:

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

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

10 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

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

14 **SEC. 19. PREEMPTION.**

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

18 *“(2) the application of any Federal or State law*
19 *(including any regulation) to an agreement, contract,*
20 *or transaction in or involving any commodity, prod-*
21 *uct, right, service, or interest, except that this Act*
22 *shall supersede and preempt—*

23 *“(A) in the case of any such agreement, con-*
24 *tract, or transaction—*

1 “(i) that is conducted on or subject to
2 the rules of a registered entity or exempt
3 board of trade;

4 “(ii) that is conducted on or subject to
5 the rules of any board of trade, exchange, or
6 market located outside the United States, or
7 any territory or possession of the United
8 States (in accordance with any terms or
9 conditions specified by the Commission by
10 regulation); and

11 “(iii) that is subject to regulation by
12 the Commission under section 4c or 19; and

13 “(B) any State or local law that prohibits
14 or regulates gaming or the operation of bucket
15 shops (other than antifraud provisions of general
16 applicability) in the case of—

17 “(i) an electronic trading facility
18 under section 2(e); or

19 “(ii) an agreement, contract, or trans-
20 action that is excluded or exempt under sec-
21 tion 2(c), 2(d), 2(f), or 2(h) or is covered by
22 the terms of an exemption granted by the
23 Commission under section 4(c) (regardless
24 of whether any such agreement, contract, or

1 *transaction is otherwise subject to this Act);*
2 *or”.*

3 **SEC. 20. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
4 **STITUTIONAL CUSTOMERS.**

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

8 *“(g) PREDISPUTE RESOLUTION AGREEMENTS FOR IN-*
9 *STITUTIONAL CUSTOMERS.—Nothing in this section pro-*
10 *hibits a registered futures commission merchant from re-*
11 *quiring a customer that is an eligible contract participant,*
12 *as a condition to the commission merchant’s conducting a*
13 *transaction for the customer, to enter into an agreement*
14 *waiving the right to file a claim under this section.”.*

15 **SEC. 21. CONSIDERATION OF COSTS AND BENEFITS AND**
16 **ANTITRUST LAWS.**

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

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

22 *“(a) COSTS AND BENEFITS.—*

23 *“(1) IN GENERAL.—Before promulgating a regu-*
24 *lation under this Act or issuing an order (except as*
25 *provided in paragraph (3)), the Commission shall*

1 *consider the costs and benefits of the action of the*
2 *Commission.*

3 “(2) *CONSIDERATIONS.—The costs and benefits*
4 *of the proposed Commission action shall be evaluated*
5 *in light of—*

6 “(A) *considerations of protection of market*
7 *participants and the public;*

8 “(B) *considerations of the efficiency, com-*
9 *petitiveness, and financial integrity of futures*
10 *markets;*

11 “(C) *considerations of price discovery;*

12 “(D) *considerations of sound risk manage-*
13 *ment practices; and*

14 “(E) *other public interest considerations.*

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

17 “(A) *An order that initiates, is part of, or*
18 *is the result of an adjudicatory or investigative*
19 *process of the Commission.*

20 “(B) *An emergency action.*

21 “(C) *A finding of fact regarding compliance*
22 *with a requirement of the Commission.*

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

1 **SEC. 22. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
 2 **COUNTERPARTIES.**

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

6 *“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE*
 7 *COUNTERPARTIES.—No agreement, contract, or transaction*
 8 *between eligible contract participants shall be void, void-*
 9 *able, or unenforceable, and no such eligible contract partici-*
 10 *pant shall be entitled to rescind, or recover any payment*
 11 *made with respect to, such an agreement, contract, or trans-*
 12 *action, under this section based solely on the failure of the*
 13 *agreement, contract, or transaction to comply with the*
 14 *terms or conditions of an exemption or exclusion from any*
 15 *provision of this Act or regulations of the Commission.”.*

16 **SEC. 23. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
 17 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
 18 **TURAL PRODUCERS.**

19 *The Commodity Exchange Act, as otherwise amended*
 20 *by this Act, is amended by inserting after section 40 the*
 21 *following:*

22 **“SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
 23 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
 24 **TURAL PRODUCERS.**

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

1 “(1) prescribe procedures under which each con-
2 tract market is to provide for orderly delivery, includ-
3 ing temporary storage costs, of any agricultural com-
4 modity enumerated in section 1a(3) which is the sub-
5 ject of a contract for purchase or sale for future deliv-
6 ery;

7 “(2) increase the ease with which domestic agri-
8 cultural producers may participate in contract mar-
9 kets, including by addressing cost and margin re-
10 quirements, so as to better enable such producers to
11 hedge price risk associated with their production;

12 “(3) provide flexibility in the minimum quan-
13 tities of such agricultural commodities that may be
14 the subject of a contract for purchase or sale for future
15 delivery that is traded on a contract market, to better
16 allow domestic agricultural producers to hedge such
17 price risk; and

18 “(4) encourage exchanges to provide information
19 and otherwise facilitate the participation of domestic
20 agricultural producers in contract markets.

21 “(b) *REPORT.*—Within 1 year after the date of enact-
22 ment of this section, the Commission shall submit to the
23 Committee on Agriculture of the House of Representatives
24 and the Committee on Agriculture, Nutrition, and Forestry
25 of the Senate a report on the steps it has taken to implement

1 *this section and on the activities of contract markets pursu-*
2 *ant to this section.”.*

3 **SEC. 24. RULE OF CONSTRUCTION.**

4 *Except as expressly provided in this Act or an amend-*
5 *ment made by this Act, nothing in this Act or an amend-*
6 *ment made by the Act supersedes, affects, or otherwise limits*
7 *or expands the scope and applicability of laws governing*
8 *the Securities and Exchange Commission.*

9 **SEC. 25. TECHNICAL AND CONFORMING AMENDMENTS.**

10 *(a) COMMODITY EXCHANGE ACT.—*

11 *(1) Section 1a of the Commodity Exchange Act*
12 *(7 U.S.C. 1a) is amended—*

13 *(A) in paragraph (3), by inserting “alu-*
14 *minum, copper, gold, palladium, platinum, sil-*
15 *ver,” after “orange juice,”;*

16 *(B) in paragraphs (4), (5), (8), (9), (12),*
17 *and (14), by inserting “or derivatives trans-*
18 *action execution facility” after “contract mar-*
19 *ket” each place it appears; and*

20 *(C) in paragraph (15)—*

21 *(i) in the paragraph heading, by strik-*
22 *ing “CONTRACT MARKET” and inserting*
23 *“REGISTERED ENTITY”; and*

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

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

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

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

12 “(a) JURISDICTION OF COMMISSION; COMMODITY FU-
 13 TURES TRADING COMMISSION.—

14 “(1) JURISDICTION OF COMMISSION.—

15 “(A) IN GENERAL.—The”; and

16 (B) in subsection (a)—

17 (i) in paragraph (1) (as amended by
 18 subparagraph (A))—

19 (I) by striking subparagraph (B);

20 (II) by striking “subparagraph

21 (B) of this subparagraph” and insert-

22 ing “subsection (g)”;

23 (III) by striking “contract market

24 designated pursuant to section 5 of this

25 Act” and inserting “contract market

1 *designated or derivatives transaction*
2 *execution facility registered pursuant*
3 *to section 5 or 5a”;*

4 *(IV) by striking clause (ii); and*

5 *(V) in clause (iii), by striking*

6 *“(iii) The” and inserting the following:*

7 *“(B) LIABILITY OF PRINCIPAL FOR ACT OF*
8 *AGENT.—The”;*

9 *(ii) in paragraph (7), by striking*
10 *“contract market” and inserting “registered*
11 *entity”;*

12 *(iii) in paragraph (8)(B)(ii)—*

13 *(I) in the first sentence, by strik-*
14 *ing “designation as a contract market”*
15 *and inserting “designation or registra-*
16 *tion as a contract market or deriva-*
17 *tives transaction execution facility”;*

18 *(II) in the second sentence, by*
19 *striking “designate a board of trade as*
20 *a contract market” and inserting “des-*
21 *ignate or register a board of trade as*
22 *a contract market or derivatives trans-*
23 *action execution facility”; and*

24 *(III) in the fourth sentence, by*
25 *striking “designating, or refusing, sus-*

1 *pending, or revoking the designation*
2 *of, a board of trade as a contract mar-*
3 *ket involving transactions for future*
4 *delivery referred to in this clause or in*
5 *considering possible emergency action*
6 *under section 8a(9) of this Act” and*
7 *inserting “designating, registering, or*
8 *refusing, suspending, or revoking the*
9 *designation or registration of, a board*
10 *of trade as a contract market or de-*
11 *rivatives transaction execution facility*
12 *involving transactions for future deliv-*
13 *ery referred to in this clause or in con-*
14 *sidering any possible action under this*
15 *Act (including without limitation*
16 *emergency action under section*
17 *8a(9))”, and by striking “designation,*
18 *suspension, revocation, or emergency*
19 *action” and inserting “designation,*
20 *registration, suspension, revocation, or*
21 *action”; and*
22 *(iv) by moving paragraphs (2) through*
23 *(9) 2 ems to the right.*
24 *(3) Section 4 of the Commodity Exchange Act (7*
25 *U.S.C. 6) is amended—*

1 (A) in subsection (a)—

2 (i) in paragraph (1), by striking “des-
3 ignated by the Commission as a ‘contract
4 market’ for” and inserting “designated or
5 registered by the Commission as a contract
6 market or derivatives transaction execution
7 facility for”;

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

10 (iii) in paragraph (3), by inserting
11 “or derivatives transaction execution facil-
12 ity” after “contract market”; and

13 (B) in subsection (c)—

14 (i) in paragraph (1)—

15 (I) by striking “designated as a
16 contract market” and inserting “des-
17 ignated or registered as a contract
18 market or derivatives transaction exe-
19 cution facility”; and

20 (II) by striking “section
21 2(a)(1)(B)” and inserting “section
22 2(g)”; and

23 (ii) in paragraph (2)(B)(ii), by insert-
24 ing “or derivatives transaction execution fa-
25 cility” after “contract market”.

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

3 (A) *in subsection (a)—*

4 (i) *in the first sentence, by inserting*
5 *“or derivatives transaction execution facili-*
6 *ties” after “contract markets”; and*

7 (ii) *in the second sentence, by inserting*
8 *“or derivatives transaction execution facil-*
9 *ity” after “contract market”;*

10 (B) *in subsection (b)—*

11 (i) *in paragraph (1), by inserting “, or*
12 *derivatives transaction execution facility or*
13 *facilities,” after “markets”; and*

14 (ii) *in paragraph (2), by inserting “or*
15 *derivatives transaction execution facility”*
16 *after “contract market”; and*

17 (C) *in subsection (e)—*

18 (i) *by striking “contract market or”*
19 *each place it appears and inserting “con-*
20 *tract market, derivatives transaction execu-*
21 *tion facility, or”;*

22 (ii) *by striking “licensed or des-*
23 *ignated” each place it appears and insert-*
24 *ing “licensed, designated, or registered”;*
25 *and*

1 (iii) by striking “contract market, or”
2 and inserting “contract market or deriva-
3 tives transaction execution facility, or”.

4 (5) Section 4b(a) of the Commodity Exchange
5 Act (7 U.S.C. 6b(a)) is amended by striking “contract
6 market” each place it appears and inserting “reg-
7 istered entity”.

8 (6) Sections 4c(g), 4d, 4e, and 4f of the Com-
9 modity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f) are
10 amended by inserting “or derivatives transaction exe-
11 cution facility” after “contract market” each place it
12 appears.

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

15 (A) in subsection (b), by striking “clearing-
16 house and contract market” and inserting “reg-
17 istered entity”; and

18 (B) in subsection (f), by striking “clearing-
19 houses, contract markets, and exchanges” and in-
20 serting “registered entities”.

21 (8) Section 4h of the Commodity Exchange Act
22 (7 U.S.C. 6h) is amended by striking “contract mar-
23 ket” each place it appears and inserting “registered
24 entity”.

1 (9) *Section 4i of the Commodity Exchange Act*
2 (7 U.S.C. 6i) is amended in the first sentence by in-
3 serting “or derivatives transaction execution facility”
4 after “contract market”.

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

7 (11) *Section 4l of the Commodity Exchange Act*
8 (7 U.S.C. 6l) is amended by inserting “or derivatives
9 transaction execution facilities” after “contract mar-
10 kets” each place it appears.

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

13 (A) in the third sentence of subsection (a),
14 by striking “Act or contract markets” and in-
15 serting “Act, contract markets, or derivatives
16 transaction execution facilities”; and

17 (B) in subsection (b), by inserting “deriva-
18 tives transaction execution facility,” after “con-
19 tract market,”.

20 (13) *The Commodity Exchange Act (as amended*
21 *by paragraphs (10), (11), and (12)) is amended by*
22 *redesignating section 4k through 4p (7 U.S.C. 6k*
23 *through 6p) as sections 4j through 4o, respectively.*

24 (14) *Section 6 of the Commodity Exchange Act*
25 (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

1 (A) in subsection (a)—

2 (i) in the first sentence—

3 (I) by striking “board of trade de-
4 siring to be designated a ‘contract
5 market’ shall make application to the
6 Commission for such designation” and
7 inserting “person desiring to be des-
8 ignated or registered as a contract
9 market or derivatives transaction exe-
10 cution facility shall make application
11 to the Commission for such designation
12 or registration”;

13 (II) by striking “above condi-
14 tions” and inserting “conditions set
15 forth in this Act”; and

16 (III) by striking “above require-
17 ments” and inserting “the require-
18 ments of this Act”;

19 (ii) in the second sentence, by striking
20 “designation as a contract market within
21 one year” and inserting “designation or
22 registration as a contract market or deriva-
23 tives transaction execution facility within
24 180 days”;

25 (iii) in the third sentence—

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

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

5 (iv) in the last sentence, by striking
6 “designate as a ‘contract market’ any board
7 of trade that has made application therefor,
8 such board of trade” and inserting “des-
9 ignate or register as a contract market or
10 derivatives transaction execution facility
11 any person that has made application
12 therefor, such person”;

13 (B) in subsection (b)—

14 (i) in the first sentence—

15 (I) by striking “designation of
16 any board of trade as a ‘contract mar-
17 ket’ upon” and inserting “designation
18 or registration of any contract market
19 or derivatives transaction execution fa-
20 cility on”;

21 (II) by striking “board of trade”
22 each place it appears and inserting
23 “contract market or derivatives trans-
24 action execution facility”; and

1 (III) by striking “designation as
2 set forth in section 5 of this Act” and
3 inserting “designation or registration
4 as set forth in sections 5 through 5b”;
5 (ii) in the second sentence—

6 (I) by striking “board of trade”
7 the first place it appears and inserting
8 “contract market or derivatives trans-
9 action execution facility”; and

10 (II) by striking “board of trade”
11 the second and third places it appears
12 and inserting “person”; and

13 (iii) in the last sentence, by striking
14 “board of trade” each place it appears and
15 inserting “person”;

16 (C) in subsection (c)—

17 (i) by striking “contract market” each
18 place it appears and inserting “registered
19 entity”;

20 (ii) by striking “contract markets”
21 each place it appears and inserting “reg-
22 istered entities”; and

23 (iii) by striking “trading privileges”
24 each place it appears and inserting “privi-
25 leges”;

1 (D) in subsection (d), by striking “contract
2 market” each place it appears and inserting
3 “registered entity”; and

4 (E) in subsection (e), by striking “trading
5 on all contract markets” each place it appears
6 and inserting “the privileges of all registered en-
7 tities”.

8 (15) Section 6a of the Commodity Exchange Act
9 (7 U.S.C. 10a) is amended—

10 (A) in the first sentence of subsection (a), by
11 striking “designated as a ‘contract market’
12 shall” and inserting “designated or registered as
13 a contract market or a derivatives transaction
14 execution facility”; and

15 (B) in subsection (b), by striking “des-
16 ignated as a contract market” and inserting
17 “designated or registered as a contract market or
18 a derivatives transaction execution facility”.

19 (16) Section 6b of the Commodity Exchange Act
20 (7 U.S.C. 13a) is amended—

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

24 (B) in the first sentence, by striking “des-
25 ignation as set forth in section 5 of this Act”

1 *and inserting “designation or registration as set*
2 *forth in sections 5 through 5c”; and*

3 *(C) in the last sentence, by striking “the*
4 *contract market’s ability” and inserting “the*
5 *ability of the registered entity”.*

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

9 *(18) Section 6d(1) of the Commodity Exchange*
10 *Act (7 U.S.C. 13a–2(1)) is amended by inserting “de-*
11 *rivatives transaction execution facility,” after “con-*
12 *tract market,”.*

13 *(19) Section 7 of the Commodity Exchange Act*
14 *(7 U.S.C. 11) is amended—*

15 *(A) in the first sentence—*

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

18 *(ii) by inserting “or registered” after*
19 *“designated”;*

20 *(iii) by inserting “or registration”*
21 *after “designation” each place it appears;*
22 *and*

23 *(iv) by striking “contract market” each*
24 *place it appears and inserting “registered*
25 *entity”;*

1 (B) *in the second sentence—*

2 (i) *by striking “designation of such*
3 *board of trade as a contract market” and*
4 *inserting “designation or registration of the*
5 *registered entity”; and*

6 (ii) *by striking “contract markets” and*
7 *inserting “registered entities”; and*

8 (C) *in the last sentence—*

9 (i) *by striking “board of trade” and*
10 *inserting “person”; and*

11 (ii) *by striking “designated again a*
12 *contract market” and inserting “designated*
13 *or registered again a registered entity”.*

14 (20) *Section 8(c) of the Commodity Exchange*
15 *Act (7 U.S.C. 12(c)) is amended in the first sentence*
16 *by striking “board of trade” and inserting “registered*
17 *entity”.*

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

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

23 (B) *in paragraph (2)(F), by striking “trad-*
24 *ing privileges” and inserting “privileges”.*

1 (22) *Sections 8b and 8c(e) of the Commodity Ex-*
2 *change Act (7 U.S.C. 12b, 12c(e)) are amended by*
3 *striking “contract market” each place it appears and*
4 *inserting “registered entity”.*

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

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

10 (B) *in subsection (a), by striking “section*
11 *5a(b)” and inserting “sections 5 through 5c”;*

12 (C) *in subsection (b)—*

13 (i) *in paragraph (1), by striking “con-*
14 *tract market’s trade monitoring system im-*
15 *plemented pursuant to section 5a(b)” and*
16 *inserting “the trade monitoring system of a*
17 *registered entity implemented pursuant to*
18 *sections 5 through 5c”;*

19 (ii) *by striking paragraph (3) and in-*
20 *serting the following:*

21 “(3) *REMEDIES.—On becoming final, the Com-*
22 *mission deficiency order may require the registered*
23 *entity to—*

1 “(A) institute appropriate improvements in
2 its trade monitoring system necessary to correct
3 the deficiencies in the order;

4 “(B) satisfy stated objective performance
5 criteria to correct the deficiencies;

6 “(C) upgrade or reconfigure existing sys-
7 tems for collecting or processing relevant data on
8 trading and trader or broker activity, including,
9 where appropriate, the commitment of additional
10 resources.”; and

11 (iii) in paragraph (5)—

12 (I) in the paragraph heading, by
13 striking “*DESIGNATION AS CONTRACT*
14 *MARKET*” and inserting “*DESIGNATION*
15 *OR REGISTRATION AS REGISTERED EN-*
16 *TITY*”;

17 (II) by inserting “or registration”
18 after “*designation*”; and

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

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

23 (E) in the paragraph heading of subsection
24 (e)(2), by striking “*CONTRACT MARKETS*” and
25 inserting “*REGISTERED ENTITIES*”.

1 (24) *Section 9 of the Commodity Exchange Act*
2 (7 U.S.C. 13) is amended—

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

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

8 (25) *Section 14 of the Commodity Exchange Act*
9 (7 U.S.C. 18) is amended—

10 (A) *in subsection (a)(1)(B), by striking*
11 *“contract market” and inserting “registered enti-*
12 *ty”;* and

13 (B) *in subsection (f), by striking “contract*
14 *markets” and inserting “registered entities”.*

15 (26) *Section 17 of the Commodity Exchange Act*
16 (7 U.S.C. 21) is amended *by striking “contract mar-*
17 *ket” each place it appears and inserting “registered*
18 *entity”.*

19 (27) *Section 22 of the Commodity Exchange Act*
20 (7 U.S.C. 25) is amended—

21 (A) *in subsection (a)—*

22 (i) *in paragraph (1)—*

23 (I) *by striking “contract market,*
24 *clearing organization of a contract*

1 *market, licensed board of trade,” and*
2 *inserting “registered entity”; and*

3 *(II) in subparagraph (C)(i), by*
4 *striking “contract market” and insert-*
5 *ing “registered entity”;*

6 *(ii) in paragraph (2), by striking “sec-*
7 *tions 5a(11),” and inserting “sections*
8 *5(d)(13), 5b(b)(1)(E),”;* and

9 *(iii) in paragraph (3), by striking*
10 *“contract market” and inserting “registered*
11 *entity”; and*

12 *(B) in subsection (b)—*

13 *(i) in paragraph (1)—*

14 *(I) by striking “contract market*
15 *or clearing organization of a contract*
16 *market” and inserting “registered enti-*
17 *ty”;*

18 *(II) by striking “section 5a(8)*
19 *and section 5a(9) of this Act” and in-*
20 *serting “sections 5 through 5c”;*

21 *(III) by striking “contract mar-*
22 *ket, clearing organization of a contract*
23 *market, or licensed board of trade” and*
24 *inserting “registered entity”; and*

1 (IV) by striking “contract market
2 or licensed board of trade” and insert-
3 ing “registered entity”;

4 (ii) in paragraph (3)—

5 (I) by striking “a contract mar-
6 ket, clearing organization, licensed
7 board of trade,” and inserting “reg-
8 istered entity”; and

9 (II) by striking “contract market,
10 licensed board of trade” and inserting
11 “registered entity”;

12 (iii) in paragraph (4), by striking
13 “contract market, licensed board of trade,
14 clearing organization,” and inserting “reg-
15 istered entity”; and

16 (iv) in paragraph (5), by striking
17 “contract market, licensed board of trade,
18 clearing organization,” and inserting “reg-
19 istered entity”.

20 (b) *FEDERAL DEPOSIT INSURANCE CORPORATION IM-*
21 *PROVEMENT ACT OF 1991.*—Section 402(2) of the *Federal*
22 *Deposit Insurance Corporation Improvement Act of 1991*
23 *(12 U.S.C. 4402(2))* is amended by striking subparagraph
24 (B) and inserting the following:

1 “(B) that is registered as a derivatives
2 clearing organization under section 5b of the
3 Commodity Exchange Act.”.

4 **SEC. 26. REPORT TO CONGRESS.**

5 (a) The Commodity Futures Trading Commission (in
6 this section referred to as the “Commission”) shall under-
7 take and complete a study of the Commodity Exchange Act
8 (in this section referred to as “the Act”) and the Commis-
9 sion’s rules, regulations and orders governing the conduct
10 of persons required to be registered under the Act, not later
11 than 1 year after the date of the enactment of this Act. The
12 study shall identify—

13 (1) the core principles and interpretations of ac-
14 ceptable business practices that the Commission has
15 adopted or intends to adopt to replace the provisions
16 of the Act and the Commission’s rules and regulations
17 thereunder;

18 (2) the rules and regulations that the Commis-
19 sion has determined must be retained and the reasons
20 therefor;

21 (3) the extent to which the Commission believes
22 it can effect the changes identified in paragraph (1)
23 of this subsection through its exemptive authority
24 under section 4(c) of the Act; and

1 (4) *the regulatory functions the Commission cur-*
2 *rently performs that can be delegated to a registered*
3 *futures association (within the meaning of the Act)*
4 *and the regulatory functions that the Commission has*
5 *determined must be retained and the reasons therefor.*

6 (b) *In conducting the study, the Commission shall so-*
7 *licit the views of the public as well as Commission reg-*
8 *istrants, registered entities, and registered futures associa-*
9 *tions (all within the meaning of the Act).*

10 (c) *The Commission shall transmit to the Committee*
11 *on Agriculture of the House of Representatives and the*
12 *Committee on Agriculture, Nutrition, and Forestry of the*
13 *Senate a report of the results of its study, which shall in-*
14 *clude an analysis of comments received.*

15 **SEC. 27. EFFECTIVE DATE.**

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

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

22 **SEC. 28. INTERNATIONAL ACTIVITIES OF THE COMMODITY**
23 **FUTURES TRADING COMMISSION.**

24 (a) *FINDINGS.—The Congress finds that—*

1 (1) *derivatives markets serving United States in-*
2 *dustry are increasingly global in scope;*

3 (2) *developments in data processing and commu-*
4 *nications technologies enable users of risk manage-*
5 *ment services to analyze and compare those services*
6 *on a worldwide basis;*

7 (3) *financial services regulatory policy must be*
8 *flexible to account for rapidly changing derivatives*
9 *industry business practices;*

10 (4) *regulatory impediments to the operation of*
11 *global business interests can compromise the competi-*
12 *tiveness of United States businesses;*

13 (5) *events that disrupt financial markets and*
14 *economies are often global in scope, require rapid reg-*
15 *ulatory response, and coordinated regulatory effort*
16 *across international jurisdictions;*

17 (6) *through its membership in the International*
18 *Organisation of Securities Commissions, the Com-*
19 *modity Futures Trading Commission has promoted*
20 *beneficial communication among market regulators*
21 *and international regulatory cooperation; and*

22 (7) *the Commodity Futures Trading Commission*
23 *and other United States financial regulators and self-*
24 *regulatory organizations should continue to foster*

1 *productive and cooperative working relationships*
2 *with their counterparts in foreign jurisdictions.*

3 *(b) SENSE OF THE CONGRESS.—It is the sense of the*
4 *Congress that, consistent with its responsibilities under the*
5 *Commodity Exchange Act, the Commodity Futures Trading*
6 *Commission should, as part of its international activities,*
7 *continue to coordinate with foreign regulatory authorities,*
8 *to participate in international regulatory organizations*
9 *and forums, and to provide technical assistance to foreign*
10 *government authorities, in order to encourage—*

11 *(1) the facilitation of cross-border transactions*
12 *through the removal or lessening of any unnecessary*
13 *legal or practical obstacles;*

14 *(2) the development of internationally accepted*
15 *regulatory standards of best practice;*

16 *(3) the enhancement of international supervisory*
17 *cooperation and emergency procedures;*

18 *(4) the strengthening of international coopera-*
19 *tion for customer and market protection; and*

20 *(5) improvements in the quality and timeliness*
21 *of international information sharing.*

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

23 **(a) SHORT TITLE.—This Act may be cited as**
24 **the “Commodity Futures Modernization and**

**1 Financial Contract Netting Improvement Act
2 of 2000”.**

**3 (b) TABLE OF CONTENTS.—The table of con-
4 tents of this Act is as follows:**

Sec. 1. Short title; table of contents.

TITLE I—COMMODITY FUTURES MODERNIZATION

Sec. 101. Short title.

Sec. 102. Purposes.

Sec. 103. Definitions.

**Sec. 104. Agreements, contracts, and transactions in foreign
currency, government securities, and certain
other commodities.**

Sec. 105. Legal certainty for excluded derivative transactions.

Sec. 106. Excluded electronic trading facilities.

**Sec. 107. Conformity with the Gramm-Leach-Bliley Act; hybrid
instruments.**

Sec. 108. Futures on securities.

Sec. 109. Transactions in exempt commodities.

Sec. 110. Swap transactions.

Sec. 111. Application of the Commodity Exchange Act.

Sec. 112. Protection of the public interest.

Sec. 113. Prohibited transactions.

Sec. 114. Designation of boards of trade as contract markets.

Sec. 115. Derivatives transaction execution facilities.

Sec. 116. Derivatives clearing.

Sec. 117. Common provisions applicable to registered entities.

Sec. 118. Exempt boards of trade.

**Sec. 119. Suspension or revocation of designation as contract
market.**

Sec. 120. Authorization of appropriations.

Sec. 121. Preemption.

**Sec. 122. Predispute resolution agreements for institutional
customers.**

**Sec. 123. Consideration of costs and benefits and antitrust
laws.**

Sec. 124. Contract enforcement.

**Sec. 125. Special procedures to encourage and facilitate bona
fide hedging by agricultural producers.**

Sec. 126. Rule of construction.

**Sec. 127. Authority of agencies to construe the term “contract
market”.**

Sec. 128. Technical and conforming amendments.

Sec. 129. Report to Congress.

Sec. 130. Effective date.

**Sec. 131. International activities of the Commodity Futures
Trading Commission.**

Sec. 132. Antifraud provisions.

Sec. 133. Retail swap customer protections.

TITLE II—FINANCIAL CONTRACT NETTING IMPROVEMENT**Sec. 201. Short title.****Sec. 202. Treatment of certain agreements by conservators or receivers of insured depository institutions.****Sec. 203. Authority of the Corporation with respect to failed and failing institutions.****Sec. 204. Amendments relating to transfers of qualified financial contracts.****Sec. 205. Amendments relating to disaffirmance or repudiation of qualified financial contracts.****Sec. 206. Clarifying amendment relating to master agreements.****Sec. 207. Federal Deposit Insurance Corporation Improvement Act of 1991.****Sec. 208. Bankruptcy code amendments.****Sec. 209. Recordkeeping requirements.****Sec. 210. Exemptions from contemporaneous execution requirement.****Sec. 211. Damage measure.****Sec. 212. SIPC stay.****Sec. 213. Asset-backed securitizations.****Sec. 214. Application of amendments.**

1 **TITLE I—COMMODITY FUTURES**
 2 **MODERNIZATION**

3 **SEC. 101. SHORT TITLE.**

4 **This title may be cited as the “Commodity**
 5 **Futures Modernization Act of 2000”.**

6 **SEC. 102. PURPOSES.**

7 **The purposes of this title are—**

8 **(1) to reauthorize the appropriation**
 9 **for the Commodity Futures Trading Com-**
 10 **mission;**

11 **(2) to streamline and eliminate un-**
 12 **necessary regulation for the commodity**
 13 **futures exchanges and other entities reg-**
 14 **ulated under the Commodity Exchange**
 15 **Act;**

1 **(3) to transform the role of the Com-**
2 **modity Futures Trading Commission to**
3 **oversight of the futures markets;**

4 **(4) to provide a statutory and regu-**
5 **latory framework for allowing the trad-**
6 **ing of futures on securities;**

7 **(5) to provide the Commission jurisdic-**
8 **tion over certain retail foreign ex-**
9 **change transactions and bucket shops**
10 **that may not be otherwise regulated;**

11 **(6) to promote innovation for futures**
12 **and derivatives and to reduce systemic**
13 **risk by enhancing legal certainty in the**
14 **markets for certain futures and deriva-**
15 **tives transactions;**

16 **(7) to reduce systemic risk and pro-**
17 **vide greater stability to markets during**
18 **times of market disorder by allowing the**
19 **clearing of transactions in over-the-**
20 **counter derivatives through appro-**
21 **priately regulated clearing organizations;**
22 **and**

23 **(8) to enhance the competitive posi-**
24 **tion of United States financial institu-**
25 **tions and financial markets.**

1 SEC. 103. DEFINITIONS.

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

4 (1) by redesignating—

5 (A) paragraphs (1) through (7) as
6 paragraphs (2) through (8), respec-
7 tively;

8 (B) paragraphs (8) through (12) as
9 paragraphs (16) through (20), respec-
10 tively;

11 (C) paragraphs (13) through (15)
12 as paragraphs (22) through (24), re-
13 spectively; and

14 (D) paragraph (16) as paragraph
15 (28);

16 (2) by inserting before paragraph (2)
17 (as so redesignated by paragraph (1) of
18 this section) the following new para-
19 graph:

20 “(1) BANKING PRODUCT.—

21 “(A) IN GENERAL.—The term ‘bank-
22 ing product’ means any agreement,
23 contract, or transaction that is an
24 identified banking product (as de-
25 fined in section 206(a) of the Gramm-
26 Leach-Bliley Act).

1 **“(B) EXCLUSION.—The term ‘bank-**
2 **ing product’ does not include a con-**
3 **tract for the sale of a commodity for**
4 **future delivery traded on a contract**
5 **market designated under section 5 of**
6 **this Act or an agreement, contract, or**
7 **transaction traded on a derivatives**
8 **transaction execution facility reg-**
9 **istered under section 5a.”;**

10 **(3) by inserting after paragraph (8)**
11 **(as so redesignated by paragraph (1) of**
12 **this section) the following new para-**
13 **graphs:**

14 **“(9) DERIVATIVES CLEARING ORGANIZA-**
15 **TION.—**

16 **“(A) IN GENERAL.—The term ‘de-**
17 **rivatives clearing organization’**
18 **means a clearinghouse, clearing asso-**
19 **ciation, clearing corporation, or simi-**
20 **lar entity, facility, system, or organi-**
21 **zation that, with respect to a deriva-**
22 **tive agreement, contract, or**
23 **transaction—**

24 **“(i) enables each party to the**
25 **derivative agreement, contract, or**

1 **transaction to substitute, through**
2 **novation or otherwise, the credit**
3 **of the derivatives clearing organi-**
4 **zation for the credit of the par-**
5 **ties;**

6 **“(ii) arranges or provides, on**
7 **a multilateral basis, for the settle-**
8 **ment or netting of obligations re-**
9 **sulting from such agreements,**
10 **contracts, or transactions exe-**
11 **cuted by parties in the deriva-**
12 **tives clearing organization; or**

13 **“(iii) otherwise provides clear-**
14 **ing services or arrangements that**
15 **mutualize or transfer among par-**
16 **ties in the derivatives clearing or-**
17 **ganization the credit risk arising**
18 **from such agreements, contracts,**
19 **or transactions executed by the**
20 **parties.**

21 **“(B) EXCLUSIONS.—The term ‘de-**
22 **rivatives clearing organization’ does**
23 **not include an entity, facility, system,**
24 **or organization solely because it ar-**
25 **ranges or provides for—**

1 “(i) settlement, netting, or no-
2 vation of obligations resulting
3 from agreements, contracts, or
4 transactions, on a bilateral basis
5 and without a centralized
6 counterparty;

7 “(ii) settlement or netting of
8 cash payments through an inter-
9 bank payment system; or

10 “(iii) settlement, netting, or
11 novation of obligations resulting
12 from a sale of a commodity in a
13 transaction in the spot market for
14 the commodity.

15 “(10) ELECTRONIC TRADING FACILITY.—

16 The term ‘electronic trading facility’
17 means a trading facility that—

18 “(A) operates by means of an elec-
19 tronic network; and

20 “(B) maintains a real-time audit
21 trail of bids, offers, and the matching
22 of orders or the execution of trans-
23 actions.

24 “(11) ELIGIBLE COMMERCIAL PARTICI-
25 PANT.—The term ‘eligible commercial par-

1 **participant’ means a party or entity de-**
2 **scribed in paragraph (11)(A)(i), (ii), (v), or**
3 **(vii) or paragraph (11)(C), who, in con-**
4 **nection with its business—**

5 **“(A) has a demonstrable capacity**
6 **or ability, directly or through sepa-**
7 **rate contractual arrangements, to**
8 **make or take delivery of the under-**
9 **lying physical commodity;**

10 **“(B) incurs risks, in addition to**
11 **price risk, related to the commodity;**
12 **or**

13 **“(C) is a dealer that regularly pro-**
14 **vides hedging, risk management, or**
15 **market-making services to the fore-**
16 **going entities.**

17 **“(12) ELIGIBLE CONTRACT PARTICI-**
18 **PANT.—The term ‘eligible contract partici-**
19 **pant’ means—**

20 **“(A) acting for its own account—**

21 **“(i) a financial institution;**

22 **“(ii) an insurance company**
23 **regulated by a State (including a**
24 **subsidiary or affiliate of such an**
25 **insurance company);**

1 “(iii) an investment company
2 subject to regulation under the
3 Investment Company Act of 1940
4 (15 U.S.C. 80a-1 et seq.) or a for-
5 eign person performing a similar
6 role or function subject as such to
7 foreign regulation (regardless of
8 whether each investor in the in-
9 vestment company or the foreign
10 person is itself an eligible con-
11 tract participant);

12 “(iv) a commodity pool that—

13 “(I) has total assets ex-
14 ceeding \$5,000,000; and

15 “(II) is formed and oper-
16 ated by a person subject to
17 regulation under this Act or a
18 foreign person performing a
19 similar role or function sub-
20 ject as such to foreign regula-
21 tion (regardless of whether
22 each investor in the com-
23 modity pool or the foreign
24 person is itself an eligible
25 contract participant);

1 “(v) a corporation, partner-
2 ship, proprietorship, organiza-
3 tion, trust, or other entity—

4 “(I) that has total assets
5 exceeding \$10,000,000;

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

17 “(III) that—

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

20 “(bb) enters into an
21 agreement, contract, or
22 transaction in connection
23 with the conduct of the
24 entity’s business or to
25 manage the risk associ-

1 **ated with an asset or li-**
2 **ability owned or incurred**
3 **or reasonably likely to be**
4 **owned or incurred by the**
5 **entity in the conduct of**
6 **the entity’s business;**

7 **“(vi) an employee benefit plan**
8 **subject to the Employee Retire-**
9 **ment Income Security Act of 1974**
10 **(29 U.S.C. 1001 et seq.) or a for-**
11 **ign person performing a similar**
12 **role or function subject as such to**
13 **foreign regulation—**

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

16 **“(II) the investment deci-**
17 **sions of which are made by—**

18 **“(aa) an investment**
19 **advisor or commodity**
20 **trading advisor subject to**
21 **regulation under the In-**
22 **vestment Advisers Act of**
23 **1940 (15 U.S.C. 80b-1 et**
24 **seq.) or this Act;**

1 **“(bb) a foreign person**
2 **performing a similar role**
3 **or function subject as**
4 **such to foreign regulation;**

5 **“(cc) a financial insti-**
6 **tution; or**

7 **“(dd) an insurance**
8 **company regulated by a**
9 **State (including a sub-**
10 **subsidiary or affiliate of such**
11 **an insurance company);**

12 **“(vii)(I) a governmental entity**
13 **(including the United States, a**
14 **State, or a foreign government) or**
15 **political subdivision of a govern-**
16 **mental entity;**

17 **“(II) a multinational or supra-**
18 **national government entity; or**

19 **“(III) an instrumentality,**
20 **agency, or department of an enti-**
21 **ty described in subclause (I) or**
22 **(II);**

23 **“(viii) a broker or dealer sub-**
24 **ject to regulation under the Secu-**
25 **rities Exchange Act of 1934 (15**

1 U.S.C. 78a et seq.) or a foreign
2 person performing a similar role
3 or function subject as such to for-
4 eign regulation, except that, if the
5 broker or dealer or foreign per-
6 son is a natural person or propri-
7 etorship, the broker or dealer or
8 foreign person shall not be con-
9 sidered to be an eligible contract
10 participant unless the broker or
11 dealer or foreign person also
12 meets the requirements of clause
13 (v) or (xi);

14 “(ix) a futures commission
15 merchant subject to regulation
16 under this Act or a foreign person
17 performing a similar role or func-
18 tion subject as such to foreign
19 regulation, except that, if the fu-
20 tures commission merchant or
21 foreign person is a natural person
22 or proprietorship, the futures
23 commission merchant or foreign
24 person shall not be considered to
25 be an eligible contract participant

1 **unless the futures commission**
2 **merchant or foreign person also**
3 **meets the requirements of clause**
4 **(v) or (xi);**

5 **“(x) a floor broker or floor**
6 **trader subject to regulation under**
7 **this Act in connection with any**
8 **transaction that takes place on or**
9 **through the facilities of a reg-**
10 **istered entity or an exempt board**
11 **of trade, or any affiliate thereof,**
12 **on which such person regularly**
13 **trades; or**

14 **“(xi) an individual who has**
15 **total assets in an amount in ex-**
16 **cess of—**

17 **“(I) \$10,000,000; or**

18 **“(II) \$5,000,000 and who**
19 **enters into the agreement,**
20 **contract, or transaction in**
21 **order to manage the risk asso-**
22 **ciated with an asset owned or**
23 **liability incurred, or reason-**
24 **ably likely to be owned or in-**
25 **curred, by such individual**

1 with total assets exceeding
2 \$10,000,000;

3 “(B)(i) a person described in any
4 of clauses (i) through (x) of subpara-
5 graph (A) or in subparagraph (C), act-
6 ing as broker or performing an equiv-
7 alent agency function on behalf of an-
8 other person described in subpara-
9 graph (A) or (C);

10 “(ii) an investment adviser sub-
11 ject to regulation under the Invest-
12 ment Advisors Act of 1940, a com-
13 modity trading advisor subject to reg-
14 ulation under this Act, a foreign per-
15 son performing a similar role or func-
16 tion subject as such to foreign regula-
17 tion, or a person described in any of
18 clauses (i) through (x) of subpara-
19 graph (A) or in subparagraph (C), in
20 any such case acting as investment
21 manager or fiduciary (but excluding a
22 person acting as broker or per-
23 forming an equivalent agency func-
24 tion) for another person described in
25 subparagraph (A) or (C) and who is

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

3 “(iii) a commodity trading advisor
4 subject to regulation under this Act,
5 having assets under management of
6 not less than \$25,000,000 and acting
7 as investment manager or fiduciary
8 for another person and authorized by
9 such person to commit such person to
10 the transaction; or

11 “(C) any other person that the
12 Commission determines to be eligible
13 in light of the financial or other
14 qualifications of the person.

15 “(13) EXCLUSION-ELIGIBLE COM-
16 MODITY.—

17 “(A) IN GENERAL.—The term ‘exclu-
18 sion-eligible commodity’ means—

19 “(i) an interest rate, exchange
20 rate, currency, security, security
21 index, credit risk or measure,
22 debt or equity instrument, index
23 or measure of inflation, or other
24 macroeconomic index or measure;

1 “(ii) any other rate, differen-
2 tial, index, or measure of eco-
3 nomic or commercial risk, return,
4 or value that is—

5 “(I) not based in substan-
6 tial part on the value of a nar-
7 row group of commodities not
8 described in clause (i); or

9 “(II) based solely on 1 or
10 more commodities that have
11 no cash market;

12 “(iii) any economic or com-
13 mercial index based on prices,
14 rates, values, or levels that are
15 not within the control of any
16 party to the relevant contract,
17 agreement, or transaction; or

18 “(iv) an occurrence, extent of
19 an occurrence, or contingency
20 (other than a change in the price,
21 rate, value, or level of a com-
22 modity not described in clause (i))
23 that is—

24 “(I) beyond the control of
25 the parties to the relevant

1 **contract, agreement, or trans-**
2 **action; and**

3 **“(II) associated with a fi-**
4 **nancial, commercial, or eco-**
5 **nom ic consequence.**

6 **“(B) REFERENCE TO EXCLUDED COM-**
7 **MODITY.—Any reference in this Act to**
8 **the term ‘excluded commodity’ shall**
9 **be deemed to be a reference to ‘exclu-**
10 **sion-eligible commodity’.**

11 **“(14) EXEMPT COMMODITY.—The term**
12 **‘exempt commodity’ means a commodity**
13 **that is not an excluded commodity or an**
14 **agricultural commodity.**

15 **“(15) FINANCIAL INSTITUTION.—The**
16 **term ‘financial institution’ means—**

17 **“(A) a corporation operating**
18 **under the fifth undesignated para-**
19 **graph of section 25 of the Federal Re-**
20 **serve Act (12 U.S.C. 603), commonly**
21 **known as ‘an agreement corporation’;**

22 **“(B) a corporation organized**
23 **under section 25A of the Federal Re-**
24 **serve Act (12 U.S.C. 611 et seq.), com-**

1 **monly known as an ‘Edge Act cor-**
2 **poration’;**

3 **“(C) an institution that is regu-**
4 **lated by the Farm Credit Administra-**
5 **tion;**

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

10 **“(E) a depository institution (as**
11 **defined in section 3 of the Federal**
12 **Deposit Insurance Act (12 U.S.C.**
13 **1813));**

14 **“(F) a foreign bank or a branch or**
15 **agency of a foreign bank (each as de-**
16 **defined in section 1(b) of the Inter-**
17 **national Banking Act of 1978 (12**
18 **U.S.C. 3101(b));**

19 **“(G) any financial holding com-**
20 **pany (as defined in section 2 of the**
21 **Bank Holding Company Act of 1956);**

22 **“(H) a trust company; or**

23 **“(I) a similarly regulated sub-**
24 **sidary or affiliate of an entity de-**

1 scribed in any of subparagraphs (A)
2 through (H).”;

3 (3) by inserting after paragraph (20)
4 (as so redesignated by paragraph (1)) the
5 following new paragraph:

6 “(21) HYBRID INSTRUMENT.—

7 “(A) IN GENERAL.—The term ‘hy-
8 brid instrument’ means a deposit in-
9 strument offered by a financial insti-
10 tution, or a security, having 1 or more
11 payments indexed to the value, level,
12 or rate of 1 or more commodities.

13 “(B) DEPOSIT INSTRUMENT DE-
14 FINED.—The term ‘deposit instrument’
15 means an instrument representing an
16 interest described in paragraph (1),
17 (2), (3), (4), or (5) of section 3(l) of the
18 Federal Deposit Insurance Act, other
19 than in subparagraph (A), (B), or (C)
20 at the end of paragraph (5).”;

21 (4) by inserting after paragraph (24)
22 (as so redesignated by paragraph (1)) the
23 following new paragraphs:

24 “(25) NONEXEMPT SECURITY.—The term
25 ‘nonexempt security’ means a security

1 that is not an exempted security under
2 section 3 of the Securities Act of 1933 or
3 section 3(a)(12) of the Securities Ex-
4 change Act of 1934 (other than any mu-
5 nicipal security, as defined in section
6 3(a)(29) of the Securities Exchange Act of
7 1934).

8 “(26) OPTION.—The term ‘option’
9 means an agreement, contract, or trans-
10 action that is of the character of, or is
11 commonly known to the trade as, an ‘op-
12 tion’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’,
13 ‘put’, ‘call’, ‘advance guaranty’, or ‘decline
14 guaranty’.

15 “(27) ORGANIZED EXCHANGE.—The term
16 ‘organized exchange’ means a trading fa-
17 cility that—

18 “(A) permits trading by persons
19 other than—

20 “(i) eligible contract partici-
21 pants trading on a principal-to-
22 principal basis; or

23 “(ii) eligible contract partici-
24 pants described in subclause (I),
25 (II), (III), (IV), (V) or (VI) of sec-

1 **tion 2(c)(2)(B), acting as a broker**
2 **or performing an equivalent**
3 **agency function on behalf of eligi-**
4 **ble contract participants; or**

5 **“(B) has adopted (directly or**
6 **through another nongovernmental**
7 **entity) rules that—**

8 **“(i) govern the conduct of par-**
9 **ticipants, other than rules that**
10 **govern the submission of orders**
11 **or execution of transactions on**
12 **the trading facility; or**

13 **“(ii) include disciplinary sanc-**
14 **tions other than the exclusion of**
15 **participants from trading.”; and**

16 **(5) by adding at the end the following**
17 **new paragraphs:**

18 **“(29) REGISTERED ENTITY.—The term**
19 **‘registered entity’ means—**

20 **“(A) a board of trade designated**
21 **as a contract market under section 5;**

22 **“(B) a derivatives transaction exe-**
23 **cution facility registered under sec-**
24 **tion 5a; or**

1 **“(C) a derivatives clearing organi-**
2 **zation registered under section 5b.**

3 **“(30) SECURITY.—The term ‘security’**
4 **has the meaning given the term in sec-**
5 **tion 3(a) of the Securities Exchange Act**
6 **of 1934 (15 U.S.C. 78c(a)) as in effect on**
7 **date of the enactment of this paragraph.**

8 **“(31) TRADING FACILITY.—**

9 **“(A) IN GENERAL.—The term ‘trad-**
10 **ing facility’ means a person or group**
11 **of persons that constitutes, main-**
12 **tains, or provides a physical or elec-**
13 **tronic facility or system in which**
14 **multiple participants have the ability**
15 **to execute or trade agreements, con-**
16 **tracts, or transactions by accepting**
17 **bids and offers made by other partici-**
18 **pants that are open to multiple par-**
19 **ticipants in the facility or system.**

20 **“(B) EXCLUSIONS.—The term ‘trad-**
21 **ing facility’ does not include—**

22 **“(i) a person or group of per-**
23 **sons solely because the person or**
24 **group of persons constitutes,**
25 **maintains, or provides an elec-**

1 **tronic facility or system that en-**
2 **ables participants to negotiate**
3 **the terms of and enter into bilat-**
4 **eral transactions as a result of**
5 **communications exchanged by**
6 **the parties and not from inter-**
7 **action of multiple orders within a**
8 **predetermined, nondiscretionary**
9 **automated trade matching algo-**
10 **rithm;**

11 “(ii) a government securities
12 **dealer or government securities**
13 **broker, to the extent that the**
14 **dealer or broker executes or**
15 **trades agreements, contracts, or**
16 **transactions in government secu-**
17 **rities, or assists persons in com-**
18 **municating about, negotiating,**
19 **entering into, executing, or trad-**
20 **ing an agreement, contract, or**
21 **transaction in government securi-**
22 **ties (as the terms ‘government se-**
23 **curities dealer’, ‘government secu-**
24 **rities broker’, and ‘government**
25 **securities’ are defined in section**

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

3 **“(iii) facilities on which bids**
4 **and offers, and acceptances of**
5 **bids and offers effected on the fa-**
6 **cility, are not binding; or**

7 **“(iv) a person or group of per-**
8 **sons solely because the person or**
9 **group of persons constitutes,**
10 **maintains, or provides an elec-**
11 **tronic facility or system that—**

12 **“(I) enables participants**
13 **to enter into bilateral trans-**
14 **actions with other partici-**
15 **pants; and**

16 **“(II) incorporates credit**
17 **screens or filters that prevent**
18 **any participant from exe-**
19 **cuting a transaction with an-**
20 **other participant unless both**
21 **participants have approved**
22 **the extension of credit to the**
23 **other.”.**

1 **SEC. 104. AGREEMENTS, CONTRACTS, AND TRANSACTIONS**
2 **IN FOREIGN CURRENCY, GOVERNMENT SECU-**
3 **RITIES, AND CERTAIN OTHER COMMODITIES.**

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

7 **“(c) AGREEMENTS, CONTRACTS, AND TRANS-**
8 **ACTIONS IN FOREIGN CURRENCY, GOVERNMENT**
9 **SECURITIES, AND CERTAIN OTHER COMMOD-**
10 **ITIES.—**

11 **“(1) IN GENERAL.—Except as provided**
12 **in paragraph (2), nothing in this Act**
13 **(other than section 5b or 12(e)(2)(B)) gov-**
14 **erns or applies to an agreement, contract,**
15 **or transaction in—**

16 **“(A) foreign currency;**

17 **“(B) government securities;**

18 **“(C) security warrants;**

19 **“(D) security rights;**

20 **“(E) resales of installment loan**
21 **contracts;**

22 **“(F) repurchase transactions in**
23 **an excluded commodity; or**

24 **“(G) mortgages or mortgage pur-**
25 **chase commitments.**

26 **“(2) COMMISSION JURISDICTION.—**

1 **“(A) AGREEMENTS, CONTRACTS, AND**
2 **TRANSACTIONS THAT ARE FUTURES TRAD-**
3 **ED ON AN ORGANIZED EXCHANGE.—This**
4 **Act applies to, and the Commission**
5 **shall have jurisdiction over, an agree-**
6 **ment, contract, or transaction de-**
7 **scribed in paragraph (1) that is—**

8 **“(i) a contract of sale of a**
9 **commodity for future delivery (or**
10 **an option thereon), or an option**
11 **on a commodity (other than for-**
12 **ign currency or a security), that**
13 **is executed or traded on an orga-**
14 **nized exchange; or**

15 **“(ii) an option on foreign cur-**
16 **rency and is executed or traded**
17 **on an organized exchange that is**
18 **not a national securities ex-**
19 **change.**

20 **“(B) AGREEMENTS, CONTRACTS, AND**
21 **TRANSACTIONS IN RETAIL FOREIGN CUR-**
22 **RENCY.—This Act applies to, and the**
23 **Commission shall have jurisdiction**
24 **over, an agreement, contract, or**
25 **transaction in foreign currency that—**

1 “(i) is a contract of sale for fu-
2 ture delivery (or an option on
3 such a contract) or an option; and

4 “(ii) is offered to, or entered
5 into with, a person that is not an
6 eligible contract participant, un-
7 less the counterparty, or the per-
8 son offering to be the
9 counterparty, of the person is—

10 “(I) a financial institution;

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

18 “(III) an associated person
19 of a broker or dealer reg-
20 istered under section 15(b) or
21 15C of the Securities Ex-
22 change Act of 1934 (15 U.S.C.
23 78o(b), 78o-5), or an affiliated
24 person of a futures commis-
25 sion merchant registered

1 **under this Act, concerning the**
2 **financial or securities activi-**
3 **ties of which the registered**
4 **person makes and keeps**
5 **records under section 15C(b)**
6 **or 17(h) of the Securities Ex-**
7 **change Act of 1934 (15 U.S.C.**
8 **78o-5(b), 78q(h)) or section**
9 **4f(c)(2)(B) of this Act;**

10 **“(IV) an insurance com-**
11 **pany that is subject to State**
12 **regulation (including a sub-**
13 **sidary or affiliate of such an**
14 **insurance company);**

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

19 **“(VI) an investment bank**
20 **holding company (as defined**
21 **in section 17(i) of the Securi-**
22 **ties Exchange Act of 1934).”.**

1 SEC. 105. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE
2 TRANSACTIONS.

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

7 “(d) EXCLUDED DERIVATIVE TRANS-
8 ACTIONS.—

9 “(1) IN GENERAL.—Nothing in this Act
10 (other than section 5b or 12(e)(2)(B)) gov-
11 erns or applies to an agreement, contract,
12 or transaction in an excluded commodity
13 if—

14 “(A) the agreement, contract, or
15 transaction is entered into only be-
16 tween persons that are eligible con-
17 tract participants at the time at
18 which the persons enter into the
19 agreement, contract, or transaction;
20 and

21 “(B) the agreement, contract, or
22 transaction is not executed or traded
23 on a trading facility.

24 “(2) ELECTRONIC TRADING FACILITY EX-
25 CLUSION.—Nothing in this Act (other than
26 section 5a, 5b, or 12(e)(2)(B)) governs or

1 applies to an agreement, contract, or
2 transaction in an excluded commodity
3 if—

4 “(A) the agreement, contract, or
5 transaction is—

6 “(i) entered into—

7 “(I) on a principal-to-prin-
8 cipal basis between parties
9 trading for their own ac-
10 counts or as described in sec-
11 tion 1a(12)(B)(ii) of this Act;
12 and

13 “(II) only between eligible
14 contract participants (as de-
15 fined in subparagraphs (A),
16 (B)(ii), and (C) section 1a(12))
17 at the time at which the per-
18 sons enter into the agreement,
19 contract, or transaction; or

20 “(ii) entered into only be-
21 tween eligible contract partici-
22 pants described in subclause (I),
23 (II), (III), (IV), (V), or (VI) of sec-
24 tion 2(c)(2)(B)(ii) acting as a
25 broker or performing a similar

1 **agency function on behalf of per-**
2 **sons that are eligible contract**
3 **participants at the time at which**
4 **the persons enter into the agree-**
5 **ment, contract, or transaction;**
6 **and**

7 **“(B) the agreement, contract, or**
8 **transaction is executed or traded on**
9 **an electronic trading facility.”.**

10 **SEC. 106. EXCLUDED ELECTRONIC TRADING FACILITIES.**

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

15 **“(e) EXCLUDED ELECTRONIC TRADING FA-**
16 **CILITIES.—**

17 **“(1) IN GENERAL.—Nothing in this Act**
18 **(other than section 12(e)(2)(B)) governs**
19 **or is applicable to an electronic trading**
20 **facility that limits transactions author-**
21 **ized to be conducted on its facilities to**
22 **those satisfying the requirements of sec-**
23 **tions 2(d)(2) and 2(h)(3)(B) of this Act.**

24 **“(2) EFFECT ON AUTHORITY TO ESTAB-**
25 **LISH AND OPERATE.—Nothing in this Act**

1 shall prohibit a board of trade designated
2 by the Commission as a contract market
3 or derivatives transaction execution facil-
4 ity, or an exempt board of trade, from es-
5 tablishing and operating an electronic
6 trading facility excluded under this Act
7 pursuant to paragraph (1).”.

8 SEC. 107. CONFORMITY WITH THE GRAMM-LEACH-BLILEY
9 ACT; HYBRID INSTRUMENTS.

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

14 “(f) EXCLUSION FOR QUALIFYING HYBRID IN-
15 STRUMENTS.—

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

19 “(A) a banking product or secu-
20 rity sold or provided by an entity that
21 is listed in any of subclauses (I)
22 through (VI) of section 2(c)(2)(B)(ii);
23 or

1 **“(B) a hybrid instrument that is**
2 **predominantly a security or a deposit**
3 **instrument.**

4 **“(2) EXCEPTION.—Paragraph (1)(A)**
5 **shall not apply to any swap agreement**
6 **(as defined in section 206(b) of the**
7 **Gramm-Leach-Bliley Act) with any party**
8 **who is not an eligible contract partici-**
9 **pant unless such swap agreement is en-**
10 **tered into after final regulations have**
11 **been prescribed under section 49 of the**
12 **Federal Deposit Insurance Act.**

13 **“(3) PREDOMINANCE.—A hybrid instru-**
14 **ment shall be considered to be predomi-**
15 **nantly a security or deposit instrument**
16 **if—**

17 **“(A) the issuer of the hybrid in-**
18 **strument receives payment in full of**
19 **the purchase price of the hybrid in-**
20 **strument, substantially contempora-**
21 **neously with delivery of the hybrid**
22 **instrument;**

23 **“(B) the purchaser or holder of**
24 **the hybrid instrument is not required**
25 **to make any payment to the issuer in**

1 **addition to the purchase price paid**
2 **under subparagraph (A), whether as**
3 **margin, settlement payment, or other-**
4 **wise, during the life of the hybrid in-**
5 **strument or at maturity;**

6 **“(C) the issuer of the hybrid in-**
7 **strument is not subject by the terms**
8 **of the instrument to mark-to-market**
9 **marginining requirements; and**

10 **“(D) the hybrid instrument is not**
11 **marketed as a contract of sale for fu-**
12 **ture delivery of a commodity (or op-**
13 **tion on such a contract) subject to**
14 **this Act.**

15 **“(4) MARK-TO-MARKET MARGINING RE-**
16 **QUIREMENTS.—For the purposes of para-**
17 **graph (3)(C), mark-to-market margining**
18 **requirements do not include the obliga-**
19 **tion of an issuer of a secured debt instru-**
20 **ment to increase the amount of collateral**
21 **held in pledge for the benefit of the pur-**
22 **chaser of the secured debt instrument to**
23 **secure the repayment obligations of the**
24 **issuer under the secured debt instru-**
25 **ment.”.**

1 SEC. 108. FUTURES ON SECURITIES.

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

6 “(g) Notwithstanding any other provision
7 of law:

8 “(1) This Act shall not apply to and
9 the Commission shall have no jurisdic-
10 tion to designate a board of trade as a
11 contract market for any transaction
12 whereby any party to the transaction ac-
13 quires a put, call, or other option on 1 or
14 more securities (as defined in section
15 2(a)(1) of the Securities Act of 1933 or
16 section 3(a)(10) of the Securities Ex-
17 change Act of 1934, on the date of enact-
18 ment of the Futures Trading Act of 1982),
19 including any group or index of securi-
20 ties and any interest in or based on the
21 value of securities.

22 “(2) Nothing in this subsection gov-
23 erns or applies to—

24 “(A) an agreement, contract, or
25 transaction in a commodity that is ex-
26 cluded under subsection (c) or (d);

1 **“(B) an electronic trading facility**
2 **that is excluded under subsection (e);**
3 **or**

4 **“(C) a hybrid instrument that is**
5 **covered by an exclusion under sub-**
6 **section (f) or an exemption granted**
7 **by the Commission under section 4(c)**
8 **(whether or not the hybrid instru-**
9 **ment is otherwise subject to this Act).**

10 **“(3) Except as provided in paragraph**
11 **(4) of this subsection, or unless excluded**
12 **by paragraph (2) of this subsection, a per-**
13 **son shall not offer to enter into, enter**
14 **into, or confirm the execution of any con-**
15 **tract of sale (or option on the contract)**
16 **for future delivery of any security or in-**
17 **terest in or based on the value of a non-**
18 **exempt security.**

19 **“(4)(A) Except as excluded by para-**
20 **graph (2) of this subsection, this Act shall**
21 **apply to and the Commission shall have**
22 **exclusive jurisdiction with respect to ac-**
23 **counts, agreements (including any trans-**
24 **action which is of the character of, or is**
25 **commonly known to the trade as an op-**

1 **tion, privilege, indemnity, bid, offer, put,**
2 **call, advance guaranty, or decline guar-**
3 **anty), and transactions involving, and**
4 **may designate a board of trade as a con-**
5 **tract market under section 5 or register**
6 **the board of trade as a derivatives trans-**
7 **action execution facility under section 5a**
8 **in, contracts of sale (or options on the**
9 **contracts) for future delivery of 1 or**
10 **more securities (as defined in section**
11 **2(a)(1) of the Securities Act of 1933 or**
12 **section 3(a)(10) of the Securities Ex-**
13 **change Act of 1934), including any group**
14 **or index of securities and any interest in**
15 **or based on the value of securities.**

16 **“(B) The Commission shall not des-**
17 **ignate a board of trade as a contract mar-**
18 **ket under section 5 or register a board of**
19 **trade as a derivatives transaction execu-**
20 **tion facility under section 5a with respect**
21 **to any such contracts of sale (or options**
22 **on the contracts) for future delivery un-**
23 **less the board of trade demonstrates and**
24 **the Commission expressly finds that the**
25 **specific contract (or option on the con-**

1 tract) with respect to which the applica-
2 tion for the designation or recognition
3 has been made meets the following re-
4 quirements:

5 “(i) Settlement of or delivery on
6 the contract (or option on the con-
7 tract) shall be effected in cash or by
8 means other than the transfer or re-
9 ceipt of a nonexempt security.

10 “(ii) SUSCEPTIBILITY TO PRICE MA-
11 NIPULATION.—Trading in a contract
12 (or option on such a contract) de-
13 scribed in subparagraph (A) shall not
14 be readily susceptible to—

15 “(I) manipulation of the price
16 of the contract (or option on such
17 a contract); or

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

24 “(iii) If the contract is based on a
25 single nonexempt security, an option

1 **on the security underlying the con-**
2 **tract would meet all Securities and**
3 **Exchange Commission requirements**
4 **for listing on a national securities ex-**
5 **change.**

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

15 **“(v)(I) IN GENERAL.—The contract**
16 **will be traded on a board of trade**
17 **that establishes the level of margin**
18 **for futures contracts (or options on**
19 **the contracts) based on a single non-**
20 **exempt security, an index of fewer**
21 **than 5 nonexempt securities, or an**
22 **index in which a single nonexempt**
23 **security predominates, at a level con-**
24 **sistent with the level of margin on**

1 **comparable option contracts listed on**
2 **any national securities exchange.**

3 **“(II) CONSISTENCY.—For**
4 **the purposes of subclause (I),**
5 **a margin for designated fu-**
6 **tures on securities and op-**
7 **tions on securities shall be**
8 **considered to be consistent if**
9 **the margin provides a similar**
10 **level of protection against de-**
11 **faults by counterparties, tak-**
12 **ing into account any dif-**
13 **ferences in—**

14 **“(aa) the price vola-**
15 **tility of the contracts;**

16 **“(bb) the frequency**
17 **with which margin re-**
18 **quirements are made; and**

19 **“(cc) the period of**
20 **time within which margin**
21 **calls must be met.**

22 **“(vi) The contract will be traded**
23 **on a board of trade that prohibits a**
24 **person who acts as a floor broker for**
25 **any contract of sale (or options on**

1 **the contract) for future delivery of a**
2 **nonexempt security, an index based**
3 **on fewer than 5 nonexempt securi-**
4 **ties, or an index in which a single**
5 **nonexempt security predominates,**
6 **from trading that contract for the**
7 **broker's own account during the**
8 **same trading session.**

9 **“(vii) The contract will be traded**
10 **on a board of trade that collects,**
11 **maintains, and promptly provides to**
12 **the Securities and Exchange Commis-**
13 **sion such information as the Commis-**
14 **sion and the Securities and Exchange**
15 **Commission jointly consider nec-**
16 **essary to perform the enforcement re-**
17 **sponsibilities described in paragraph**
18 **(6).**

19 **“(5) The Commission shall consult**
20 **with the Securities and Exchange Com-**
21 **mission with respect to any application**
22 **submitted by a board of trade for des-**
23 **ignation as a contract market or deriva-**
24 **tives transaction execution facility with**
25 **respect to any contract of sale (or option**

1 on the contract) for future delivery of a
2 nonexempt security or a group or index
3 of such securities. If, not later than 15
4 days after the consultation, the Securities
5 and Exchange Commission objects to the
6 designation of a board of trade as a con-
7 tract market or derivatives transaction
8 execution facility in the contract (or op-
9 tion on the contract) on the ground that
10 any requirement of paragraph (4)(B) is
11 not met, the Commission shall afford the
12 Securities and Exchange Commission an
13 opportunity for an oral hearing to be
14 transcribed before the Commission, and
15 shall give appropriate weight to the
16 views of the Securities and Exchange
17 Commission. The oral hearing shall be
18 held before Commission action upon the
19 application for the designation, and not
20 less than 30 nor more than 45 days after
21 the Securities and Exchange Commission
22 has objected. If such an oral hearing is
23 held, the Securities and Exchange Com-
24 mission fails to withdraw its objections,
25 and the Commission issues an order des-

1 **ignating a board of trade as a contract**
2 **market or recognizes the board of trade**
3 **as a derivatives transaction execution fa-**
4 **ility with respect to any such contract**
5 **(or option on the contract), the Securities**
6 **and Exchange Commission may seek judi-**
7 **cial review of the order in accordance**
8 **with the procedural requirements set**
9 **forth in section 6(c). If, pursuant to sec-**
10 **tion 6, there is a hearing on the record**
11 **with respect to an application for such**
12 **designation, the Securities and Exchange**
13 **Commission may participate in that hear-**
14 **ing as an interested party.**

15 **“(6) Notwithstanding any other provi-**
16 **sion of this Act, the Securities and Ex-**
17 **change Commission may enforce against**
18 **a person that purchases or sells any con-**
19 **tract of sale (or option on the contract)**
20 **for future delivery of any nonexempt se-**
21 **curity, any index comprised of fewer**
22 **than 5 nonexempt securities, or any**
23 **index in which a single nonexempt secu-**
24 **rity predominates to the same extent as if**
25 **the person had purchased or sold an op-**

1 **tion on the security or index under the**
2 **following provisions of the securities**
3 **laws and regulations with respect to the**
4 **following categories of conduct:**

5 **“(A) Section 10(b) and 21A of the**
6 **Securities Exchange Act of 1934 (15**
7 **U.S.C. 78j(b), 78u-1) with respect to**
8 **insider trading.**

9 **“(B) Section 16(b) of such Act (15**
10 **U.S.C. 78p(b)) with respect to unfair**
11 **use of information in short swing**
12 **trading by a corporate insider.**

13 **“(C) Section 9 of such Act (15**
14 **U.S.C. 78i) with respect to manipula-**
15 **tion of securities prices.**

16 **“(D) Section 10(b) of such Act (15**
17 **U.S.C. 78J(b)) and section 204A of the**
18 **Investment Adviser’s Act of 1940 (15**
19 **U.S.C. 80b-4a) with respect to**
20 **frontrunning.**

21 **“(E) Section 14 of the Securities**
22 **Exchange Act of 1934 (15 U.S.C. 78n)**
23 **with respect to the pricing and integ-**
24 **egrity of tender offers.**

1 **“(F) Rule 144 of the rules of the**
2 **Securities and Exchange Commission**
3 **(17 C.F.R. 230.144) with respect to**
4 **trading in restricted securities.**

5 **“(7)(A) Notwithstanding any other**
6 **provision of this Act, any contract market**
7 **or derivatives transaction execution facil-**
8 **ity in a nonexempt security or stock**
9 **index futures contract (or option there-**
10 **on) shall file with the Board of Governors**
11 **of the Federal Reserve System any rule**
12 **establishing or changing the levels of**
13 **margin (initial and maintenance) for the**
14 **nonexempt security or stock index fu-**
15 **tures contract (or option on the contract).**

16 **“(B) The Board may at any time re-**
17 **quest any contract market or derivatives**
18 **transaction execution facility to set the**
19 **level of margin for any nonexempt secu-**
20 **rity or stock index futures contract (or**
21 **option on the contract) at such levels as**
22 **the Board in its judgment determines are**
23 **appropriate to preserve the financial in-**
24 **tegrity of the contract market or deriva-**
25 **tives transaction execution facility or its**

1 clearing system or to prevent systemic
2 risk. If the contract market or derivatives
3 transaction execution facility fails to do
4 so within the time specified by the Board
5 in its request, the Board may direct the
6 contract market or derivatives trans-
7 action execution facility to alter or sup-
8 plement the rules of the contract market
9 or derivatives transaction execution facil-
10 ity as specified in the request.

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

17 “(D) INTERMARKET MARGIN BOARD.—

18 “(i) ESTABLISHMENT.—With the
19 concurrence of the Securities and Ex-
20 change Commission and the Commis-
21 sion, the Board may establish an
22 intermarket margin board, consisting
23 of representatives of any or all of the
24 three agencies.

1 “(ii) **DUTIES.**—The intermarket
2 margin board may set and maintain
3 margin levels and rules pertaining to
4 margin for futures on a single non-
5 exempt security, an index of fewer
6 than 5 nonexempt securities, or an
7 index in which a single nonexempt
8 security predominates, listed on a
9 contract market or derivatives trans-
10 action execution facility. In dis-
11 charging these duties, the inter-
12 market margin board shall endeavor
13 to make the levels of margin for fu-
14 tures and options on a single non-
15 exempt security consistent taking
16 into account any material differences
17 in such contracts, including—

18 “(I) the price volatility of the
19 contracts;

20 “(II) the frequency with which
21 margin calls are made; and

22 “(III) the period of time with-
23 in which margin calls must be
24 met.

1 **“(E) This paragraph shall not be con-**
2 **strued to supersede or limit the authority**
3 **granted to the Commission in section**
4 **8a(9) to direct a contract market or de-**
5 **rivatives transaction execution facility,**
6 **on finding an emergency to exist, to raise**
7 **temporary emergency margin levels on**
8 **any futures contract or option on the**
9 **contract covered by this paragraph.**

10 **“(F) Any action taken by the Board**
11 **under this paragraph, or by the Commis-**
12 **sion acting under the delegation of au-**
13 **thority under subparagraph (C), direct-**
14 **ing a contract market or derivatives**
15 **transaction execution facility to alter or**
16 **supplement a contract market or deriva-**
17 **tives transaction execution facility rule**
18 **shall be subject to review only in the**
19 **United States Court of Appeals for the ju-**
20 **dicial circuit in which the party seeking**
21 **review resides or has its principal place**
22 **of business, or in the United States Court**
23 **of Appeals for the District of Columbia**
24 **Circuit. The review shall be based on the**
25 **examination of all information before the**

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

12 **“(8) This subsection shall not be con-**
13 **strued to prohibit—**

14 **“(A) an agreement, contract, or**
15 **transaction excluded from this Act by**
16 **paragraph (2); or**

17 **“(B) any hybrid instrument that is**
18 **covered by the terms of any exemp-**
19 **tion granted by the Commission**
20 **under section 4(c) (whether or not**
21 **any such hybrid instrument is other-**
22 **wise subject to this Act).**

23 **“(9)(A) No futures commission mer-**
24 **chant, commodity trading advisor, or in-**
25 **troducing broker shall recommend to any**

1 **customer the purchase or sale of any con-**
2 **tract of sale for future delivery of a single**
3 **nonexempt security, an index of fewer**
4 **than 5 nonexempt securities, or an index**
5 **in which a single nonexempt security**
6 **predominates, unless the futures commis-**
7 **sion merchant, commodity trading advi-**
8 **sor, or introducing broker complies with**
9 **the rules described in subparagraph (B)**
10 **of a registered futures association of**
11 **which such merchant, advisor, or broker**
12 **is a member.**

13 **“(B) Within 9 months of the date of**
14 **enactment of the Commodity Futures**
15 **Modernization Act of 2000, a registered**
16 **futures association shall adopt rules re-**
17 **quiring a futures commission merchant, a**
18 **commodity trading advisor, or an intro-**
19 **ducing broker which recommends to any**
20 **customer the purchase or sale of any con-**
21 **tract of sale for future delivery of a single**
22 **nonexempt security, an index of fewer**
23 **than 5 nonexempt securities, or an index**
24 **in which a single nonexempt security**
25 **predominates to ascertain through rea-**

1 sonable due diligence that the rec-
2 ommendation is suitable for that cus-
3 tomer in light of the customer’s financial
4 position and trading goals. The reg-
5 istered futures association shall consult
6 with the Commission and the Securities
7 and Exchange Commission prior to the
8 adoption of any such rule, and shall sub-
9 mit any such rule to the Commission for
10 approval in the manner and according to
11 the procedures described in section 17(j)
12 of this Act, provided, that in such case
13 the rule shall become effective if the
14 Commission fails to disapprove such rule
15 within 90 days of submission.

16 “(10)(A) Nothing in this Act shall be
17 construed to require or authorize the
18 Commission to review or approve, di-
19 rectly or indirectly, any contract, rule,
20 regulation, or action adopted by a foreign
21 board of trade, exchange, or market, or a
22 clearinghouse for such a board of trade,
23 exchange, or market, relating to any
24 transaction involving a contract of sale
25 for future delivery (or option on such a

1 **contract) in or involving any security, in-**
2 **cluding any foreign government debt se-**
3 **curity, or group or index of such securi-**
4 **ties, if—**

5 **“(i)(I) in the case of a contract of**
6 **sale for future delivery (or option on**
7 **such a contract) in or involving a sin-**
8 **gle equity security, the United States**
9 **is not the primary trading market for**
10 **the underlying security; or**

11 **“(II) in the case of a contract of**
12 **sale for future delivery (or option on**
13 **such a contract) in or involving a**
14 **group or index of equity securities,**
15 **less than 25 percent of the weighting**
16 **of the group or index is derived from**
17 **securities for which the United States**
18 **is the primary trading market for the**
19 **securities underlying the contract for**
20 **future delivery (or option on the con-**
21 **tract); and**

22 **“(ii) settlement of or delivery on**
23 **the contract for future delivery (or**
24 **option on such a contract) is to be ef-**
25 **fectured in cash or by means other than**

1 **the transfer or receipt of a security in**
2 **the United States other than an ex-**
3 **empted security.**

4 **“(B) Within 90 days after the date of**
5 **the enactment of this paragraph, the**
6 **Commission shall adopt such procedures**
7 **as it deems appropriate pursuant to**
8 **which, consistent with this Act, the Com-**
9 **mission shall authorize the offer and sale**
10 **in the United States of any contract of**
11 **sale for future delivery (or option on**
12 **such a contract) of a security, other than**
13 **a security of the type described in sub-**
14 **paragraph (A)(i)(I) or a group or index of**
15 **securities of the type described in sub-**
16 **paragraph (A)(i)(II), traded on or subject**
17 **to the rules of a foreign board of trade,**
18 **exchange, or market, or a clearinghouse**
19 **for such a board of trade, exchange, or**
20 **market, except that such procedures**
21 **shall not require a foreign board of trade,**
22 **exchange, or market, or a clearinghouse**
23 **for such a board of trade, exchange, or**
24 **market to apply for designation as a con-**
25 **tract market under this Act with respect**

1 **to such a contract for future delivery (or**
2 **option on such a contract).”.**

3 **SEC. 109. TRANSACTIONS IN EXEMPT COMMODITIES.**

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

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

10 **“(1) Except as provided in paragraph**
11 **(2) of this subsection, nothing in this Act**
12 **shall apply to a contract, agreement or**
13 **transaction in an exempt commodity**
14 **which—**

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

20 **“(B) is not entered into on a trad-**
21 **ing facility.**

22 **“(2) An agreement, contract, or trans-**
23 **action described in paragraph (1) of this**
24 **subsection shall be subject to—**

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

3 “(B) sections 4b and 4n of this Act
4 and the regulations of the Commis-
5 sion pursuant to section 4c(b) of this
6 Act proscribing fraud in connection
7 with commodity option transactions,
8 to the extent such agreement, con-
9 tract, or transaction is not between
10 eligible commercial participants and
11 would otherwise be subject to those
12 provisions; and

13 “(C) sections 6(c) and 9(a)(2) of
14 this Act to the extent they prohibit
15 manipulation of the market price of
16 any commodity in interstate com-
17 merce, to the extent such agreement,
18 contract, or transaction would other-
19 wise be subject to those provisions.

20 “(3) Except as provided in paragraph
21 (4) of this subsection, nothing in this Act
22 shall apply to an agreement, contract, or
23 transaction in an exempt commodity
24 (other than a metal commodity enumer-
25 ated in section 1a(3) of this Act) which—

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

7 “(B) is executed or traded on an
8 electronic trading facility.

9 “(4) An agreement, contract, or trans-
10 action described in paragraph (3) shall be
11 subject to—

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

14 “(B) sections 4b and 4n of this Act
15 and the regulations of the Commis-
16 sion pursuant to section 4c(b) of this
17 Act proscribing fraud in connection
18 with commodity option transactions
19 and section 6(c) and 9(a)(2) of this
20 Act, to the extent these provisions
21 prohibit manipulation of the market
22 price of any commodity in interstate
23 commerce, to the extent such agree-
24 ment, contract, or transaction would

1 otherwise be subject to those provi-
2 sions; and

3 “(C) such rules and regulations as
4 the Commission may prescribe if nec-
5 essary to ensure timely dissemination
6 by the electronic trading facility of
7 price, trading volume, and other trad-
8 ing data to the extent appropriate, if
9 the Commission determines that the
10 electronic trading facility performs a
11 significant price discovery function
12 for transactions related to the com-
13 modity executed or traded on the
14 electronic trading facility.”

15 SEC. 110. SWAP TRANSACTIONS.

16 Section 2 of the Commodity Exchange Act
17 (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section
18 109) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(i) EXCLUDED SWAP TRANSACTIONS.—

21 “(1) IN GENERAL.—No provision of this
22 Act (other than section 5b or 12(e)(2)(B))
23 shall apply to or govern any agreement,
24 contract, or transaction in a commodity

1 other than an agricultural commodity
2 enumerated in section 1a(3) if—

3 “(A) the agreement, contract, or
4 transaction is entered into only be-
5 tween persons that are eligible con-
6 tract participants at the time they
7 enter into the agreement, contract, or
8 transaction; and

9 “(B) the material economic terms
10 of the agreement, contract, or trans-
11 action are subject to individual nego-
12 tiation and are not specified by the
13 rules terms or conditions of a trading
14 facility.

15 “(2) EXCLUSION.—Paragraph (1) shall
16 not apply to—

17 “(A) a contract for the sale of a
18 commodity for future delivery traded
19 on a contract market designated
20 under section 5; or

21 “(B) any agreement, contract, or
22 transaction traded on a derivatives
23 transaction execution facility reg-
24 istered under section 5a.”.

1 SEC. 111. APPLICATION OF THE COMMODITY EXCHANGE
2 ACT.

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

7 “(j) APPLICATION OF THE ACT.—No provi-
8 sion of this Act shall be construed as—

9 “(1) implying or creating any pre-
10 sumption that—

11 “(A) any agreement, contract, or
12 transaction that is eligible for an ex-
13 clusion or exemption from regulation
14 under this Act; or

15 “(B) any agreement, contract, or
16 transaction that is not eligible for an
17 exclusion or exemption from regula-
18 tion under this Act,

19 is or would otherwise be subject to this
20 Act; or

21 “(2) conferring jurisdiction on the
22 Commission with respect to any such
23 agreement, contract, or transaction, ex-
24 cept as expressly provided in section 5b.”.

1 SEC. 112. PROTECTION OF THE PUBLIC INTEREST.

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

5 “SEC. 3. FINDINGS AND PURPOSE.

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

15 **“(b) PURPOSE.—It is the purpose of this Act**
16 **to serve the public interests described in sub-**
17 **section (a) through a system of effective self-**
18 **regulation of trading facilities, clearing sys-**
19 **tems, market participants and market profes-**
20 **sionals under the oversight of the Commis-**
21 **sion. To foster these public interests, it is fur-**
22 **ther the purpose of this Act to deter and pre-**
23 **vent price manipulation or any other disrup-**
24 **tions to market integrity; to ensure the finan-**
25 **cial integrity of all transactions subject to this**
26 **Act and the avoidance of systemic risk; to pro-**

1 **protect all market participants from fraudulent**
2 **or other abusive sales practices and misuses**
3 **of customer assets; and to promote respon-**
4 **sible innovation and fair competition among**
5 **boards of trade, other markets and market**
6 **participants.”.**

7 **SEC. 113. PROHIBITED TRANSACTIONS.**

8 **Section 4c of the Commodity Exchange**
9 **Act (7 U.S.C. 6c) is amended by striking “SEC.**
10 **4c.” and all that follows through subsection**
11 **(a) and inserting the following:**

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

13 **“(a) IN GENERAL.—**

14 **“(1) PROHIBITION.—It shall be unlaw-**
15 **ful for any person to offer to enter into,**
16 **enter into, or confirm the execution of a**
17 **transaction described in paragraph (2)**
18 **involving any commodity if the trans-**
19 **action is used or may be used to—**

20 **“(A) hedge any transaction in**
21 **interstate commerce in the com-**
22 **modity or the product or byproduct**
23 **of the commodity;**

1 **“(B) determine the price basis of**
2 **any such transaction in interstate**
3 **commerce in the commodity; or**

4 **“(C) deliver any such commodity**
5 **sold, shipped, or received in inter-**
6 **state commerce for the execution of**
7 **the transaction.**

8 **“(2) TRANSACTION.—A transaction re-**
9 **ferred to in paragraph (1) is a transaction**
10 **that—**

11 **“(A)(i) is, is of the character of, or**
12 **is commonly known to the trade as, a**
13 **‘wash sale’ or ‘accommodation trade’;**
14 **or**

15 **“(ii) is a fictitious sale; or**

16 **“(B) is used to cause any price to**
17 **be reported, registered, or recorded**
18 **that is not a true and bona fide**
19 **price.”.**

20 **SEC. 114. DESIGNATION OF BOARDS OF TRADE AS CON-**
21 **TRACT MARKETS.**

22 **The Commodity Exchange Act is**
23 **amended—**

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

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

3 **“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-**
4 **TRACT MARKETS.**

5 **“(a) APPLICATIONS.—A board of trade ap-**
6 **plying to the Commission for designation as**
7 **a contract market shall submit an application**
8 **to the Commission that includes any relevant**
9 **materials and records the Commission may**
10 **require consistent with this Act.**

11 **“(b) CRITERIA FOR DESIGNATION.—**

12 **“(1) IN GENERAL.—To be designated as**
13 **a contract market, the board of trade**
14 **shall demonstrate to the Commission that**
15 **the board of trade meets the criteria**
16 **specified in this subsection.**

17 **“(2) PREVENTION OF MARKET MANIPULA-**
18 **TION.—The board of trade shall have the**
19 **capacity to prevent market manipulation**
20 **through market surveillance, compliance,**
21 **and enforcement practices and proce-**
22 **dures, including methods for conducting**
23 **real-time monitoring of trading and com-**
24 **prehensive and accurate trade recon-**
25 **structions.**

1 **“(3) FAIR AND EQUITABLE TRADING.—**

2 **The board of trade shall establish and en-**
3 **force trading rules to ensure fair and eq-**
4 **uitable trading through the facilities of**
5 **the contract market, and the capacity to**
6 **detect, investigate, and discipline any**
7 **person that violates the rules. Such rules**
8 **may authorize—**

9 **“(A) an exchange of—**

10 **“(i) futures in connection with**
11 **a cash commodity transaction;**

12 **“(ii) futures for cash commod-**
13 **ities;**

14 **“(iii) transfer trades or office**
15 **trades; or**

16 **“(iv) futures for swaps; and**

17 **“(B) a futures commission mer-**
18 **chant, acting as principal or agent, to**
19 **enter into or confirm the execution of**
20 **a contract for the purchase or sale of**
21 **a commodity for future delivery if the**
22 **contract is reported, recorded, or**
23 **cleared in accordance with the rules**
24 **of the contract market or a deriva-**
25 **tives clearing organization.**

1 **“(4) TRADE EXECUTION FACILITY.—The**
2 **board of trade shall—**

3 **“(A) establish and enforce rules**
4 **defining, or specifications detailing,**
5 **the manner of operation of the trade**
6 **execution facility maintained by the**
7 **board of trade, including rules or**
8 **specifications describing the oper-**
9 **ation of any electronic matching plat-**
10 **form; and**

11 **“(B) demonstrate that the trading**
12 **facility operates in accordance with**
13 **the rules or specifications.**

14 **“(5) FINANCIAL INTEGRITY OF TRANS-**
15 **ACTIONS.—The board of trade shall estab-**
16 **lish and enforce rules and procedures for**
17 **ensuring the financial integrity of trans-**
18 **actions entered into by or through the fa-**
19 **cilities of the contract market.**

20 **“(6) DISCIPLINARY PROCEDURES.—The**
21 **board of trade shall establish and enforce**
22 **disciplinary procedures that authorize**
23 **the board of trade to discipline, suspend,**
24 **or expel members or market participants**
25 **that violate the rules of the board of**

1 **trade, or similar methods for performing**
2 **the same functions, including delegation**
3 **of the functions to third parties.**

4 **“(7) PUBLIC ACCESS.—The board of**
5 **trade shall provide the public with access**
6 **to the rules, regulations, and contract**
7 **specifications of the board of trade.**

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

17 **“(c) EXISTING CONTRACT MARKETS.—A**
18 **board of trade that is designated as a contract**
19 **market on the effective date of the Com-**
20 **modity Futures Modernization Act of 2000**
21 **shall be considered to be a designated con-**
22 **tract market under this section.**

23 **“(d) CORE PRINCIPLES FOR CONTRACT MAR-**
24 **KETS.—**

1 **“(1) IN GENERAL.—To maintain the**
2 **designation of a board of trade as a con-**
3 **tract market, a board of trade shall com-**
4 **ply with the core principles specified in**
5 **this subsection.**

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

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

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

23 **“(5) POSITION LIMITATIONS OR ACCOUNT-**
24 **ABILITY.—To reduce the potential threat**
25 **of market manipulation or congestion, es-**

1 pecially during trading in the delivery
2 month, the board of trade shall adopt po-
3 sition limitations or position account-
4 ability for speculators, where necessary
5 and appropriate.

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

13 “(A) liquidate or transfer open po-
14 sitions in any contract;

15 “(B) suspend or curtail trading in
16 any contract; and

17 “(C) require market participants
18 in any contract to meet special mar-
19 gin requirements.

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

1 “(A) the terms and conditions of
2 the contracts of the contract market;
3 and

4 “(B) the mechanisms for exe-
5 cuting transactions on or through the
6 facilities of the contract market.

7 “(8) DAILY PUBLICATION OF TRADING IN-
8 FORMATION.—The board of trade shall
9 make public daily information on settle-
10 ment prices, volume, open interest, and
11 opening and closing ranges for actively
12 traded contracts on the contract market.

13 “(9) EXECUTION OF TRANSACTIONS.—The
14 board of trade shall provide a competi-
15 tive, open, and efficient market and
16 mechanism for executing transactions.

17 “(10) TRADE INFORMATION.—The board
18 of trade shall maintain rules and proce-
19 dures to provide for the recording and
20 safe storage of all identifying trade infor-
21 mation in a manner that enables the con-
22 tract market to use the information for
23 purposes of assisting in the prevention of
24 customer and market abuses and pro-

1 **viding evidence of any violations of the**
2 **rules of the contract market.**

3 **“(11) FINANCIAL INTEGRITY OF CON-**
4 **TRACTS.—The board of trade shall estab-**
5 **lish and enforce rules providing for the**
6 **financial integrity of any contracts trad-**
7 **ed on the contract market, including**
8 **rules to ensure the financial integrity of**
9 **any futures commission merchants and**
10 **introducing brokers and the protection of**
11 **customer funds.**

12 **“(12) PROTECTION OF MARKET PARTICI-**
13 **PANTS.—The board of trade shall establish**
14 **and enforce rules to protect market par-**
15 **ticipants from abusive practices com-**
16 **mitted by any party acting as an agent**
17 **for the participants.**

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

24 **“(14) GOVERNANCE FITNESS STAND-**
25 **ARDS.—The board of trade shall establish**

1 **and enforce appropriate fitness stand-**
2 **ards for directors, members of any dis-**
3 **ciplinary committee, members of the con-**
4 **tract market, and any other persons with**
5 **direct access to the facility (including**
6 **any parties affiliated with any of the per-**
7 **sons described in this paragraph).**

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

14 **“(16) COMPOSITION OF BOARDS OF MUTU-**
15 **ALLY OWNED CONTRACT MARKETS.—In the**
16 **case of a mutually owned contract mar-**
17 **ket, the board of trade shall ensure that**
18 **the composition of the governing board**
19 **reflects market participants.**

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

22 **“(A) maintain full records of all**
23 **activities related to the business of**
24 **the contract market in a form and**

1 **manner acceptable to the Commission**
2 **for a period of at least 5 years;**

3 **“(B) make the records readily**
4 **available during at least the first 2**
5 **years of the 5-year period and pro-**
6 **vide the records to the Commission at**
7 **the expense of the person required to**
8 **maintain the records; and**

9 **“(C) keep the records open to in-**
10 **spection by any representative of the**
11 **Commission or the Department of**
12 **Justice.**

13 **“(18) ANTITRUST CONSIDERATIONS.—Un-**
14 **less necessary or appropriate to achieve**
15 **the purposes of this Act, the board of**
16 **trade shall endeavor to avoid—**

17 **“(A) adopting any rules or taking**
18 **any actions that result in any unrea-**
19 **sonable restraints of trade; or**

20 **“(B) imposing any material anti-**
21 **competitive burden on trading on the**
22 **contract market.**

23 **“(e) CURRENT AGRICULTURAL AND METAL**
24 **COMMODITIES.—**

1 **“(1) Subject to paragraph (2), a con-**
2 **tract for purchase or sale for future de-**
3 **livery of an agricultural or metal com-**
4 **modity enumerated in section 1a(3) that**
5 **is available for trade on a contract mar-**
6 **ket, as of the date of the enactment of**
7 **this subsection, may be traded only on a**
8 **contract market designated under this**
9 **section.**

10 **“(2) In order to promote responsible**
11 **economic or financial innovation and fair**
12 **competition, the Commission, on applica-**
13 **tion by any person, after notice and pub-**
14 **lic comment and opportunity for hearing,**
15 **may prescribe rules and regulations to**
16 **provide for the offer and sale of contracts**
17 **for future delivery or options thereon to**
18 **be conducted on a derivatives trans-**
19 **action execution facility.”.**

20 **SEC. 115. DERIVATIVES TRANSACTION EXECUTION FACILI-**
21 **TIES.**

22 **The Commodity Exchange Act (7 U.S.C. 1**
23 **et seq.) is amended by inserting after section**
24 **5 (as amended by section 112(2)) the fol-**
25 **lowing:**

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

3 **“(a) IN GENERAL.—In lieu of compliance**
4 **with the contract market designation require-**
5 **ments of section 5, a board of trade may elect**
6 **to operate as a registered derivatives trans-**
7 **action execution facility if the facility is—**

8 **“(1) designated as a contract market**
9 **and meets the requirements of this sec-**
10 **tion; or**

11 **“(2) registered as a derivatives trans-**
12 **action execution facility under sub-**
13 **section (c).**

14 **“(b) REQUIREMENTS FOR TRADING FUTURES**
15 **CONTRACTS OR OTHER DERIVATIVES TRANS-**
16 **ACTIONS.—**

17 **“(1) IN GENERAL.—A registered deriva-**
18 **tives transaction execution facility under**
19 **subsection (a) may trade any futures con-**
20 **tract (or option on such a contract) on or**
21 **through the facility only by satisfying the**
22 **requirements of this section.**

23 **“(2) REQUIREMENTS FOR UNDERLYING**
24 **COMMODITIES.—A registered derivatives**
25 **transaction execution facility may trade**
26 **any futures contract only if—**

1 “(A) the underlying commodity
2 has a nearly inexhaustible deliver-
3 able supply;

4 “(B) the underlying commodity
5 has a deliverable supply that is suffi-
6 ciently large that the contract is high-
7 ly unlikely to be susceptible to the
8 threat of manipulation;

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

11 “(D) the Commission determines,
12 based on the market characteristics,
13 surveillance history, self-regulatory
14 record, and capacity of the facility
15 that trading in the futures contract is
16 highly unlikely to be susceptible to
17 the threat of manipulation.

18 “(3) ELIGIBLE TRADERS.—To trade on a
19 registered derivatives transaction execu-
20 tion facility, a person shall—

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

23 “(B)(i) be an eligible contract par-
24 ticipant; or

1 “(ii) be a person trading through
2 a futures commission merchant
3 that—

4 “(I) is registered with the
5 Commission;

6 “(II) is a member of a futures
7 self-regulatory organization;

8 “(III) is a clearing member of
9 a derivatives clearing organiza-
10 tion; and

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

13 “(4) TRADING BY CONTRACT MARKETS.—
14 A board of trade that is designated as a
15 contract market shall, to the extent that
16 the contract market also operates a reg-
17 istered derivatives transaction execution
18 facility—

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

1 **“(B) if the board of trade uses the**
2 **same electronic trading system for**
3 **trading on the contract market and**
4 **derivatives transaction execution fa-**
5 **ility of the board of trade, identify**
6 **whether the electronic trading is tak-**
7 **ing place on the contract market or**
8 **the derivatives transaction execution**
9 **facility.**

10 **“(c) CRITERIA FOR REGISTRATION.—**

11 **“(1) IN GENERAL.—To be registered as**
12 **a registered derivatives transaction exe-**
13 **cution facility, the board of trade shall**
14 **demonstrate to the Commission that the**
15 **board of trade meets the criteria speci-**
16 **fied in this paragraph.**

17 **“(2) DETERRENCE OF ABUSES.—The**
18 **board of trade shall establish and enforce**
19 **trading rules that will deter abuses and**
20 **has the capacity to detect, investigate,**
21 **and enforce those rules, including means**
22 **to—**

23 **“(A) obtain information necessary**
24 **to perform the functions required**
25 **under this section; or**

1 **“(B) use technological means to—**

2 **“(i) provide market partici-**
3 **pants with impartial access to the**
4 **market; and**

5 **“(ii) capture information that**
6 **may be used in establishing**
7 **whether rule violations have oc-**
8 **curred.**

9 **“(3) TRADING PROCEDURES.—The board**
10 **of trade shall establish and enforce rules**
11 **or terms and conditions defining, or spec-**
12 **ifications detailing, trading procedures to**
13 **be used in entering and executing orders**
14 **traded on the facilities of the board of**
15 **trade. Such rules may authorize—**

16 **“(A) an exchange of—**

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

19 **“(ii) futures for cash commod-**
20 **ities;**

21 **“(iii) transfer trades or office**
22 **trades; or**

23 **“(iv) futures for swaps; and**

24 **“(B) a futures commission mer-**
25 **chant, acting as principal or agent, to**

1 **enter into or confirm the execution of**
2 **a contract for the purchase or sale of**
3 **a commodity for future delivery if the**
4 **contract is reported, recorded, or**
5 **cleared in accordance with the rules**
6 **of the registered derivatives trans-**
7 **action execution facility or a deriva-**
8 **tives clearing organization.**

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

20 **“(d) CORE PRINCIPLES FOR REGISTERED DE-**
21 **RIVATIVES TRANSACTION EXECUTION FACILI-**
22 **TIES.—**

23 **“(1) IN GENERAL.—To maintain the**
24 **registration of a board of trade as a de-**
25 **rivatives transaction execution facility, a**

1 **board of trade shall comply with the core**
2 **principles specified in this subsection.**

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

9 **“(3) MONITORING OF TRADING.—The**
10 **board of trade shall monitor trading in**
11 **the contracts of the facility to ensure or-**
12 **derly trading in the contract and to**
13 **maintain an orderly market while pro-**
14 **viding any necessary trading information**
15 **to the Commission to allow the Commis-**
16 **sion to discharge the responsibilities of**
17 **the Commission under the Act.**

18 **“(4) DISCLOSURE OF GENERAL INFORMA-**
19 **TION.—The board of trade shall disclose**
20 **publicly and to the Commission informa-**
21 **tion concerning—**

22 **“(A) contract terms and condi-**
23 **tions;**

24 **“(B) trading conventions, mecha-**
25 **nisms, and practices;**

1 **“(C) financial integrity protec-**
2 **tions; and**

3 **“(D) other information relevant to**
4 **participation in trading on the facil-**
5 **ity.**

6 **“(5) DAILY PUBLICATION OF TRADING IN-**
7 **FORMATION.—The board of trade shall**
8 **make public daily information on settle-**
9 **ment prices, volume, open interest, and**
10 **opening and closing ranges for actively**
11 **traded contracts on the facility.**

12 **“(6) FITNESS STANDARDS.—The board of**
13 **trade shall establish and enforce appro-**
14 **priate fitness standards for directors,**
15 **members of any disciplinary committee,**
16 **members, and any other persons with di-**
17 **rect access to the facility, including any**
18 **parties affiliated with any of the persons**
19 **described in this paragraph.**

20 **“(7) CONFLICTS OF INTEREST.—The**
21 **board of trade shall establish and enforce**
22 **rules to minimize conflicts of interest in**
23 **the decisionmaking process of the deriva-**
24 **tives transaction execution facility and**

1 **establish a process for resolving such**
2 **conflicts of interest.**

3 **“(8) RECORDKEEPING.—The board of**
4 **trade shall—**

5 **“(A) maintain full records of all**
6 **activities related to the business of**
7 **the derivatives transaction execution**
8 **facility in a form and manner accept-**
9 **able to the Commission for a period**
10 **of at least 5 years;**

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

17 **“(C) keep the records open to in-**
18 **spection by any representatives of**
19 **the Commission or the Department of**
20 **Justice.**

21 **“(9) ANTITRUST CONSIDERATIONS.—Un-**
22 **less necessary or appropriate to achieve**
23 **the purposes of this Act, the board of**
24 **trade shall endeavor to avoid—**

1 **“(A) adopting any rules or taking**
2 **any actions that result in any unrea-**
3 **sonable restraint of trade; or**

4 **“(B) imposing any material anti-**
5 **competitive burden on trading on the**
6 **derivatives transaction execution fa-**
7 **cility.**

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

11 **“(1) IN GENERAL.—A registered deriva-**
12 **tives transaction execution facility may**
13 **by rule allow a broker-dealer, depository**
14 **institution, or institution of the Farm**
15 **Credit System that meets the require-**
16 **ments of paragraph (2) to—**

17 **“(A) act as an intermediary in**
18 **transactions executed on the facility**
19 **on behalf of customers of the broker-**
20 **dealer, depository institution, or in-**
21 **stitution of the Farm Credit System;**
22 **and**

23 **“(B) receive funds of customers to**
24 **serve as margin or security for such**
25 **transactions.**

1 **“(2) REQUIREMENTS.—The require-**
2 **ments referred to in paragraph (1) are**
3 **that—**

4 **“(A) the broker-dealer be in good**
5 **standing with the Securities and Ex-**
6 **change Commission, or the deposi-**
7 **tory institution or institution of the**
8 **Farm Credit System be in good stand-**
9 **ing with Federal bank regulatory**
10 **agencies (including the Farm Credit**
11 **Administration), as applicable; and**

12 **“(B) if the broker-dealer, deposi-**
13 **tory institution, or institution of the**
14 **Farm Credit System carries or holds**
15 **customer accounts or funds for trans-**
16 **actions on the derivatives transaction**
17 **execution facility for more than 1**
18 **business day, the broker-dealer, de-**
19 **pository institution, or institution of**
20 **the Farm Credit System is registered**
21 **as a futures commission merchant**
22 **and is a member of a registered fu-**
23 **tures association.**

24 **“(3) IMPLEMENTATION.—The Commis-**
25 **sion shall cooperate and coordinate with**

1 **the Securities and Exchange Commission,**
2 **the Secretary of the Treasury, and Fed-**
3 **eral banking regulatory agencies (includ-**
4 **ing the Farm Credit Administration) in**
5 **adopting rules and taking any other ap-**
6 **propriate action to facilitate the imple-**
7 **mentation of this subsection.**

8 **“(f) SEGREGATION OF CUSTOMER FUNDS.—**
9 **Not later than 180 days after the effective**
10 **date of the Commodity Futures Moderniza-**
11 **tion Act of 2000, consistent with regulations**
12 **adopted by the Commission, a registered de-**
13 **rivatives transaction execution facility may**
14 **authorize a futures commission merchant to**
15 **offer any customer of the futures commission**
16 **merchant that is an eligible contract partici-**
17 **pant the right to not segregate the customer**
18 **funds of the futures commission merchant for**
19 **purposes of trading on or through the facili-**
20 **ties of the registered derivatives transaction**
21 **execution facility.**

22 **“(g) ELECTION TO TRADE EXCLUDED COM-**
23 **MODITIES.—**

24 **“(1) IN GENERAL.—A board of trade**
25 **that is a registered derivatives trans-**

1 **action execution facility may trade on the**
2 **facility any agreements, contracts, or**
3 **transactions involving excluded commod-**
4 **ities that are otherwise excluded from**
5 **this Act under section 2(c), 2(d), or 2(h).**

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

14 **SEC. 116. DERIVATIVES CLEARING.**

15 **(a) IN GENERAL.—Subtitle A of title IV of**
16 **the Federal Deposit Insurance Corporation**
17 **Improvement Act of 1991 is amended—**

18 **(1) by inserting before the section**
19 **heading for section 401, the following**
20 **new heading:**

21 **“CHAPTER 1—BILATERAL AND CLEARING**
22 **ORGANIZATION NETTING”;**

23 **(2) in section 402, by striking “this**
24 **subtitle” and inserting “this chapter”;**
25 **and**

1 (3) by inserting after section 407, the
2 following new chapter:

3 **“CHAPTER 2—MULTILATERAL CLEARING**
4 **ORGANIZATIONS**

5 **“SEC. 408. DEFINITIONS.**

6 **For purposes of this chapter, the fol-**
7 **lowing definitions shall apply:**

8 **“(1) MULTILATERAL CLEARING ORGANI-**
9 **ZATION.—The term ‘multilateral clearing**
10 **organization’ means a system utilized by**
11 **more than 2 participants in which the bi-**
12 **lateral credit exposures of participants**
13 **arising from the transactions cleared are**
14 **effectively eliminated and replaced by a**
15 **system of guarantees, insurance, or mutu-**
16 **alized risk of loss.**

17 **“(2) OVER-THE-COUNTER DERIVATIVE IN-**
18 **STRUMENT.—The term ‘over-the-counter**
19 **derivative instrument’ means—**

20 **“(A) any agreement, contract, or**
21 **transaction, including the terms and**
22 **conditions incorporated by reference**
23 **in any such agreement, contract, or**
24 **transaction, which is an interest rate**
25 **swap, option, or forward agreement,**

1 including a rate floor, rate cap, rate
2 collar, cross-currency rate swap,
3 basis swap, and forward rate agree-
4 ment; a spot, same day-tomorrow, to-
5 morrow-next, forward, or other for-
6 eign exchange or precious metals
7 agreement; a currency swap, option,
8 or forward agreement; an equity
9 index or equity swap, option, or for-
10 ward agreement; a debt index or debt
11 swap, option, or forward agreement; a
12 credit spread or credit swap, option,
13 or forward agreement; a commodity
14 index or commodity swap, option, or
15 forward agreement; and a weather
16 swap, weather derivative, or weather
17 option;

18 “(B) any agreement, contract or
19 transaction similar to any other
20 agreement, contract, or transaction
21 referred to in this clause that is pres-
22 ently, or in the future becomes, regu-
23 larly entered into by parties that par-
24 ticipate in swap transactions (includ-
25 ing terms and conditions incor-

1 porated by reference in such agree-
2 ment) and that is a forward, swap, or
3 option on 1 or more occurrences of
4 any event, rates, currencies, commod-
5 ities, equity securities or other equity
6 instruments, debt securities or other
7 debt instruments, economic or other
8 indices or measures of economic or
9 other risk or value;

10 “(C) any contract of sale of a com-
11 modity for future delivery or com-
12 modity option described in sub-
13 section (c), (d), (f), (h), or (i) of section
14 2 of the Commodity Exchange Act or
15 exempted under section 4(c) of such
16 Act; and

17 “(D) any option to enter into any,
18 or any combination of, agreements,
19 contracts or transactions referred to
20 in this subparagraph.

21 “(3) OTHER DEFINITIONS.—The terms
22 ‘State member bank’ and ‘affiliate’ have
23 the meanings given the terms in section 3
24 of the Federal Deposit Insurance Act.

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

2 **“(a) IN GENERAL.—Except with respect to**
3 **clearing organizations described in sub-**
4 **section (b), no person may operate a multilat-**
5 **eral clearing organization for over-the-**
6 **counter derivative instruments, or otherwise**
7 **engage in activities that constitute such a**
8 **multilateral clearing organization unless the**
9 **person is a national bank, State member**
10 **bank, an affiliate of a national bank or a State**
11 **member bank, or a corporation chartered**
12 **under section 25A of the Federal Reserve Act.**

13 **“(b) CLEARING ORGANIZATIONS.—Sub-**
14 **section (a) shall not apply to any clearing or-**
15 **ganization that—**

16 **“(1) is registered as a clearing agency**
17 **under the Securities Exchange Act of**
18 **1934;**

19 **“(2) performs clearing functions for a**
20 **contract market designated pursuant to**
21 **the Commodity Exchange Act; or**

22 **“(3) is supervised by a foreign finan-**
23 **cial regulator that an appropriate Fed-**
24 **eral financial regulatory agency has de-**
25 **termined satisfies appropriate stand-**
26 **ards.”.**

1 **(b) ENFORCEMENT POWERS OF THE BOARD OF**
2 **GOVERNORS OF THE FEDERAL RESERVE SYS-**
3 **TEM.—Section 9 of the Federal Reserve Act (12**
4 **U.S.C. 221) is amended by adding at the end**
5 **the following new paragraph:**

6 **“(24) ENFORCEMENT AUTHORITY.—Sec-**
7 **tion 3(u), subsections (j) and (k) of sec-**
8 **tion 7, subsections (b) through (n), (s), (u),**
9 **and (v) of section 8, and section 19 of the**
10 **Federal Deposit Insurance Act shall**
11 **apply to a State member bank which is**
12 **not an insured depository institution (as**
13 **defined in section 3 of the Federal De-**
14 **posit Insurance Act) in the same manner**
15 **and to the same extent as such provisions**
16 **apply to State member insured banks,**
17 **and any reference in such sections to an**
18 **insured depository institution shall be**
19 **deemed to include a reference to any**
20 **such noninsured State member bank.”.**

21 **(c) RESOLUTION OF CLEARING BANKS.—The**
22 **Federal Reserve Act (12 U.S.C. 221 et seq.) is**
23 **amended by inserting after section 9A the fol-**
24 **lowing new section:**

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

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

3 **“(1) APPOINTMENT.—The Board may**
4 **appoint a conservator or receiver to take**
5 **possession and control of any uninsured**
6 **State member bank which operates, or**
7 **operates as, a multilateral clearing orga-**
8 **nization pursuant to section 409 of the**
9 **Federal Deposit Insurance Corporation**
10 **Improvement Act of 1991 to the same ex-**
11 **tent and in the same manner as the**
12 **Comptroller of the Currency may appoint**
13 **a conservator or receiver for a national**
14 **bank.**

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

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

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

6 “(c) BANKRUPTCY PROCEEDINGS.—The
7 Board (in the case of an uninsured State mem-
8 ber bank which operates, or operates as, such
9 a multilateral clearing organization) may di-
10 rect a conservator or receiver appointed for
11 such bank to file a petition pursuant to title
12 11, United States Code, in which case, title 11,
13 United States Code, shall apply to such bank
14 in lieu of otherwise applicable Federal or
15 State insolvency law.”.

16 (d) TECHNICAL AND CONFORMING AMEND-
17 MENTS TO TITLE 11, UNITED STATES CODE.—

18 (1) BANKRUPTCY CODE DEBTORS.—Sec-
19 tion 109(b)(2) of title 11, United States
20 Code, is amended by striking “; or” and
21 inserting the following: “, except that an
22 uninsured State member bank, or a cor-
23 poration organized under section 25A of
24 the Federal Reserve Act, which operates,
25 or operates as, a multilateral clearing or-

1 **ganization pursuant to section 409 of the**
2 **Federal Deposit Insurance Corporation**
3 **Improvement Act of 1991 may be a debtor**
4 **if a petition is filed at the direction of the**
5 **Board of Governors of the Federal Re-**
6 **serve System; or”.**

7 (2) **CHAPTER 7 DEBTORS.—Section**
8 **109(d) of title 11, United States Code, is**
9 **amended to read as follows:**

10 **“(d) Only a railroad, a person that may be**
11 **a debtor under chapter 7 of this title (except**
12 **a stockbroker or a commodity broker), and an**
13 **uninsured State member bank, or a corpora-**
14 **tion organized under section 25A of the Fed-**
15 **eral Reserve Act, which operates, or operates**
16 **as, a multilateral clearing organization pursu-**
17 **ant to section 409 of the Federal Deposit In-**
18 **surance Corporation Improvement Act of 1991**
19 **may be a debtor under chapter 11 of this**
20 **title.”.**

21 (3) **DEFINITION OF FINANCIAL INSTITU-**
22 **TION.—Section 101(22) of title 11, United**
23 **States Code, is amended to read as fol-**
24 **lows:**

25 **“(22) the term ‘financial institution’—**

1 “(A) means a Federal reserve
2 bank or an entity (domestic or for-
3 eign) that is a commercial or savings
4 bank, industrial savings bank, sav-
5 ings and loan association, trust com-
6 pany, a bank or a corporation orga-
7 nized under section 25A of the Fed-
8 eral Reserve Act and, when any such
9 bank or entity is acting as agent or
10 custodian for a customer in connec-
11 tion with a securities contract, as de-
12 fined in section 741, such customer;
13 and

14 “(B) includes any person de-
15 scribed in subparagraph (A) which
16 operates, or operates as, a multilat-
17 eral clearing organization pursuant
18 to section 409 of the Federal Deposit
19 Insurance Corporation Improvement
20 Act of 1991;”.

21 (4) DEFINITION OF UNINSURED STATE
22 MEMBER BANK.—Section 101 of title 11,
23 United States Code, is amended by insert-
24 ing after paragraph (54) the following
25 new paragraph—

1 “(54A) the term ‘uninsured State member
2 bank’ means a State member bank (as defined
3 in section 3 of the Federal Deposit Insurance
4 Act) the deposits of which are not insured by
5 the Federal Deposit Insurance Corporation;
6 and”.

7 (5) SUBCHAPTER V OF CHAPTER 7.—

8 (A) IN GENERAL.—Section 103 of
9 title 11, United States Code, is
10 amended—

11 (i) by redesignating sub-
12 sections (e) through (i) as sub-
13 sections (f) through (j), respec-
14 tively; and

15 (ii) by inserting after sub-
16 section (d) the following new sub-
17 section:

18 “(e) SCOPE OF APPLICATION.—Subchapter V
19 of chapter 7 of this title shall apply only in a
20 case under such chapter concerning the liq-
21 uidation of an uninsured State member bank,
22 or a corporation organized under section 25A
23 of the Federal Reserve Act, which operates, or
24 operates as, a multilateral clearing organiza-
25 tion pursuant to section 409 of the Federal De-

1 **posit Insurance Corporation Improvement**
2 **Act of 1991.”.**

3 **(B) CLEARING BANK LIQUIDATION.—**
4 **Chapter 7 of title 11, United States**
5 **Code, is amended by adding at the**
6 **end the following new subchapter:**

7 **“SUBCHAPTER V—CLEARING BANK**
8 **LIQUIDATION**

9 **“§ 781. Definitions**

10 **“For purposes of this subchapter, the fol-**
11 **lowing definitions shall apply:**

12 **“(1) BOARD.—The term ‘Board’ means**
13 **the Board of Governors of the Federal**
14 **Reserve System.**

15 **“(2) DEPOSITORY INSTITUTION.—The**
16 **term ‘depository institution’ has the same**
17 **meaning as in section 3 of the Federal**
18 **Deposit Insurance Act, and includes any**
19 **wholesale bank.**

20 **“(3) CLEARING BANK.—The term ‘clear-**
21 **ing bank’ means an uninsured State**
22 **member bank, or a corporation organized**
23 **under section 25A of the Federal Reserve**
24 **Act, which operates, or operates as, a**
25 **multilateral clearing organization pursu-**

1 **ant to section 409 of the Federal Deposit**
2 **Insurance Corporation Improvement Act**
3 **of 1991.**

4 **“§ 782. Selection of trustee**

5 **“(a) IN GENERAL.—**

6 **“(1) APPOINTMENT.—Notwithstanding**
7 **any other provision of this title, the con-**
8 **servator or receiver who files the petition**
9 **shall be the trustee under this chapter,**
10 **unless the Board designates an alter-**
11 **native trustee.**

12 **“(2) SUCCESSOR.—The Board may des-**
13 **ignate a successor trustee if required.**

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

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

21 **“(a) DISTRIBUTION OF PROPERTY NOT OF THE**
22 **ESTATE.—The trustee under this subchapter**
23 **has power to distribute property not of the es-**
24 **tate, including distributions to customers that**

1 are mandated by subchapters III and IV of
2 this chapter.

3 **“(b) DISPOSITION OF INSTITUTION.—The**
4 **trustee under this subchapter may, after no-**
5 **tice and a hearing—**

6 **“(1) sell the clearing bank to a deposi-**
7 **tory institution or consortium of deposi-**
8 **tory institutions (which consortium may**
9 **agree on the allocation of the clearing**
10 **bank among the consortium);**

11 **“(2) merge the clearing bank with a**
12 **depository institution;**

13 **“(3) transfer contracts to the same ex-**
14 **tent as could a receiver for a depository**
15 **institution under paragraphs (9) and (10)**
16 **of section 11(e) of the Federal Deposit In-**
17 **surance Act;**

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

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

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

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

8 **“(B) any references in any such**
9 **provision of law to the Federal De-**
10 **posit Insurance Corporation shall be**
11 **construed to be references to the ap-**
12 **pointing agency and that references**
13 **to deposit insurance shall be omitted.**

14 **“(c) CERTAIN TRANSFERS INCLUDED.—Any**
15 **reference in this section to transfers of liabil-**
16 **ities includes a ratable transfer of liabilities**
17 **within a priority class.**

18 **“§ 784. Right to be heard**

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

24 **(e) CLERICAL AMENDMENT.—The table of**
25 **sections for chapter 7 of title 11, United States**

1 **Code, is amended by adding at the end the fol-**
2 **lowing new items:**

3 **“SUBCHAPTER V—CLEARING BANK**
4 **LIQUIDATION**

“Sec.

“781. Definitions.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.”.

5 **(f) RESOLUTION OF EDGE ACT CORPORA-**
6 **TIONS.—The 16th undesignated paragraph of**
7 **section 25A of the Federal Reserve Act (12**
8 **U.S.C. 624) is amended to read as follows:**

9 **“(16) APPOINTMENT OF RECEIVER OR**
10 **CONSERVATOR.—**

11 **“(A) IN GENERAL.—The Board may**
12 **appoint a conservator or receiver for**
13 **a corporation organized under the**
14 **provisions of this section to the same**
15 **extent and in the same manner as the**
16 **Comptroller of the Currency may ap-**
17 **point a conservator or receiver for a**
18 **national bank, and the conservator or**
19 **receiver for such corporation shall**
20 **exercise the same powers, functions,**
21 **and duties, subject to the same limita-**
22 **tions, as a conservator or receiver for**
23 **a national bank.**

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

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

23 **(g) DERIVATIVES CLEARING ORGANIZA-**
24 **TIONS.—The Commodity Exchange Act (7**
25 **U.S.C. 1 et seq.) is amended by inserting after**

1 section 5a (as added by section 15) the fol-
2 lowing new section:

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

4 **“(a) REGISTRATION REQUIREMENT.—Except**
5 **as provided in subsection (b), it shall be un-**
6 **lawful for a derivatives clearing organization,**
7 **unless registered with the Commission, di-**
8 **rectly or indirectly to make use of the mails**
9 **or any means or instrumentality of interstate**
10 **commerce to perform the functions of a de-**
11 **rivatives clearing organization described in**
12 **section 1a(8) with respect to a contract of sale**
13 **of a commodity for future delivery, option on**
14 **a contract of sale of a commodity for future**
15 **delivery, or option on a commodity that is not**
16 **an exclusion-eligible commodity (unless the**
17 **contract or option is described in subsection**
18 **(c), (d), (f), (h), or (i) of section 2 or exempted**
19 **under section 4(c)).**

20 **“(b) VOLUNTARY REGISTRATION.—A deriva-**
21 **tives clearing organization that clears agree-**
22 **ments, contracts, or transactions described in**
23 **subsection (c), (d), (f), (h), or (i) of section 2**
24 **or exempted under section 4(c) may register**

1 with the Commission as a derivatives clearing
2 organization.

3 “(c) **REGISTRATION OF DERIVATIVES CLEAR-**
4 **ING ORGANIZATIONS.—**

5 “(1) **APPLICATION.—**A person desiring
6 to register as a derivatives clearing orga-
7 nization shall submit to the Commission
8 an application in such form and con-
9 taining such information as the Commis-
10 sion may require for the purpose of mak-
11 ing the determinations required for ap-
12 proval under paragraph (2).

13 “(2) **CORE PRINCIPLES.—**

14 “(A) **IN GENERAL.—**To be registered
15 and to maintain registration as a de-
16 rivatives clearing organization, an
17 applicant shall demonstrate to the
18 Commission that the applicant com-
19 plies with the core principles speci-
20 fied in this paragraph.

21 “(B) **FINANCIAL RESOURCES.—**The
22 applicant shall demonstrate that the
23 applicant has adequate financial,
24 operational, and managerial re-
25 sources to discharge the responsibil-

1 **ities of a derivatives clearing organi-**
2 **zation without interruption in var-**
3 **ious market conditions.**

4 **“(C) PARTICIPANT AND PRODUCT**
5 **ELIGIBILITY.—The applicant shall**
6 **establish—**

7 **“(i) appropriate admission**
8 **and continuing eligibility stand-**
9 **ards (including appropriate min-**
10 **imum financial requirements) for**
11 **members of and participants in**
12 **the organization; and**

13 **“(ii) appropriate standards for**
14 **determining eligibility of agree-**
15 **ments, contracts, or transactions**
16 **submitted to the applicant.**

17 **“(D) RISK MANAGEMENT.—The ap-**
18 **plicant shall have the ability to man-**
19 **age the risks associated with dis-**
20 **charging the responsibilities of a de-**
21 **rivatives clearing organization**
22 **through the use of appropriate tools**
23 **and procedures.**

1 **“(E) SETTLEMENT PROCEDURES.—**

2 **The applicant shall have the ability**
3 **to—**

4 **“(i) complete settlements on a**
5 **timely basis under varying cir-**
6 **cumstances;**

7 **“(ii) maintain an adequate**
8 **record of the flow of funds associ-**
9 **ated with each transaction that**
10 **the applicant clears; and**

11 **“(iii) comply with the terms**
12 **and conditions of any permitted**
13 **netting or offset arrangements**
14 **with other clearing organizations.**

15 **“(F) TREATMENT OF FUNDS.—The**
16 **applicant shall have standards and**
17 **procedures designed to protect and**
18 **ensure the safety of member and par-**
19 **ticipant funds.**

20 **“(G) DEFAULT RULES AND PROCE-**
21 **DURES.—The applicant shall have**
22 **rules and procedures designed to**
23 **allow for efficient, fair, and safe man-**
24 **agement of events when members or**
25 **participants become insolvent or oth-**

1 otherwise default on their obligations to
2 the derivatives clearing organization.

3 “(H) **RULE ENFORCEMENT.**—The ap-
4 plicant shall—

5 “(i) maintain adequate ar-
6 rangements and resources for the
7 effective monitoring and enforce-
8 ment of compliance with rules of
9 the applicant and for resolution
10 of disputes; and

11 “(ii) have the authority and
12 ability to discipline, limit, sus-
13 pend, or terminate a member’s or
14 participant’s activities for viola-
15 tions of rules of the applicant.

16 “(I) **SYSTEM SAFEGUARDS.**—The ap-
17 plicant shall demonstrate that the
18 applicant—

19 “(i) has established and will
20 maintain a program of oversight
21 and risk analysis to ensure that
22 the automated systems of the ap-
23 plicant function properly and
24 have adequate capacity and secu-
25 rity; and

1 “(ii) has established and will
2 maintain emergency procedures
3 and a plan for disaster recovery,
4 and will periodically test backup
5 facilities sufficient to ensure daily
6 processing, clearing, and settle-
7 ment of transactions.

8 “(J) REPORTING.—The applicant
9 shall provide to the Commission all
10 information necessary for the Com-
11 mission to conduct the oversight
12 function of the applicant with respect
13 to the activities of the derivatives
14 clearing organization.

15 “(K) RECORDKEEPING.—The appli-
16 cant shall—

17 “(i) maintain full records of
18 all activities related to the busi-
19 ness of the applicant as a deriva-
20 tives clearing organization in a
21 form and manner acceptable to
22 the Commission for a period of at
23 least 5 years;

24 “(ii) make the records readily
25 available during at least the first

1 **2 years of the 5-year period and**
2 **provide the records to the Com-**
3 **mission at the expense of the per-**
4 **son required to maintain the**
5 **records; and**

6 **“(iii) keep the records open to**
7 **inspection by any representative**
8 **of the Commission or the Depart-**
9 **ment of Justice.**

10 **“(L) PUBLIC INFORMATION.—The**
11 **applicant shall make information**
12 **concerning the rules and operating**
13 **procedures governing the clearing**
14 **and settlement systems (including de-**
15 **fault procedures) available to market**
16 **participants.**

17 **“(M) INFORMATION SHARING.—The**
18 **applicant shall—**

19 **“(i) enter into and abide by**
20 **the terms of all appropriate and**
21 **applicable domestic and inter-**
22 **national information-sharing**
23 **agreements; and**

24 **“(ii) use relevant information**
25 **obtained from the agreements in**

1 carrying out the clearing organi-
2 zation's risk management pro-
3 gram.

4 **“(N) ANTITRUST CONSIDERATIONS.—**
5 **Unless appropriate to achieve the**
6 **purposes of this Act, the derivatives**
7 **clearing organization shall avoid—**

8 **“(i) adopting any rule or tak-**
9 **ing any action that results in any**
10 **unreasonable restraint of trade;**
11 **or**

12 **“(ii) imposing any material**
13 **anticompetitive burden on trad-**
14 **ing on the contract market.**

15 **“(3) ORDERS CONCERNING COMPETI-**
16 **TION.—A derivatives clearing organiza-**
17 **tion may request the Commission to issue**
18 **an order concerning whether a rule or**
19 **practice of the applicant is the least anti-**
20 **competitive means of achieving the objec-**
21 **tives, purposes, and policies of this Act.**

22 **“(d) EXISTING DERIVATIVES CLEARING ORGA-**
23 **NIZATIONS.—A derivatives clearing organiza-**
24 **tion shall be deemed to be registered under**
25 **this section to the extent that—**

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

8 “(2) the Commission has reviewed
9 and approved the rules of the derivatives
10 clearing organization before that date.

11 “(e) APPOINTMENT OF TRUSTEE.—

12 “(1) IN GENERAL.—If a proceeding
13 under section 5e results in the suspen-
14 sion or revocation of the registration of a
15 derivatives clearing organization, or if a
16 derivatives clearing organization with-
17 draws from registration, the Commission,
18 on notice to the derivatives clearing or-
19 ganization, may apply to the appropriate
20 United States district court where the de-
21 rivatives clearing organization is located
22 for the appointment of a trustee.

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

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

6 “(B) if the court takes jurisdiction
7 under subparagraph (A), the court
8 shall appoint the Commission, or a
9 person designated by the Commis-
10 sion, as trustee with power to take
11 possession and continue to operate or
12 terminate the operations of the de-
13 rivatives clearing organization in an
14 orderly manner for the protection of
15 participants, subject to such terms
16 and conditions as the court may pre-
17 scribe.

18 “(f) LINKING OF REGULATED CLEARING FA-
19 CILITIES.—

20 “(1) IN GENERAL.—The Commission
21 shall facilitate the linking or coordina-
22 tion of derivatives clearing organizations
23 registered under this Act with other reg-
24 ulated clearance facilities for the coordi-
25 nated settlement of cleared transactions.

1 **“(2) COORDINATION.—In carrying out**
2 **paragraph (1), the Commission shall co-**
3 **ordinate with the Federal banking agen-**
4 **cies and the Securities and Exchange**
5 **Commission.”.**

6 **SEC. 117. COMMON PROVISIONS APPLICABLE TO REG-**
7 **ISTERED ENTITIES.**

8 **The Commodity Exchange Act (7 U.S.C. 1**
9 **et seq.) is amended by inserting after section**
10 **5b (as added by section 14) the following:**

11 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**
12 **ISTERED ENTITIES.**

13 **“(a) ACCEPTABLE BUSINESS PRACTICES**
14 **UNDER CORE PRINCIPLES.—**

15 **“(1) IN GENERAL.—Consistent with the**
16 **purposes of this Act, the Commission may**
17 **issue interpretations, or approve inter-**
18 **pretations submitted to the Commission,**
19 **of sections 5(d), 5a(d), and 5b(d)(2) to de-**
20 **scribe what would constitute an accept-**
21 **able business practice under such sec-**
22 **tions.**

23 **“(2) EFFECT OF INTERPRETATION.—An**
24 **interpretation issued under paragraph**

1 **(1) shall not provide the exclusive means**
2 **for complying with such sections.**

3 **“(b) DELEGATION OF FUNCTIONS UNDER**
4 **CORE PRINCIPLES.—**

5 **“(1) IN GENERAL.—A contract market**
6 **or derivatives transaction execution facil-**
7 **ity may comply with any applicable core**
8 **principle through delegation of any rel-**
9 **evant function to a registered futures as-**
10 **sociation or another registered entity.**

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

16 **“(c) NEW CONTRACTS, NEW RULES, AND RULE**
17 **AMENDMENTS.—**

18 **“(1) IN GENERAL.—Subject to para-**
19 **graph (2), a registered entity may elect to**
20 **list for trading any new contract or other**
21 **instrument, or may elect to approve and**
22 **implement any new rule or rule amend-**
23 **ment, by providing to the Commission**
24 **(and the Secretary of the Treasury, in the**
25 **case of a contract of sale for future deliv-**

1 ery of a government security (or option
2 thereon) or a rule or rule amendment
3 specifically related to such a contract) a
4 written certification that the new con-
5 tract, new rule, or rule amendment com-
6 plies with this Act (including regulations
7 under this Act).

8 “(2) PRIOR APPROVAL.—

9 “(A) IN GENERAL.—A registered en-
10 tity may request that the Commission
11 grant prior approval to any new con-
12 tract or other instrument, new rule,
13 or rule amendment.

14 “(B) PRIOR APPROVAL REQUIRED.—
15 Notwithstanding any other provision
16 of this section, a designated contract
17 market shall submit to the Commis-
18 sion for prior approval each rule
19 amendment that materially changes
20 the terms and conditions, as deter-
21 mined by the Commission, in any con-
22 tract of sale for future delivery of a
23 commodity specifically enumerated
24 in section 1a(3) of this Act (or any op-
25 tion thereon) traded through its fa-

1 cilities if such rule amendment ap-
2 plies to contracts and delivery
3 months which have already been list-
4 ed for trading and have open interest.

5 “(C) DEADLINE.—If prior approval
6 is requested under subparagraph (A),
7 the Commission shall take final ac-
8 tion on the request not later than 90
9 days after submission of the request,
10 unless the person submitting the re-
11 quest agrees to an extension of the
12 time limitation established under this
13 subparagraph.

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

20 “(d) VIOLATION OF CORE PRINCIPLES.—

21 “(1) IN GENERAL.—If the Commission
22 has reason to believe that a registered
23 entity is violating any applicable provi-
24 sion specified in section 5(d), 5a(d), or
25 5b(d)(2), the Commission shall notify the

1 registered entity in writing of the rea-
2 sons for the preliminary determination
3 by the Commission of a violation, includ-
4 ing any data, materials, and facts the
5 Commission relied on in making the pre-
6 liminary determination.

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

13 “(A) the registered entity is vio-
14 lating any applicable provision speci-
15 fied in section 5(d), 5a(d), or 5b(d)(2);
16 and

17 “(B) the Commission has rec-
18 ommended an appropriate remedial
19 action to remove the deficiency based
20 on an analysis of the costs and bene-
21 fits in the public interest of the Com-
22 mission recommendation.

23 “(3) BURDEN OF PROOF.—In making a
24 determination that a registered entity is
25 violating any applicable provision speci-

1 **fi**ed in section 5(d), 5a(d), or 5b(d)(2), the
2 **Commission shall have the burden of**
3 **proving that the registered entity is vio-**
4 **lating the applicable core principle.**

5 **“(e) RESERVATION OF EMERGENCY AUTHOR-**
6 **ITY.—Nothing in this section shall limit or in**
7 **any way affect the emergency powers of the**
8 **Commission provided in section 8a(9) of this**
9 **Act.”.**

10 **SEC. 118. EXEMPT BOARDS OF TRADE.**

11 **The Commodity Exchange Act (7 U.S.C. 1**
12 **et seq.) is amended by inserting after section**
13 **5c (as added by section 115) the following:**

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

15 **“(a) IN GENERAL.—Except as otherwise**
16 **provided in this section, a contract of sale (or**
17 **option on such a contract) of a commodity for**
18 **future delivery traded on or through the fa-**
19 **cilities of an exempt board of trade shall be**
20 **exempt from all provisions of this Act, other**
21 **than section 2(g).**

22 **“(b) CRITERIA FOR EXEMPTION.—To qualify**
23 **for an exemption under subsection (a), a**
24 **board of trade shall limit trading on or**
25 **through the facilities of the board of trade to**

1 **contracts of sale of a commodity for future de-**
2 **livery (or options on such contracts)—**

3 **“(1) that have—**

4 **“(A) a nearly inexhaustible deliv-**
5 **erable supply;**

6 **“(B) a deliverable supply that is**
7 **sufficiently large, and a cash market**
8 **sufficiently liquid, to render any con-**
9 **tract traded on the commodity highly**
10 **unlikely to be susceptible to the**
11 **threat of manipulation; or**

12 **“(C) no cash market;**

13 **“(2) that are entered into only be-**
14 **tween persons that are eligible contract**
15 **participants at the time at which the per-**
16 **sons enter into the contract; and**

17 **“(3) that are not contracts of sale (or**
18 **options on the contract) for future deliv-**
19 **ery of any security, including any group**
20 **or index of securities or any interest in,**
21 **or interest that is based on the value of,**
22 **any security.**

23 **“(c) ANTIMANIPULATION REQUIREMENTS.—A**
24 **party to a futures contract or related option**
25 **that is traded on an exempt board of trade**

1 shall be subject to sections 4b, 4n, 6(c), and
2 9(a)(2), and the Commission shall enforce
3 those provisions with respect to any such
4 trading.

5 “(d) **PRICE DISCOVERY.**—If the Commission
6 finds that an exempt board of trade is a sig-
7 nificant source of price discovery for any un-
8 derlying commodity in any transaction traded
9 on or through the facilities of the board of
10 trade, the board of trade shall disseminate
11 publicly on a daily basis trading volume,
12 opening and closing price ranges, open inter-
13 est, and other trading data as appropriate to
14 the market.

15 “(e) **JURISDICTION.**—The Commission shall
16 have exclusive jurisdiction over any account,
17 agreement, or transaction involving a con-
18 tract of sale of a commodity for future deliv-
19 ery, or related option, to the extent that such
20 account, agreement, or transaction is traded
21 on an exempt board of trade.

22 “(f) **SUBSIDIARIES.**—A board of trade that is
23 designated as a contract market or registered
24 as a derivatives transaction execution facility
25 may operate an exempt board of trade by es-

1 **tablishing a separate subsidiary or other legal**
2 **entity and otherwise satisfying the require-**
3 **ments of this section.”.**

4 **SEC. 119. SUSPENSION OR REVOCATION OF DESIGNATION**
5 **AS CONTRACT MARKET.**

6 **Section 5e of the Commodity Exchange**
7 **Act (7 U.S.C. 7b) (as redesignated by section**
8 **112(1)) is amended to read as follows:**

9 **“SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION**
10 **AS REGISTERED ENTITY.**

11 **“The failure of a registered entity to com-**
12 **ply with any provision of this Act, or any reg-**
13 **ulation or order of the Commission under this**
14 **Act, shall be cause for the suspension of the**
15 **registered entity for a period not to exceed**
16 **180 days, or revocation of designation as a**
17 **registered entity in accordance with the pro-**
18 **cedures and subject to the judicial review**
19 **provided in section 6(b).”.**

20 **SEC. 120. AUTHORIZATION OF APPROPRIATIONS.**

21 **Section 12(d) of the Commodity Exchange**
22 **Act (7 U.S.C. 16(d)) is amended by striking**
23 **“2000” and inserting “2005”.**

1 SEC. 121. PREEMPTION.

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

5 “(2) the application of any Federal or
6 State law (including any regulation) to an
7 agreement, contract, or transaction in or
8 involving any commodity, product, right,
9 service, or interest, except that this Act
10 shall supersede and preempt—

11 “(A) in the case of any such agree-
12 ment, contract, or transaction—

13 “(i) that is conducted on or
14 subject to the rules of a reg-
15 istered entity or exempt board of
16 trade;

17 “(ii) that is conducted on or
18 subject to the rules of any board
19 of trade, exchange, or market lo-
20 cated outside the United States,
21 or any territory or possession of
22 the United States (in accordance
23 with any terms or conditions
24 specified by the Commission by
25 regulation); and

1 “(iii) that is subject to regula-
2 tion by the Commission under
3 section 4c or 19; and

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

9 “(i) an electronic trading facil-
10 ity under section 2(e); or

11 “(ii) an agreement, contract,
12 or transaction that is excluded or
13 exempt under section 2(c), 2(d),
14 2(f), or 2(h) or is covered by the
15 terms of an exemption granted by
16 the Commission under section
17 4(c) (regardless of whether any
18 such agreement, contract, or
19 transaction is otherwise subject
20 to this Act); or”.

21 **SEC. 122. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
22 **STITUTIONAL CUSTOMERS.**

23 **Section 14 of the Commodity Exchange**
24 **Act (7 U.S.C. 18) is amended by striking sub-**
25 **section (g) and inserting the following:**

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

10 **SEC. 123. CONSIDERATION OF COSTS AND BENEFITS AND**
11 **ANTITRUST LAWS.**

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

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

18 **“(a) COSTS AND BENEFITS.—**

19 **“(1) IN GENERAL.—Before promul-**
20 **gating a regulation under this Act or**
21 **issuing an order (except as provided in**
22 **paragraph (3)), the Commission shall con-**
23 **sider the costs and benefits of the action**
24 **of the Commission.**

1 **“(2) CONSIDERATIONS.—The costs and**
2 **benefits of the proposed Commission ac-**
3 **tion shall be evaluated in light of—**

4 **“(A) considerations of protection**
5 **of market participants and the pub-**
6 **lic;**

7 **“(B) considerations of the effi-**
8 **ciency, competitiveness, and financial**
9 **integrity of futures markets;**

10 **“(C) considerations of price dis-**
11 **covery;**

12 **“(D) considerations of sound risk**
13 **management practices; and**

14 **“(E) other public interest consid-**
15 **erations.**

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

19 **“(A) An order that initiates, is**
20 **part of, or is the result of an adju-**
21 **dicatory or investigative process of**
22 **the Commission.**

23 **“(B) An emergency action.**

1 **“(C) A finding of fact regarding**
2 **compliance with a requirement of the**
3 **Commission.**

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

5 **SEC. 124. CONTRACT ENFORCEMENT.**

6 **Section 22(a) of the Commodity Exchange**
7 **Act (7 U.S.C. 25(a)) is amended by adding at**
8 **the end the following:**

9 **“(4) CONTRACT ENFORCEMENT BETWEEN ELI-**
10 **GIBLE COUNTERPARTIES.—**

11 **“(A) IN GENERAL.—No agreement, con-**
12 **tract, or transaction involving a party de-**
13 **scribed in subclauses (I) through (VI) of**
14 **section 2(c)(2)(B)(ii) or between eligible**
15 **contract participants shall be void, void-**
16 **able, or unenforceable, and no such**
17 **counterparty or eligible contract partici-**
18 **pant shall be entitled to rescind, or re-**
19 **cover any payment made with respect to,**
20 **such an agreement, contract, or trans-**
21 **action, under this section or any other**
22 **provision of Federal or State law based**
23 **solely on the failure of the agreement,**
24 **contract, or transaction to comply with**
25 **the terms or conditions of an exemption**

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

3 “(B) EXCEPTION.—This paragraph
4 shall not apply to any swap agreement
5 (as defined in section 206(b) of the
6 Gramm-Leach-Bliley Act) with any party
7 who is not an eligible contract partici-
8 pant unless such swap agreement is en-
9 tered into after final regulations have
10 been prescribed under section 49 of the
11 Federal Deposit Insurance Act.

12 SEC. 125. SPECIAL PROCEDURES TO ENCOURAGE AND FA-
13 CILITATE BONA FIDE HEDGING BY AGRICUL-
14 TURAL PRODUCERS.

15 The Commodity Exchange Act, as other-
16 wise amended by this Act, is amended by in-
17 serting after section 4o the following:

18 “SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FA-
19 CILITATE BONA FIDE HEDGING BY AGRICUL-
20 TURAL PRODUCERS.

21 “(a) AUTHORITY.—The Commission shall
22 consider issuing rules or orders which—

23 “(1) prescribe procedures under
24 which each contract market is to provide
25 for orderly delivery, including temporary

1 storage costs, of any agricultural com-
2 modity enumerated in section 1a(3)
3 which is the subject of a contract for pur-
4 chase or sale for future delivery;

5 “(2) increase the ease with which do-
6 mestic agricultural producers may par-
7 ticipate in contract markets, including by
8 addressing cost and margin require-
9 ments, so as to better enable such pro-
10 ducers to hedge price risk associated
11 with their production;

12 “(3) provide flexibility in the min-
13 imum quantities of such agricultural
14 commodities that may be the subject of a
15 contract for purchase or sale for future
16 delivery that is traded on a contract mar-
17 ket, to better allow domestic agricultural
18 producers to hedge such price risk; and

19 “(4) encourage exchanges to provide
20 information and otherwise facilitate the
21 participation of domestic agricultural
22 producers in contract markets.

23 “(b) REPORT.—Within 1 year after the date
24 of enactment of this section, the Commission
25 shall submit to the Committee on Agriculture

1 of the House of Representatives and the Com-
2 mittee on Agriculture, Nutrition, and Forestry
3 of the Senate a report on the steps it has
4 taken to implement this section and on the ac-
5 tivities of contract markets pursuant to this
6 section.”.

7 SEC. 126. RULE OF CONSTRUCTION.

8 Except as expressly provided in this title
9 or an amendment made by this title, nothing
10 in this title or an amendment made by the
11 title supersedes, affects, or otherwise limits or
12 expands the scope and applicability of laws
13 governing the Securities and Exchange Com-
14 mission.

15 SEC. 127. AUTHORITY OF AGENCIES TO CONSTRUE THE
16 TERM “CONTRACT MARKET”.

17 Each executive agency of the United
18 States Government that has authority to pre-
19 scribe regulations under a statute that uses
20 the term “contract market” may prescribe
21 regulations construing such term as referring
22 to any contract market, derivatives trans-
23 action execution facility, or derivatives clear-
24 ing organization that is registered with the
25 Commodity Futures Trading Commission.

1 SEC. 128. TECHNICAL AND CONFORMING AMENDMENTS.

2 (a) COMMODITY EXCHANGE ACT.—

3 (1) Section 1a of the Commodity Ex-
4 change Act (7 U.S.C. 1a) is amended—

5 (A) in paragraph (3), by inserting
6 “aluminum, copper, gold, palladium,
7 platinum, silver,” after “orange
8 juice,”;

9 (B) in paragraphs (4), (5), (8), (9),
10 (12), and (14), by inserting “or deriva-
11 tives transaction execution facility”
12 after “contract market” each place it
13 appears; and

14 (C) in paragraph (15)—

15 (i) in the paragraph heading,
16 by striking “CONTRACT MARKET”
17 and inserting “REGISTERED ENTI-
18 TY”; and

19 (ii) by striking “contract mar-
20 ket” each place it appears and in-
21 serting “registered entity”.

22 (2) Section 2 of the Commodity Ex-
23 change Act (7 U.S.C. 2, 2a, 4, 4a, 3) is
24 amended—

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

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

5 **“(a) JURISDICTION OF COMMISSION; COM-**
6 **MODITY FUTURES TRADING COMMISSION.—**

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

8 **“(A) IN GENERAL.—The”; and**

9 **(B) in subsection (a)—**

10 **(i) in paragraph (1) (as**
11 **amended by subparagraph (A))—**

12 **(I) by striking subpara-**
13 **graph (B);**

14 **(II) by striking “subpara-**
15 **graph (B) of this paragraph”**
16 **and inserting “subsection (c),**
17 **(d), (e), (f), (g), or (i)”;**

18 **(III) by striking “contract**
19 **market designated pursuant**
20 **to section 5 of this Act” and**
21 **inserting “contract market**
22 **designated or derivatives**
23 **transaction execution facility**
24 **registered pursuant to section**
25 **5 or 5a”;**

1 **(IV) by redesignating sub-**
2 **clauses (I) and (II) as clauses**
3 **(i) and (ii);**

4 **(V) by striking clause (ii);**
5 **and**

6 **(VI) in clause (iii), by**
7 **striking “(iii) The” and insert-**
8 **ing the following:**

9 **“(B) LIABILITY OF PRINCIPAL FOR**
10 **ACT OF AGENT.—The”;**

11 **(ii) in paragraph (7), by strik-**
12 **ing “contract market” and insert-**
13 **ing “registered entity”;**

14 **(iii) in paragraph (8)(B)(ii)—**

15 **(I) in the first sentence, by**
16 **striking “designation as a con-**
17 **tract market” and inserting**
18 **“designation or registration**
19 **as a contract market or de-**
20 **rivatives transaction execu-**
21 **tion facility”;**

22 **(II) in the second sen-**
23 **tence, by striking “designate a**
24 **board of trade as a contract**
25 **market” and inserting “des-**

1 **ignate or register a board of**
2 **trade as a contract market or**
3 **derivatives transaction execu-**
4 **tion facility”;** and

5 **(III) in the fourth sen-**
6 **tence, by striking “desig-**
7 **nating, or refusing, sus-**
8 **pending, or revoking the des-**
9 **ignation of, a board of trade**
10 **as a contract market involv-**
11 **ing transactions for future de-**
12 **livery referred to in this**
13 **clause or in considering pos-**
14 **sible emergency action under**
15 **section 8a(9) of this Act” and**
16 **inserting “designating, reg-**
17 **istering, or refusing, sus-**
18 **pending, or revoking the des-**
19 **ignation or registration of, a**
20 **board of trade as a contract**
21 **market or derivatives trans-**
22 **action execution facility in-**
23 **volving transactions for fu-**
24 **ture delivery referred to in**
25 **this clause or in considering**

1 **any possible action under this**
2 **Act (including without limita-**
3 **tion emergency action under**
4 **section 8a(9))”, and by strik-**
5 **ing “designation, suspension,**
6 **revocation, or emergency ac-**
7 **tion” and inserting “designa-**
8 **tion, registration, suspension,**
9 **revocation, or action”; and**
10 **(iv) by moving paragraphs (2)**
11 **through (11) 2 ems to the right.**

12 **(3) Section 4 of the Commodity Ex-**
13 **change Act (7 U.S.C. 6) is amended—**

14 **(A) in subsection (a)—**

15 **(i) in paragraph (1), by strik-**
16 **ing “designated by the Commis-**
17 **sion as a ‘contract market’ for”**
18 **and inserting “designated or reg-**
19 **istered by the Commission as a**
20 **contract market or derivatives**
21 **transaction execution facility**
22 **for”;**

23 **(ii) in paragraph (2), by strik-**
24 **ing “member of such”; and**

1 (iii) in paragraph (3), by in-
2 serting “or derivatives trans-
3 action execution facility” after
4 “contract market”; and

5 **(B) in subsection (c)—**

6 **(i) in paragraph (1)—**

7 **(I) by striking “designated**
8 **as a contract market” and in-**
9 **serting “designated or reg-**
10 **istered as a contract market**
11 **or derivatives transaction**
12 **execution facility”; and**

13 **(II) by striking “section**
14 **2(a)(1)(B)” and inserting “sec-**
15 **tion 2(g)”;** and

16 **(ii) in paragraph (2)(B)(ii), by**
17 **inserting “or derivatives trans-**
18 **action execution facility” after**
19 **“contract market”.**

20 **(4) Section 4a of the Commodity Ex-**
21 **change Act (7 U.S.C. 6a) is amended—**

22 **(A) in subsection (a)—**

23 **(i) in the first sentence, by in-**
24 **serting “or derivatives trans-**

1 **action execution facilities” after**
2 **“contract markets”; and**

3 **(ii) in the second sentence, by**
4 **inserting “or derivatives trans-**
5 **action execution facility” after**
6 **“contract market”;**

7 **(B) in subsection (b)—**

8 **(i) in paragraph (1), by insert-**
9 **ing “, or derivatives transaction**
10 **execution facility or facilities,”**
11 **after “markets”; and**

12 **(ii) in paragraph (2), by in-**
13 **serting “or derivatives trans-**
14 **action execution facility” after**
15 **“contract market”; and**

16 **(C) in subsection (e)—**

17 **(i) by striking “contract mar-**
18 **ket or” each place it appears and**
19 **inserting “contract market, de-**
20 **rivatives transaction execution**
21 **facility, or”;**

22 **(ii) by striking “licensed or**
23 **designated” each place it appears**
24 **and inserting “licensed, des-**
25 **ignated, or registered”; and**

1 (iii) by striking “contract mar-
2 ket, or” and inserting “contract
3 market or derivatives transaction
4 execution facility, or”.

5 (5) Section 4b(a) of the Commodity
6 Exchange Act (7 U.S.C. 6b(a)) is amended
7 by striking “contract market” each place
8 it appears and inserting “registered enti-
9 ty”.

10 (6) Sections 4c(g), 4d, 4e, and 4f of the
11 Commodity Exchange Act (7 U.S.C. 6c(g),
12 6d, 6e, 6f) are amended by inserting “or
13 derivatives transaction execution facil-
14 ity” after “contract market” each place it
15 appears.

16 (7) Section 4g of the Commodity Ex-
17 change Act (7 U.S.C. 6g) is amended—

18 (A) in subsection (b), by striking
19 “clearinghouse and contract market”
20 and inserting “registered entity”; and

21 (B) in subsection (f), by striking
22 “clearinghouses, contract markets,
23 and exchanges” and inserting “reg-
24 istered entities”.

1 **(8) Section 4h of the Commodity Ex-**
2 **change Act (7 U.S.C. 6h) is amended by**
3 **striking “contract market” each place it**
4 **appears and inserting “registered entity”.**

5 **(9) Section 4i of the Commodity Ex-**
6 **change Act (7 U.S.C. 6i) is amended in the**
7 **first sentence by inserting “or derivatives**
8 **transaction execution facility” after “con-**
9 **tract market”.**

10 **(10) Section 4j of the Commodity Ex-**
11 **change Act (7 U.S.C. 6j) is repealed.**

12 **(11) Section 4l of the Commodity Ex-**
13 **change Act (7 U.S.C. 6l) is amended by in-**
14 **serting “or derivatives transaction execu-**
15 **tion facilities” after “contract markets”**
16 **each place it appears.**

17 **(12) Section 4p of the Commodity Ex-**
18 **change Act (7 U.S.C. 6p) (as determined**
19 **before the redesignation by paragraph**
20 **(13) of this subsection) is amended—**

21 **(A) in the third sentence of sub-**
22 **section (a), by striking “Act or con-**
23 **tract markets” and inserting “Act,**
24 **contract markets, or derivatives**
25 **transaction execution facilities”; and**

1 **(B) in subsection (b), by inserting**
2 **“derivatives transaction execution fa-**
3 **cility,” after “contract market,”.**

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

9 **(14) Section 6 of the Commodity Ex-**
10 **change Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15)**
11 **is amended—**

12 **(A) in subsection (a)—**

13 **(i) in the first sentence—**

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

1 **for such designation or reg-**
2 **istration”;**

3 **(II) by striking “above**
4 **conditions” and inserting**
5 **“conditions set forth in this**
6 **Act”;** and

7 **(III) by striking “above re-**
8 **quirements” and inserting**
9 **“the requirements of this**
10 **Act”;**

11 **(ii) in the second sentence, by**
12 **striking “designation as a con-**
13 **tract market within one year” and**
14 **inserting “designation or registra-**
15 **tion as a contract market or de-**
16 **rivatives transaction execution**
17 **facility within 180 days”;**

18 **(iii) in the third sentence—**

19 **(I) by striking “board of**
20 **trade” and inserting “person”;**
21 **and**

22 **(II) by striking “one-year**
23 **period” and inserting “180-**
24 **day period”;** and

1 (iv) in the last sentence, by
2 striking “designate as a ‘contract
3 market’ any board of trade that
4 has made application therefor,
5 such board of trade” and insert-
6 ing “designate or register as a
7 contract market or derivatives
8 transaction execution facility any
9 person that has made application
10 therefor, such person”;

11 (B) in subsection (b)—

12 (i) in the first sentence—

13 (I) by striking “designa-
14 tion of any board of trade as a
15 ‘contract market’ upon” and
16 inserting “designation or reg-
17 istration of any contract mar-
18 ket or derivatives transaction
19 execution facility on”;

20 (II) by striking “board of
21 trade” each place it appears
22 and inserting “contract mar-
23 ket or derivatives transaction
24 execution facility”; and

1 **(III) by striking “designa-**
2 **tion as set forth in section 5 of**
3 **this Act” and inserting “des-**
4 **ignation or registration as set**
5 **forth in sections 5 through**
6 **5b”;**

7 **(ii) in the second sentence—**

8 **(I) by striking “board of**
9 **trade” the first place it ap-**
10 **pears and inserting “contract**
11 **market or derivatives trans-**
12 **action execution facility”;** and

13 **(II) by striking “board of**
14 **trade” the second and third**
15 **places it appears and insert-**
16 **ing “person”;** and

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

21 **(C) in subsection (c)—**

22 **(i) by striking “contract mar-**
23 **ket” each place it appears and in-**
24 **serting “registered entity”;**

1 (ii) by striking “contract mar-
2 kets” each place it appears and
3 inserting “registered entities”;
4 and

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

8 (D) in subsection (d), by striking
9 “contract market” each place it ap-
10 pears and inserting “registered enti-
11 ty”; and

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

17 (15) Section 6a of the Commodity Ex-
18 change Act (7 U.S.C. 10a) is amended—

19 (A) in the first sentence of sub-
20 section (a), by striking “designated as
21 a ‘contract market’ shall” and insert-
22 ing “designated or registered as a
23 contract market or a derivatives
24 transaction execution facility”; and

1 **(B) in subsection (b), by striking**
2 **“designated as a contract market”**
3 **and inserting “designated or reg-**
4 **istered as a contract market or a de-**
5 **rivatives transaction execution facil-**
6 **ity”.**

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

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

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

17 **(C) in the last sentence, by strik-**
18 **ing “the contract market’s ability”**
19 **and inserting “the ability of the reg-**
20 **istered entity”.**

21 **(17) Section 6c(a) of the Commodity**
22 **Exchange Act (7 U.S.C. 13a-1(a)) by strik-**
23 **ing “contract market” and inserting “reg-**
24 **istered entity”.**

1 **(18) Section 6d(1) of the Commodity**
2 **Exchange Act (7 U.S.C. 13a-2(1)) is**
3 **amended by inserting “derivatives trans-**
4 **action execution facility,” after “contract**
5 **market.”.**

6 **(19) Section 7 of the Commodity Ex-**
7 **change Act (7 U.S.C. 11) is amended—**

8 **(A) in the first sentence—**

9 **(i) by striking “board of**
10 **trade” and inserting “person”;**

11 **(ii) by inserting “or reg-**
12 **istered” after “designated”;**

13 **(iii) by inserting “or registra-**
14 **tion” after “designation” each**
15 **place it appears; and**

16 **(iv) by striking “contract mar-**
17 **ket” each place it appears and in-**
18 **serting “registered entity”;**

19 **(B) in the second sentence—**

20 **(i) by striking “designation of**
21 **such board of trade as a contract**
22 **market” and inserting “designa-**
23 **tion or registration of the reg-**
24 **istered entity”; and**

1 (ii) by striking “contract mar-
2 kets” and inserting “registered
3 entities”; and

4 (C) in the last sentence—

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

8 (ii) by striking “designated
9 again a contract market” and in-
10 serting “designated or registered
11 again a registered entity”.

12 (20) Section 8(c) of the Commodity
13 Exchange Act (7 U.S.C. 12(c)) is amended
14 in the first sentence by striking “board of
15 trade” and inserting “registered entity”.

16 (21) Section 8a of the Commodity Ex-
17 change Act (7 U.S.C. 12a) is amended—

18 (A) by striking “contract market”
19 each place it appears and inserting
20 “registered entity”; and

21 (B) in paragraph (2)(F), by strik-
22 ing “trading privileges” and inserting
23 “privileges”.

24 (22) Sections 8b and 8c(e) of the Com-
25 modity Exchange Act (7 U.S.C. 12b,

1 **12c(e)) are amended by striking “contract**
2 **market” each place it appears and insert-**
3 **ing “registered entity”.**

4 **(23) Section 8e of the Commodity Ex-**
5 **change Act (7 U.S.C. 12e) is amended—**

6 **(A) by striking “contract market”**
7 **each place it appears and inserting**
8 **“registered entity”;**

9 **(B) in subsection (a), by striking**
10 **“section 5a(b)” and inserting “sec-**
11 **tions 5 through 5c”;**

12 **(C) in subsection (b)—**

13 **(i) in paragraph (1), by strik-**
14 **ing “a contract market’s trade**
15 **monitoring system implemented**
16 **pursuant to section 5a(b)” and in-**
17 **serting “the trade monitoring sys-**
18 **tem of a registered entity imple-**
19 **mented pursuant to sections 5**
20 **through 5c”;**

21 **(ii) by striking paragraph (3)**
22 **and inserting the following:**

23 **“(3) REMEDIES.—On becoming final,**
24 **the Commission deficiency order may re-**
25 **quire the registered entity to—**

1 “(A) institute appropriate im-
2 provements in its trade monitoring
3 system necessary to correct the defi-
4 ciencies in the order;

5 “(B) satisfy stated objective per-
6 formance criteria to correct the defi-
7 ciencies;

8 “(C) upgrade or reconfigure exist-
9 ing systems for collecting or proc-
10 essing relevant data on trading and
11 trader or broker activity, including,
12 where appropriate, the commitment
13 of additional resources.”; and

14 (iii) in paragraph (5)—

15 (I) in the paragraph head-
16 ing, by striking “DESIGNATION
17 AS CONTRACT MARKET” and in-
18 serting “DESIGNATION OR REG-
19 ISTRATION AS REGISTERED ENTI-
20 TY”;

21 (II) by inserting “or reg-
22 istration” after “designation”;
23 and

24 (III) by striking “board of
25 trade” and inserting “person”;

1 **(D) in subsection (d)(2), by strik-**
2 **ing “section 5b” and inserting “sec-**
3 **tion 5e”; and**

4 **(E) in the paragraph heading of**
5 **subsection (e)(2), by striking “CON-**
6 **TRACT MARKETS” and inserting “REG-**
7 **ISTERED ENTITIES”.**

8 **(24) Section 9 of the Commodity Ex-**
9 **change Act (7 U.S.C. 13) is amended—**

10 **(A) by striking “contract market”**
11 **each place it appears and inserting**
12 **“registered entity”; and**

13 **(B) in subsection (a)(2), by strik-**
14 **ing “section 4o(1),” and inserting “sec-**
15 **tion 4n(1),”.**

16 **(25) Section 14 of the Commodity Ex-**
17 **change Act (7 U.S.C. 18) is amended—**

18 **(A) in subsection (a)(1)(B), by**
19 **striking “contract market” and insert-**
20 **ing “registered entity”; and**

21 **(B) in subsection (f), by striking**
22 **“contract markets” and inserting**
23 **“registered entities”.**

24 **(26) Section 17 of the Commodity Ex-**
25 **change Act (7 U.S.C. 21) is amended by**

1 striking “contract market” each place it
2 appears and inserting “registered entity”.

3 (27) Section 22 of the Commodity Ex-
4 change Act (7 U.S.C. 25) is amended—

5 (A) in subsection (a)—

6 (i) in paragraph (1)—

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

12 (II) in subparagraph
13 (C)(i), by striking “contract
14 market” and inserting “reg-
15 istered entity”;

16 (ii) in paragraph (2), by strik-
17 ing “sections 5a(11),” and insert-
18 ing “sections 5(d)(13),
19 5b(b)(1)(E),”; and

20 (iii) in paragraph (3), by strik-
21 ing “contract market” and insert-
22 ing “registered entity”; and

23 (B) in subsection (b)—

24 (i) in paragraph (1)—

1 **(I) by striking “contract**
2 **market or clearing organiza-**
3 **tion of a contract market” and**
4 **inserting “registered entity”;**

5 **(II) by striking “section**
6 **5a(8) and section 5a(9) of this**
7 **Act” and inserting “sections 5**
8 **through 5c”;**

9 **(III) by striking “contract**
10 **market, clearing organization**
11 **of a contract market, or li-**
12 **icensed board of trade” and in-**
13 **serting “registered entity”;**
14 **and**

15 **(IV) by striking “contract**
16 **market or licensed board of**
17 **trade” and inserting “reg-**
18 **istered entity”;**

19 **(ii) in paragraph (3)—**

20 **(I) by striking “contract**
21 **market, clearing organization,**
22 **licensed board of trade,” and**
23 **inserting “registered entity”;**
24 **and**

1 **(II) by striking “contract**
2 **market, licensed board of**
3 **trade” and inserting “reg-**
4 **istered entity”;**

5 **(iii) in paragraph (4), by strik-**
6 **ing “contract market, licensed**
7 **board of trade, clearing organiza-**
8 **tion” and inserting “registered**
9 **entity”;** and

10 **(iv) in paragraph (5), by strik-**
11 **ing “contract market, licensed**
12 **board of trade, clearing organiza-**
13 **tion,” and inserting “registered**
14 **entity”.**

15 **(b) FEDERAL DEPOSIT INSURANCE CORPORA-**
16 **TION IMPROVEMENT ACT OF 1991.—Section**
17 **402(2) of the Federal Deposit Insurance Cor-**
18 **poration Improvement Act of 1991 (12 U.S.C.**
19 **4402(2)) is amended by striking subparagraph**
20 **(B) and inserting the following:**

21 **“(B) that is registered as a deriva-**
22 **tives clearing organization under sec-**
23 **tion 5b of the Commodity Exchange**
24 **Act.”.**

1 SEC. 129. REPORT TO CONGRESS.

2 (a) **The Commodity Futures Trading Com-**
3 **mission (in this section referred to as the**
4 **“Commission”)** shall undertake and complete
5 **a study of the Commodity Exchange Act (in**
6 **this section referred to as “the Act”)** and the
7 **Commission’s rules, regulations and orders**
8 **governing the conduct of persons required to**
9 **be registered under the Act, not later than 1**
10 **year after the date of the enactment of this**
11 **Act. The study shall identify—**

12 (1) **the core principles and interpreta-**
13 **tions of acceptable business practices**
14 **that the Commission has adopted or in-**
15 **tends to adopt to replace the provisions**
16 **of the Act and the Commission’s rules**
17 **and regulations thereunder;**

18 (2) **the rules and regulations that the**
19 **Commission has determined must be re-**
20 **tained and the reasons therefor;**

21 (3) **the extent to which the Commis-**
22 **sion believes it can effect the changes**
23 **identified in paragraph (1) of this sub-**
24 **section through its exemptive authority**
25 **under section 4(c) of the Act; and**

1 **(4) the regulatory functions the Com-**
2 **mission currently performs that can be**
3 **delegated to a registered futures associa-**
4 **tion (within the meaning of the Act) and**
5 **the regulatory functions that the Com-**
6 **mission has determined must be retained**
7 **and the reasons therefor.**

8 **(b) In conducting the study, the Commis-**
9 **sion shall solicit the views of the public as**
10 **well as Commission registrants, registered en-**
11 **tities, and registered futures associations (all**
12 **within the meaning of the Act).**

13 **(c) The Commission shall transmit to the**
14 **Committee on Agriculture of the House of**
15 **Representatives and the Committee on Agri-**
16 **culture, Nutrition, and Forestry of the Senate**
17 **a report of the results of its study, which shall**
18 **include an analysis of comments received.**

19 **SEC. 130. EFFECTIVE DATE.**

20 **(a) IN GENERAL.—Except as provided in**
21 **subsection (b), this title shall take effect on**
22 **the date of enactment of this Act.**

23 **(b) JURISDICTION OF COMMISSION.—Section**
24 **108, and the amendments made by that sec-**

1 **tion, shall take effect 1 year after the date of**
2 **enactment of this Act.**

3 **SEC. 131. INTERNATIONAL ACTIVITIES OF THE COMMODITY**
4 **FUTURES TRADING COMMISSION.**

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

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

9 **(2) developments in data processing**
10 **and communications technologies enable**
11 **users of risk management services to ana-**
12 **lyze and compare those services on a**
13 **worldwide basis;**

14 **(3) financial services regulatory pol-**
15 **icy must be flexible to account for rapidly**
16 **changing derivatives industry business**
17 **practices;**

18 **(4) regulatory impediments to the op-**
19 **eration of global business interests can**
20 **compromise the competitiveness of**
21 **United States businesses;**

22 **(5) events that disrupt financial mar-**
23 **kets and economies are often global in**
24 **scope, require rapid regulatory response,**

1 **and coordinated regulatory effort across**
2 **international jurisdictions;**

3 **(6) through its membership in the**
4 **International Organisation of Securities**
5 **Commissions, the Commodity Futures**
6 **Trading Commission has promoted bene-**
7 **ficial communication among market reg-**
8 **ulators and international regulatory co-**
9 **operation; and**

10 **(7) the Commodity Futures Trading**
11 **Commission and other United States fi-**
12 **nancial regulators and self-regulatory or-**
13 **ganizations should continue to foster pro-**
14 **ductive and cooperative working rela-**
15 **tionships with their counterparts in for-**
16 **ign jurisdictions.**

17 **(b) SENSE OF THE CONGRESS.—It is the**
18 **sense of the Congress that, consistent with its**
19 **responsibilities under the Commodity Ex-**
20 **change Act, the Commodity Futures Trading**
21 **Commission should, as part of its inter-**
22 **national activities, continue to coordinate**
23 **with foreign regulatory authorities, to partici-**
24 **pate in international regulatory organiza-**
25 **tions and forums, and to provide technical as-**

1 **sistance to foreign government authorities, in**
2 **order to encourage—**

3 **(1) the facilitation of cross-border**
4 **transactions through the removal or less-**
5 **ening of any unnecessary legal or prac-**
6 **tical obstacles;**

7 **(2) the development of internationally**
8 **accepted regulatory standards of best**
9 **practice;**

10 **(3) the enhancement of international**
11 **supervisory cooperation and emergency**
12 **procedures;**

13 **(4) the strengthening of international**
14 **cooperation for customer and market**
15 **protection; and**

16 **(5) improvements in the quality and**
17 **timeliness of international information**
18 **sharing.**

19 **SEC. 132. ANTIFRAUD PROVISIONS.**

20 **(a) IN GENERAL.—It shall be unlawful to**
21 **commit retail derivatives fraud by the use of**
22 **any means or instruments of transportation**
23 **or communication in interstate commerce or**
24 **of the mails.**

1 **(b) DEFINITIONS.—**For purposes of this sec-
2 **tion, the following definitions shall apply:**

3 **(1) ELIGIBLE CONTRACT PARTICIPANT.—**
4 **The term “eligible contract participant”**
5 **has the same meaning as in section 1a of**
6 **the Commodity Exchange Act.**

7 **(2) FEDERAL FINANCIAL INSTITUTION**
8 **REGULATOR.—**The term “Federal financial
9 **institution regulator” means—**

10 **(A) any Federal functional regu-**
11 **lator (as defined in section 509(2) of**
12 **the Gramm-Leach-Bliley Act) in the**
13 **case of any financial institution de-**
14 **scribed in paragraph (3)(A); and**

15 **(B) the Commodity Futures Trad-**
16 **ing Commission, in the case of a fi-**
17 **ancial institution described in para-**
18 **graph (3)(B).**

19 **(3) FINANCIAL INSTITUTION.—**The term
20 **“financial institution”—**

21 **(A) has the meaning given to such**
22 **term in subparagraph (A) of section**
23 **509(3) of the Gramm-Leach-Bliley Act;**
24 **and**

1 **(B) includes any person or entity**
2 **described in subparagraph (B) of**
3 **such section 509(3).**

4 **(4) RETAIL DERIVATIVES FRAUD.—The**
5 **term “retail derivatives fraud” means any**
6 **fraud perpetrated by a party on a**
7 **counterparty (other than a counterparty**
8 **that is an eligible contract participant) to**
9 **any agreement, contract, transaction,**
10 **warrant, note or option (other than a**
11 **contract of sale of a commodity for future**
12 **delivery or an option on such contract**
13 **(unless such contract or option has been**
14 **excluded from the Commodity Exchange**
15 **Act under subsection (c), (d), (f), or (i) of**
16 **section 2 of such Act), or a security) that**
17 **is based, in whole or in part, on the value**
18 **of any interest in, or a quantitative meas-**
19 **ure relating to 1 or more commodities, se-**
20 **curities, currencies, interest or other**
21 **rates, indices, or other assets, or the oc-**
22 **currence of any event.**

23 **(5) SECURITY.—The term “security”**
24 **has the same meaning as in section 3 of**
25 **the Securities Exchange Act of 1934.**

1 **(c) ENFORCEMENT.—This section shall be**
2 **enforced by the appropriate Federal financial**
3 **institution regulator, any appropriate State**
4 **insurance authority, and the Federal Trade**
5 **Commission with respect to financial institu-**
6 **tions and other persons subject to the juris-**
7 **isdiction of such agency or authority under ap-**
8 **plicable law, as follows:**

9 **(1) Under section 8 of the Federal De-**
10 **posit Insurance Act, in the case of—**

11 **(A) national banks, Federal**
12 **branches and Federal agencies of for-**
13 **oreign banks, and any subsidiaries of**
14 **such entities (except brokers, dealers,**
15 **futures commission merchants, per-**
16 **sons providing insurance, investment**
17 **companies, and investment advisers),**
18 **by the office of the Comptroller of the**
19 **Currency;**

20 **(B) member banks of the Federal**
21 **Reserve System (other than national**
22 **banks), branches and agencies of for-**
23 **oreign banks (other than Federal**
24 **branches, Federal agencies, and in-**
25 **sured State branches of foreign**

1 banks), commercial lending compa-
2 nies owned or controlled by foreign
3 banks, organizations operating under
4 section 25 or 25A of the Federal Re-
5 serve Act, and bank holding compa-
6 nies and their nonbank affiliates
7 (other than financial institutions of
8 whom the Securities and Exchange
9 Commission is the federal functional
10 regulator), by the Board of Governors
11 of the Federal Reserve System;

12 (C) banks insured by the Federal
13 Deposit Insurance Corporation (other
14 than members of the Federal Reserve
15 System), insured State branches of
16 foreign banks, and any subsidiaries of
17 such entities (other than subsidiaries
18 of whom the Securities and Exchange
19 Commission is the Federal functional
20 regulator), by the Board of Directors
21 of the Federal Deposit Insurance Cor-
22 poration; and

23 (D) savings associations the de-
24 posits of which are insured by the
25 Federal Deposit Insurance Corpora-

1 **tion, and any subsidiaries of such**
2 **savings associations (other than a**
3 **subsidiary of whom the Securities**
4 **and Exchange Commission is the Fed-**
5 **eral functional regulator), by the Di-**
6 **rector of the Office of Thrift Super-**
7 **vision.**

8 **(2) Under the Federal Credit Union**
9 **Act, by the Board of the National Credit**
10 **Union Administration with respect to any**
11 **federally insured credit union, and any**
12 **subsidiary of any such credit union**
13 **(other than a subsidiary of whom the Se-**
14 **curities and Exchange Commission is the**
15 **Federal functional regulator).**

16 **(3) Under the Securities Exchange**
17 **Act of 1934, by the Securities and Ex-**
18 **change Commission with respect to—**

19 **(A) any broker, dealer, or invest-**
20 **ment bank holding company; or**

21 **(B) any associated person of a**
22 **broker or dealer, concerning the fi-**
23 **nancial or securities activities of**
24 **which the broker or dealer makes**
25 **and keeps records under section**

1 **15C(b) or 17(h) of the Securities Ex-**
2 **change Act of 1934.**

3 **(4) Under the Investment Company**
4 **Act of 1940, by the Securities and Ex-**
5 **change Commission with respect to in-**
6 **vestment companies.**

7 **(5) Under the Investment Advisers**
8 **Act of 1940, by the Securities and Ex-**
9 **change Commission with respect to in-**
10 **vestment advisers.**

11 **(6) Under the Commodity Exchange**
12 **Act, by the Commodity Futures Trading**
13 **Commission with respect to a commodity**
14 **trading adviser, commodity pool oper-**
15 **ator, or futures commission merchant.**

16 **(7) Under State insurance law, in the**
17 **case of any person engaged in providing**
18 **insurance, by the applicable State insur-**
19 **ance authority of the State in which the**
20 **defrauded person is domiciled.**

21 **(8) Under the Federal Trade Commis-**
22 **sion Act, by the Federal Trade Commis-**
23 **sion for any other financial institution or**
24 **other person that is not subject to the ju-**
25 **risdiction of any agency or authority**

1 under any other paragraph of this sub-
2 section.

3 **(d) CRIMINAL PENALTIES.—Any person who**
4 **willfully violates subsection (a) shall be fined**
5 **not more than \$1,000,000, in the case of an in-**
6 **dividual, or \$2,500,000 in the case of any per-**
7 **son other than an individual, or imprisoned**
8 **not more than 10 years, or both.**

9 SEC. 133. RETAIL SWAP CUSTOMER PROTECTIONS.

10 **(a) IN GENERAL.—The Federal Deposit In-**
11 **surance Act (12 U.S.C. 1811 et seq.) is amend-**
12 **ed by adding at the end the following new sec-**
13 **tion:**

14 “SEC. 49. RETAIL SWAP CUSTOMER PROTECTIONS.

15 **“(a) REGULATIONS AUTHORIZED.—The**
16 **Board of Governors of the Federal Reserve**
17 **System and the Secretary of the Treasury**
18 **may, in consultation with appropriate Fed-**
19 **eral banking agencies, the Securities and Ex-**
20 **change Commission, and the Commodity Fu-**
21 **tures Trading Commission, jointly prescribe**
22 **customer protection regulations that apply to**
23 **sales practices relating to swap agreements**
24 **(as defined in section 206(b) of the Gramm-**

1 Leach-Bliley Act) between financial institu-
2 tions and retail customers.

3 **“(b) SALES PRACTICE REGULATIONS.—The**
4 **regulations prescribed under subsection (a)**
5 **may address—**

6 **“(1) the information that financial in-**
7 **stitutions shall obtain from retail cus-**
8 **tomers in order to determine whether**
9 **swap agreements recommended by the fi-**
10 **ancial institution to retail customers are**
11 **appropriate in light of the retail cus-**
12 **tomers’ net worth, ability and willingness**
13 **to incur losses, risk management needs,**
14 **financial goals, investment experience**
15 **and history, and other indicia of appro-**
16 **priateness;**

17 **“(2) information that financial institu-**
18 **tions shall provide to retail customers to**
19 **help the retail customers understand the**
20 **economic characteristics and risks of**
21 **swap agreements recommended by finan-**
22 **cial institutions;**

23 **“(3) measures to protect retail cus-**
24 **tomers against fraudulent, deceptive, and**
25 **manipulative acts and practices;**

1 “(4) the extent to which access of re-
2 tail customers to particular classes of
3 swap agreements should be restricted;
4 and

5 “(5) such other matters as the Sec-
6 retary of the Treasury and the Board of
7 Governors of the Federal Reserve System
8 determine are necessary or appropriate
9 for the protection of retail customers of
10 swap agreements.

11 “(c) DEFINITIONS.—

12 “(1) FINANCIAL INSTITUTION.—The term
13 ‘financial institution’ means a person de-
14 scribed in subclause (I), (II), (III), (IV),
15 (V), or (VI) of section 2(c)(2)(B)(ii) of the
16 Commodity Exchange Act.

17 “(2) RETAIL CUSTOMER.—The term ‘re-
18 tail customer’ means a person other than
19 an eligible contract participant (as de-
20 fined in section 1a(11) of the Commodity
21 Exchange Act).

22 “(d) ENFORCEMENT.—The regulations pre-
23 scribed under subsection (a) shall be enforced
24 as follows:

1 **“(1) Subject to section 45 of the Fed-**
2 **eral Deposit Insurance Act, under section**
3 **8 of the Federal Deposit Insurance Act, in**
4 **the case of—**

5 **“(A) any national bank, Federal**
6 **branch or Federal agency of a foreign**
7 **bank, or any subsidiary of a national**
8 **bank (other than any broker, dealer,**
9 **investment company or investment**
10 **adviser) by the Comptroller of the**
11 **Currency;**

12 **“(B) any member bank (other**
13 **than a national bank), branch or**
14 **agency of a foreign bank (other than**
15 **a Federal branch, Federal agency, or**
16 **insured State branch of a foreign**
17 **bank), commercial lending company**
18 **owned or controlled by a foreign**
19 **bank, organization operating under**
20 **section 25 or 25A of the Federal Re-**
21 **serve Act, any subsidiary of any such**
22 **entity (other than any broker, dealer,**
23 **investment company or investment**
24 **adviser) and any bank holding com-**
25 **pany and any nonbank affiliate of**

1 **any such company (other than any**
2 **broker, dealer, investment company**
3 **or investment adviser) by the Board**
4 **of Governors of the Federal Reserve**
5 **System;**

6 **“(C) any insured State non-**
7 **member bank, insured State branch**
8 **of a foreign bank, or any subsidiary**
9 **of any such entity (other than any**
10 **broker, dealer, investment company,**
11 **or investment adviser) by the Board**
12 **of Directors of the Federal Deposit**
13 **Insurance Corporation; and**

14 **“(D) any savings association the**
15 **deposits of which are insured by the**
16 **Corporation, any savings and loan**
17 **holding company, or any subsidiary**
18 **of any such savings association or**
19 **holding company (other than any**
20 **broker, dealer, investment company**
21 **or investment adviser) by the Direc-**
22 **tor of the Office of Thrift Supervision.**

23 **“(2) Under the Federal Credit Union**
24 **Act, by the National Credit Union Admin-**
25 **istration Board with respect to any feder-**

1 ally insured credit union, and any sub-
2 sidiaries of such an entity.

3 “(3) Under the Securities Exchange
4 Act of 1934, by the Securities and Ex-
5 change Commission with respect to any
6 registered broker or dealer, or any asso-
7 ciated person thereof that is not other-
8 wise regulated.

9 “(4) Under the Commodity Exchange
10 Act, by the Commodity Futures Trading
11 Commission, with respect to any reg-
12 istered futures commission merchant, or
13 any affiliated person of any such futures
14 commission merchant that is not other-
15 wise regulated.

16 “(5) Under State insurance law, in the
17 case of any person engaged in providing
18 insurance, or any affiliate of any such
19 person that is not otherwise regulated, by
20 the applicable State insurance authority
21 of the State in which the person is domi-
22 ciled.”.

23 (b) REPORT.—If regulations authorized
24 under the amendment made by subsection (a)
25 have not been prescribed in final form before

1 the end of the 1-year period beginning on the
2 date of the enactment of this Act, the Board
3 of Governors of the Federal Reserve System
4 and the Secretary of the Treasury shall each
5 submit a report to the Congress within 15
6 days after the end of such period containing
7 an explanation of why such regulations were
8 not prescribed in final form by the end of
9 such period.

10 **TITLE II—FINANCIAL CONTRACT**
11 **NETTING IMPROVEMENT**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Financial
14 Contract Netting Improvement Act of 2000”.

15 **SEC. 202. TREATMENT OF CERTAIN AGREEMENTS BY CON-**
16 **SERVATORS OR RECEIVERS OF INSURED DE-**
17 **POSITORY INSTITUTIONS.**

18 (a) **DEFINITION OF QUALIFIED FINANCIAL**
19 **CONTRACT.—Section 11(e)(8)(D)(i) of the Fed-**
20 **eral Deposit Insurance Act (12 U.S.C.**
21 **1821(e)(8)(D)(i)) is amended by inserting “,**
22 **resolution or order” after “any similar agree-**
23 **ment that the Corporation determines by reg-**
24 **ulation”.**

1 **(b) DEFINITION OF SECURITIES CONTRACT.—**
2 **Section 11(e)(8)(D)(ii) of the Federal Deposit**
3 **Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is**
4 **amended to read as follows:**

5 **“(ii) SECURITIES CONTRACT.—**
6 **The term ‘securities contract’—**

7 **“(I) means a contract for**
8 **the purchase, sale, or loan of**
9 **a security, a certificate of de-**
10 **posit, a mortgage loan, or any**
11 **interest in a mortgage loan, a**
12 **group or index of securities,**
13 **certificates of deposit, or**
14 **mortgage loans or interests**
15 **therein (including any inter-**
16 **est therein or based on the**
17 **value thereof) or any option**
18 **on any of the foregoing, in-**
19 **cluding any option to pur-**
20 **chase or sell any such secu-**
21 **rity, certificate of deposit,**
22 **loan, interest, group or index,**
23 **or option;**

24 **“(II) does not include any**
25 **purchase, sale, or repurchase**

1 **obligation under a participa-**
2 **tion in a commercial mort-**
3 **gage loan unless the Corpora-**
4 **tion determines by regulation,**
5 **resolution, or order to include**
6 **any such agreement within**
7 **the meaning of such term;**

8 **“(III) means any option**
9 **entered into on a national se-**
10 **curities exchange relating to**
11 **foreign currencies;**

12 **“(IV) means the guarantee**
13 **by or to any securities clear-**
14 **ing agency of any settlement**
15 **of cash, securities, certificates**
16 **of deposit, mortgage loans or**
17 **interests therein, group or**
18 **index of securities, certifi-**
19 **cates of deposit, or mortgage**
20 **loans or interests therein (in-**
21 **cluding any interest therein**
22 **or based on the value thereof)**
23 **or option on any of the fore-**
24 **going, including any option to**
25 **purchase or sell any such se-**

1 **curity, certificate of deposit,**
2 **loan, interest, group or index,**
3 **or option;**

4 **“(V) means any margin**
5 **loan;**

6 **“(VI) means any other**
7 **agreement or transaction that**
8 **is similar to any agreement or**
9 **transaction referred to in this**
10 **clause;**

11 **“(VII) means any combina-**
12 **tion of the agreements or**
13 **transactions referred to in**
14 **this clause;**

15 **“(VIII) means any option**
16 **to enter into any agreement**
17 **or transaction referred to in**
18 **this clause;**

19 **“(IX) means a master**
20 **agreement that provides for**
21 **an agreement or transaction**
22 **referred to in subclause (I),**
23 **(III), (IV), (V), (VI), (VII), or**
24 **(VIII), together with all sup-**
25 **plements to any such master**

1 **agreement, without regard to**
2 **whether the master agree-**
3 **ment provides for an agree-**
4 **ment or transaction that is**
5 **not a securities contract**
6 **under this clause, except that**
7 **the master agreement shall be**
8 **considered to be a securities**
9 **contract under this clause**
10 **only with respect to each**
11 **agreement or transaction**
12 **under the master agreement**
13 **that is referred to in sub-**
14 **clause (I), (III), (IV), (V), (VI),**
15 **(VII), or (VIII); and**

16 **“(X) means any security**
17 **agreement or arrangement or**
18 **other credit enhancement re-**
19 **lated to any agreement or**
20 **transaction referred to in this**
21 **clause.”.**

22 **(c) DEFINITION OF COMMODITY CONTRACT.—**
23 **Section 11(e)(8)(D)(iii) of the Federal Deposit**
24 **Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is**
25 **amended to read as follows:**

1 **“(iii) COMMODITY CONTRACT.—**
2 **The term ‘commodity contract’**
3 **means—**

4 **“(I) with respect to a fu-**
5 **tures commission merchant, a**
6 **contract for the purchase or**
7 **sale of a commodity for future**
8 **delivery on, or subject to the**
9 **rules of, a contract market or**
10 **board of trade;**

11 **“(II) with respect to a for-**
12 **ign futures commission mer-**
13 **chant, a foreign future;**

14 **“(III) with respect to a le-**
15 **verage transaction merchant,**
16 **a leverage transaction;**

17 **“(IV) with respect to a**
18 **clearing organization, a con-**
19 **tract for the purchase or sale**
20 **of a commodity for future de-**
21 **livery on, or subject to the**
22 **rules of, a contract market or**
23 **board of trade that is cleared**
24 **by such clearing organization,**
25 **or commodity option traded**

1 on, or subject to the rules of,
2 a contract market or board of
3 trade that is cleared by such
4 clearing organization;

5 “(V) with respect to a com-
6 modity options dealer, a com-
7 modity option;

8 “(VI) any other agreement
9 or transaction that is similar
10 to any agreement or trans-
11 action referred to in this
12 clause;

13 “(VII) any combination of
14 the agreements or trans-
15 actions referred to in this
16 clause;

17 “(VIII) any option to enter
18 into any agreement or trans-
19 action referred to in this
20 clause;

21 “(IX) a master agreement
22 that provides for an agree-
23 ment or transaction referred
24 to in subclause (I), (II), (III),
25 (IV), (V), (VI), (VII), or (VIII),

1 together with all supplements
2 to any such master agree-
3 ment, without regard to
4 whether the master agree-
5 ment provides for an agree-
6 ment or transaction that is
7 not a commodity contract
8 under this clause, except that
9 the master agreement shall be
10 considered to be a commodity
11 contract under this clause
12 only with respect to each
13 agreement or transaction
14 under the master agreement
15 that is referred to in sub-
16 clause (I), (II), (III), (IV), (V),
17 (VI), (VII), or (VIII); or

18 “(X) any security agree-
19 ment or arrangement or other
20 credit enhancement related to
21 any agreement or transaction
22 referred to in this clause.”.

23 (d) DEFINITION OF FORWARD CONTRACT.—
24 Section 11(e)(8)(D)(iv) of the Federal Deposit

1 **Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is**
2 **amended to read as follows:**

3 **“(iv) FORWARD CONTRACT.—The**
4 **term ‘forward contract’ means—**

5 **“(I) a contract (other than**
6 **a commodity contract) for the**
7 **purchase, sale, or transfer of**
8 **a commodity or any similar**
9 **good, article, service, right, or**
10 **interest which is presently or**
11 **in the future becomes the sub-**
12 **ject of dealing in the forward**
13 **contract trade, or product or**
14 **byproduct thereof, with a ma-**
15 **turity date more than 2 days**
16 **after the date the contract is**
17 **entered into, including a re-**
18 **purchase transaction, reverse**
19 **repurchase transaction, con-**
20 **signment, lease, swap, hedge**
21 **transaction, deposit, loan, op-**
22 **tion, allocated transaction,**
23 **unallocated transaction, or**
24 **any other similar agreement;**

1 **“(II) any combination of**
2 **agreements or transactions**
3 **referred to in subclauses (I)**
4 **and (III);**

5 **“(III) any option to enter**
6 **into any agreement or trans-**
7 **action referred to in sub-**
8 **clause (I) or (II);**

9 **“(IV) a master agreement**
10 **that provides for an agree-**
11 **ment or transaction referred**
12 **to in subclause (I), (II), or**
13 **(III), together with all supple-**
14 **ments to any such master**
15 **agreement, without regard to**
16 **whether the master agree-**
17 **ment provides for an agree-**
18 **ment or transaction that is**
19 **not a forward contract under**
20 **this clause, except that the**
21 **master agreement shall be**
22 **considered to be a forward**
23 **contract under this clause**
24 **only with respect to each**
25 **agreement or transaction**

1 under the master agreement
2 that is referred to in sub-
3 clause (I), (II), or (III); or

4 “(V) any security agree-
5 ment or arrangement or other
6 credit enhancement related to
7 any agreement or transaction
8 referred to in subclause (I),
9 (II), (III), or (IV).”.

10 (e) DEFINITION OF REPURCHASE AGREE-
11 MENT.—Section 11(e)(8)(D)(v) of the Federal
12 Deposit Insurance Act (12 U.S.C.
13 1821(e)(8)(D)(v)) is amended to read as fol-
14 lows:

15 “(v) REPURCHASE AGREEMENT.—
16 The term ‘repurchase agreement’
17 (which definition also applies to
18 the term ‘reverse repurchase
19 agreement’)—

20 “(I) means an agreement,
21 including related terms,
22 which provides for the trans-
23 fer of 1 or more certificates of
24 deposit, mortgage-related se-
25 curities (as such term is de-

1 **defined in the Securities Ex-**
2 **change Act of 1934), mortgage**
3 **loans, interests in mortgage-**
4 **related securities or mortgage**
5 **loans, eligible bankers' ac-**
6 **ceptances, qualified foreign**
7 **government securities or se-**
8 **curities that are direct obliga-**
9 **tions of, or that are fully guar-**
10 **anteed by, the United States**
11 **or any agency of the United**
12 **States against the transfer of**
13 **funds by the transferee of**
14 **such certificates of deposit, el-**
15 **igible bankers' acceptances,**
16 **securities, loans, or interests**
17 **with a simultaneous agree-**
18 **ment by such transferee to**
19 **transfer to the transferor**
20 **thereof certificates of deposit,**
21 **eligible bankers' acceptances,**
22 **securities, loans, or interests**
23 **as described above, at a date**
24 **certain not later than 1 year**
25 **after such transfers or on de-**

1 **mand, against the transfer of**
2 **funds, or any other similar**
3 **agreement;**

4 **“(II) does not include any**
5 **repurchase obligation under a**
6 **participation in a commercial**
7 **mortgage loan unless the Cor-**
8 **poration determines by regu-**
9 **lation, resolution, or order to**
10 **include any such participa-**
11 **tion within the meaning of**
12 **such term;**

13 **“(III) means any combina-**
14 **tion of agreements or trans-**
15 **actions referred to in sub-**
16 **clauses (I) and (IV);**

17 **“(IV) means any option to**
18 **enter into any agreement or**
19 **transaction referred to in sub-**
20 **clause (I) or (III);**

21 **“(V) means a master**
22 **agreement that provides for**
23 **an agreement or transaction**
24 **referred to in subclause (I),**
25 **(III), or (IV), together with all**

1 supplements to any such mas-
2 ter agreement, without regard
3 to whether the master agree-
4 ment provides for an agree-
5 ment or transaction that is
6 not a repurchase agreement
7 under this clause, except that
8 the master agreement shall be
9 considered to be a repurchase
10 agreement under this sub-
11 clause only with respect to
12 each agreement or trans-
13 action under the master
14 agreement that is referred to
15 in subclause (I), (III), or (IV);
16 and

17 “(VI) means any security
18 agreement or arrangement or
19 other credit enhancement re-
20 lated to any agreement or
21 transaction referred to in sub-
22 clause (I), (III), (IV), or (V).

23 For purposes of this clause, the
24 term ‘qualified foreign govern-
25 ment security’ means a security

1 **that is a direct obligation of, or**
2 **that is fully guaranteed by, the**
3 **central government of a member**
4 **of the Organization for Economic**
5 **Cooperation and Development (as**
6 **determined by regulation or**
7 **order adopted by the appropriate**
8 **Federal banking authority).”.**

9 **(f) DEFINITION OF SWAP AGREEMENT.—Sec-**
10 **tion 11(e)(8)(D)(vi) of the Federal Deposit In-**
11 **surance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is**
12 **amended to read as follows:**

13 **“(vi) SWAP AGREEMENT.—The**
14 **term ‘swap agreement’ means—**

15 **“(I) any agreement, in-**
16 **cluding the terms and condi-**
17 **tions incorporated by ref-**
18 **erence in any such agree-**
19 **ment, which is an interest**
20 **rate swap, option, future, or**
21 **forward agreement, including**
22 **a rate floor, rate cap, rate col-**
23 **lar, cross-currency rate swap,**
24 **and basis swap; a spot, same**
25 **day-tomorrow, tomorrow-**

1 next, forward, or other for-
2 eign exchange or precious
3 metals agreement; a currency
4 swap, option, future, or for-
5 ward agreement; an equity
6 index or equity swap, option,
7 future, or forward agreement;
8 a debt index or debt swap, op-
9 tion, future, or forward agree-
10 ment; a credit spread or cred-
11 it swap, option, future, or for-
12 ward agreement; a commodity
13 index or commodity swap, op-
14 tion, future, or forward agree-
15 ment; or a weather swap,
16 weather derivative, or a
17 weather option;

18 “(II) any agreement or
19 transaction similar to any
20 other agreement or trans-
21 action referred to in this
22 clause that is presently, or in
23 the future becomes, regularly
24 entered into in the swap mar-
25 ket (including terms and con-

1 **ditions incorporated by ref-**
2 **erence in such agreement)**
3 **and that is a forward, swap,**
4 **future, or option on 1 or more**
5 **rates, currencies, commod-**
6 **ities, equity securities or**
7 **other equity instruments,**
8 **debt securities or other debt**
9 **instruments, or economic in-**
10 **dices or measures of economic**
11 **risk or value;**

12 **“(III) any combination of**
13 **agreements or transactions**
14 **referred to in this clause;**

15 **“(IV) any option to enter**
16 **into any agreement or trans-**
17 **action referred to in this**
18 **clause;**

19 **“(V) a master agreement**
20 **that provides for an agree-**
21 **ment or transaction referred**
22 **to in subclause (I), (II), (III),**
23 **or (IV), together with all sup-**
24 **plements to any such master**
25 **agreement, without regard to**

1 **whether the master agree-**
2 **ment contains an agreement**
3 **or transaction that is not a**
4 **swap agreement under this**
5 **clause, except that the master**
6 **agreement shall be considered**
7 **to be a swap agreement under**
8 **this clause only with respect**
9 **to each agreement or trans-**
10 **action under the master**
11 **agreement that is referred to**
12 **in subclause (I), (II), (III), or**
13 **(IV); and**

14 **“(VI) any security agree-**
15 **ment or arrangement or other**
16 **credit enhancement related to**
17 **any agreements or trans-**
18 **actions referred to in sub-**
19 **paragraph (I), (II), (III), (IV),**
20 **or (V).**

21 **Such term is applicable for pur-**
22 **poses of this title only and shall**
23 **not be construed or applied so as**
24 **to challenge or affect the charac-**
25 **terization, definition, or treat-**

1 ment of any swap agreement
2 under any other statute, regula-
3 tion, or rule, including the Securi-
4 ties Act of 1933, the Securities Ex-
5 change Act of 1934, the Public
6 Utility Holding Company Act of
7 1935, the Trust Indenture Act of
8 1939, the Investment Company
9 Act of 1940, the Investment Advis-
10 ers Act of 1940, the Securities In-
11 vestor Protection Act of 1970, the
12 Commodity Exchange Act, and
13 the regulations promulgated by
14 the Securities and Exchange Com-
15 mission or the Commodity Fu-
16 tures Trading Commission.”.

17 (g) **DEFINITION OF TRANSFER.**—Section
18 **11(e)(8)(D)(viii) of the Federal Deposit Insur-**
19 **ance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is**
20 **amended to read as follows:**

21 “(viii) **TRANSFER.**—The term
22 ‘transfer’ means every mode, di-
23 rect or indirect, absolute or con-
24 ditional, voluntary or involun-
25 tary, of disposing of or parting

1 with property or with an interest
2 in property, including retention
3 of title as a security interest and
4 foreclosure of the depository
5 institutions’s equity of redemp-
6 tion.”.

7 **(h) TREATMENT OF QUALIFIED FINANCIAL**
8 **CONTRACTS.—Section 11(e)(8) of the Federal**
9 **Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is**
10 **amended—**

11 **(1) in subparagraph (A), by striking**
12 **“paragraph (10)” and inserting “para-**
13 **graphs (9) and (10)”;**

14 **(2) in subparagraph (A)(i), by striking**
15 **“to cause the termination or liquidation”**
16 **and inserting “such person has to cause**
17 **the termination, liquidation, or accelera-**
18 **tion”;**

19 **(3) by amending subparagraph (A)(ii)**
20 **to read as follows:**

21 **“(ii) any right under any secu-**
22 **rity agreement or arrangement or**
23 **other credit enhancement related**
24 **to 1 or more qualified financial**

1 **contracts described in clause (i);”;**
2 **and**

3 **(4) by amending subparagraph (E)(ii)**
4 **to read as follows:**

5 **“(ii) any right under any secu-**
6 **rity agreement or arrangement or**
7 **other credit enhancement related**
8 **to 1 or more qualified financial**
9 **contracts described in clause (i);”.**

10 **(i) AVOIDANCE OF TRANSFERS.—Section**
11 **11(e)(8)(C)(i) of the Federal Deposit Insurance**
12 **Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by**
13 **inserting “section 5242 of the Revised Statutes**
14 **of the United States (12 U.S.C. 91) or any other**
15 **Federal or State law relating to the avoidance**
16 **of preferential or fraudulent transfers,” be-**
17 **fore “the Corporation”.**

18 **SEC. 203. AUTHORITY OF THE CORPORATION WITH RE-**
19 **SPECT TO FAILED AND FAILING INSTITU-**
20 **TIONS.**

21 **(a) IN GENERAL.—Section 11(e)(8) of the**
22 **Federal Deposit Insurance Act (12 U.S.C.**
23 **1821(e)(8)) is amended—**

24 **(1) in subparagraph (E), by striking**
25 **“other than paragraph (12) of this sub-**

1 **section, subsection (d)(9)” and inserting**
2 **“other than subsections (d)(9) and**
3 **(e)(10)”;** and

4 **(2) by adding at the end the following**
5 **new subparagraphs:**

6 **“(F) CLARIFICATION.—No provision**
7 **of law shall be construed as limiting**
8 **the right or power of the Corpora-**
9 **tion, or authorizing any court or**
10 **agency to limit or delay, in any man-**
11 **ner, the right or power of the Cor-**
12 **poration to transfer any qualified fi-**
13 **nancial contract in accordance with**
14 **paragraphs (9) and (10) of this sub-**
15 **section or to disaffirm or repudiate**
16 **any such contract in accordance with**
17 **paragraph (1).**

18 **“(G) WALKAWAY CLAUSES NOT EF-**
19 **FECTIVE.—**

20 **“(i) IN GENERAL.—Notwith-**
21 **standing the provisions of sub-**
22 **paragraphs (A) and (E), and sec-**
23 **tions 403 and 404 of the Federal**
24 **Deposit Insurance Corporation**
25 **Improvement Act of 1991, no**

1 walkaway clause shall be enforce-
2 able in a qualified financial con-
3 tract of an insured depository in-
4 stitution in default.

5 “(ii) WALKAWAY CLAUSE DE-
6 FINED.—For purposes of this sub-
7 paragraph, the term ‘walkaway
8 clause’ means a provision in a
9 qualified financial contract that,
10 after calculation of a value of a
11 party’s position or an amount due
12 to or from 1 of the parties in ac-
13 cordance with its terms upon ter-
14 mination, liquidation, or accelera-
15 tion of the qualified financial con-
16 tract, either does not create a
17 payment obligation of a party or
18 extinguishes a payment obliga-
19 tion of a party in whole or in part
20 solely because of such party’s sta-
21 tus as a nondefaulting party.”.

22 (b) TECHNICAL AND CONFORMING AMEND-
23 MENT.—Section 11(e)(12)(A) of the Federal De-
24 posit Insurance Act (12 U.S.C. 1821(e)(12)(A))

1 is amended by inserting “or the exercise of
2 rights or powers” after “the appointment”.

3 SEC. 204. AMENDMENTS RELATING TO TRANSFERS OF
4 QUALIFIED FINANCIAL CONTRACTS.

5 (a) TRANSFERS OF QUALIFIED FINANCIAL
6 CONTRACTS TO FINANCIAL INSTITUTIONS.—Sec-
7 tion 11(e)(9) of the Federal Deposit Insurance
8 Act (12 U.S.C. 1821(e)(9)) is amended to read
9 as follows:

10 “(9) TRANSFER OF QUALIFIED FINANCIAL
11 CONTRACTS.—

12 “(A) IN GENERAL.—In making any
13 transfer of assets or liabilities of a de-
14 pository institution in default which
15 includes any qualified financial con-
16 tract, the conservator or receiver for
17 such depository institution shall
18 either—

19 “(i) transfer to 1 financial in-
20 stitution, other than a financial
21 institution for which a conser-
22 vator, receiver, trustee in bank-
23 ruptcy, or other legal custodian
24 has been appointed or which is

1 otherwise the subject of a bank-
2 ruptcy or insolvency proceeding—

3 “(I) all qualified financial
4 contracts between any person
5 or any affiliate of such person
6 and the depository institution
7 in default;

8 “(II) all claims of such per-
9 son or any affiliate of such
10 person against such deposi-
11 tory institution under any
12 such contract (other than any
13 claim which, under the terms
14 of any such contract, is subor-
15 dinated to the claims of gen-
16 eral unsecured creditors of
17 such institution);

18 “(III) all claims of such de-
19 pository institution against
20 such person or any affiliate of
21 such person under any such
22 contract; and

23 “(IV) all property securing
24 or any other credit enhance-
25 ment for any contract de-

1 **scribed in subclause (I) or any**
2 **claim described in subclause**
3 **(II) or (III) under any such**
4 **contract; or**

5 **“(ii) transfer none of the**
6 **qualified financial contracts,**
7 **claims, property or other credit**
8 **enhancement referred to in**
9 **clause (i) (with respect to such**
10 **person and any affiliate of such**
11 **person).**

12 **“(B) TRANSFER TO FOREIGN BANK,**
13 **FOREIGN FINANCIAL INSTITUTION, OR**
14 **BRANCH OR AGENCY OF A FOREIGN BANK**
15 **OR FINANCIAL INSTITUTION.—In trans-**
16 **ferring any qualified financial con-**
17 **tracts and related claims and prop-**
18 **erty pursuant to subparagraph (A)(i),**
19 **the conservator or receiver for such**
20 **depository institution shall not make**
21 **such transfer to a foreign bank, finan-**
22 **cial institution organized under the**
23 **laws of a foreign country, or a branch**
24 **or agency of a foreign bank or finan-**
25 **cial institution unless, under the law**

1 applicable to such bank, financial in-
2 stitution, branch or agency, to the
3 qualified financial contracts, and to
4 any netting contract, any security
5 agreement or arrangement or other
6 credit enhancement related to 1 or
7 more qualified financial contracts,
8 the contractual rights of the parties
9 to such qualified financial contracts,
10 netting contracts, security agree-
11 ments or arrangements, or other
12 credit enhancements are enforceable
13 substantially to the same extent as
14 permitted under this section.

15 “(C) TRANSFER OF CONTRACTS SUB-
16 JECT TO THE RULES OF A CLEARING OR-
17 GANIZATION.—In the event that a con-
18 servator or receiver transfers any
19 qualified financial contract and re-
20 lated claims, property and credit en-
21 hancements pursuant to subpara-
22 graph (A)(i) and such contract is sub-
23 ject to the rules of a clearing organi-
24 zation, the clearing organization shall
25 not be required to accept the trans-

1 **feree as a member by virtue of the**
2 **transfer.**

3 **“(D) DEFINITION.—For purposes of**
4 **this section, the term ‘financial insti-**
5 **tution’ means a broker or dealer, a**
6 **depository institution, a futures com-**
7 **mission merchant, or any other insti-**
8 **tution as determined by the Corpora-**
9 **tion by regulation to be a financial in-**
10 **stitution.”.**

11 **(b) NOTICE TO QUALIFIED FINANCIAL CON-**
12 **TRACT COUNTERPARTIES.—Section 11(e)(10)(A)**
13 **of the Federal Deposit Insurance Act (12**
14 **U.S.C. 1821(e)(10)(A)) is amended by amend-**
15 **ing the flush material following clause (ii) to**
16 **read as follows: “the conservator or receiver**
17 **shall notify any person who is a party to any**
18 **such contract of such transfer by 5:00 p.m.**
19 **(eastern time) on the business day following**
20 **the date of the appointment of the receiver,**
21 **in the case of a receivership, or the business**
22 **day following such transfer, in the case of a**
23 **conservatorship.”.**

24 **(c) RIGHTS AGAINST RECEIVER AND TREAT-**
25 **MENT OF BRIDGE BANKS.—Section 11(e)(10) of**

1 **the Federal Deposit Insurance Act (12 U.S.C.**
2 **1821(e)(10)) is further amended—**

3 **(1) by redesignating subparagraph**
4 **(B) as subparagraph (D); and**

5 **(2) by inserting after subparagraph**
6 **(A) the following new subparagraphs:**

7 **“(B) CERTAIN RIGHTS NOT ENFORCE-**
8 **ABLE.—**

9 **“(i) RECEIVERSHIP.—A person**
10 **who is a party to a qualified fi-**
11 **nancial contract with an insured**
12 **depository institution may not ex-**
13 **ercise any right such person has**
14 **to terminate, liquidate, or net**
15 **such contract under paragraph**
16 **(8)(A) or section 403 or 404 of the**
17 **Federal Deposit Insurance Cor-**
18 **poration Improvement Act of 1991**
19 **solely by reason of or incidental**
20 **to the appointment of a receiver**
21 **for the depository institution (or**
22 **the insolvency or financial condi-**
23 **tion of the depository institution**
24 **for which the receiver has been**
25 **appointed)—**

1 **“(I) until 5:00 p.m. (east-**
2 **ern time) on the business day**
3 **following the date of the ap-**
4 **pointment of the receiver; or**

5 **“(II) after the person has**
6 **received notice that the con-**
7 **tract has been transferred**
8 **pursuant to paragraph (9)(A).**

9 **“(ii) CONSERVATORSHIP.—A per-**
10 **son who is a party to a qualified**
11 **financial contract with an in-**
12 **sured depository institution may**
13 **not exercise any right such per-**
14 **son has to terminate, liquidate, or**
15 **net such contract under para-**
16 **graph (8)(E) or section 403 or 404**
17 **of the Federal Deposit Insurance**
18 **Corporation Improvement Act of**
19 **1991, solely by reason of or inci-**
20 **dental to the appointment of a**
21 **conservator for the depository in-**
22 **stitution (or the insolvency or fi-**
23 **nancial condition of the deposi-**
24 **tory institution for which the con-**
25 **servator has been appointed).**

1 “(iii) NOTICE.—For purposes of
2 this subsection, the Corporation
3 as receiver or conservator of an
4 insured depository institution
5 shall be deemed to have notified a
6 person who is a party to a quali-
7 fied financial contract with such
8 depository institution if the Cor-
9 poration has taken steps reason-
10 ably calculated to provide notice
11 to such person by the time speci-
12 fied in subparagraph (A) of this
13 subsection.

14 “(C) TREATMENT OF BRIDGE
15 BANKS.—The following institutions
16 shall not be considered a financial in-
17 stitution for which a conservator, re-
18 ceiver, trustee in bankruptcy, or
19 other legal custodian has been ap-
20 pointed or which is otherwise the
21 subject of a bankruptcy or insolvency
22 proceeding for purposes of paragraph
23 (9)—

24 “(i) a bridge bank; or

1 “(ii) a depository institution
2 organized by the Corporation, for
3 which a conservator is appointed
4 either—

5 “(I) immediately upon the
6 organization of the institu-
7 tion; or

8 “(II) at the time of a pur-
9 chase and assumption trans-
10 action between such institu-
11 tion and the Corporation as
12 receiver for a depository insti-
13 tution in default.”.

14 SEC. 205. AMENDMENTS RELATING TO DISAFFIRMANCE OR
15 REPUDIATION OF QUALIFIED FINANCIAL
16 CONTRACTS.

17 (a) IN GENERAL.—Section 11(e) of the Fed-
18 eral Deposit Insurance Act (12 U.S.C. 1821(e))
19 is further amended—

20 (1) by redesignating paragraphs (11)
21 through (15) as paragraphs (12) through
22 (16), respectively; and

23 (2) by inserting after paragraph (10)
24 the following new paragraph:

1 **“(11) DISAFFIRMANCE OR REPUDIATION**
2 **OF QUALIFIED FINANCIAL CONTRACTS.—In**
3 **exercising the rights of disaffirmance or**
4 **repudiation of a conservator or receiver**
5 **with respect to any qualified financial**
6 **contract to which an insured depository**
7 **institution is a party, the conservator or**
8 **receiver for such institution shall**
9 **either—**

10 **“(A) disaffirm or repudiate all**
11 **qualified financial contracts**
12 **between—**

13 **“(i) any person or any affiliate**
14 **of such person; and**

15 **“(ii) the depository institution**
16 **in default; or**

17 **“(B) disaffirm or repudiate none**
18 **of the qualified financial contracts re-**
19 **ferred to in subparagraph (A) (with**
20 **respect to such person or any affiliate**
21 **of such person).”.**

22 **(b) TECHNICAL AND CONFORMING AMEND-**
23 **MENTS.—Section 11(e)(8) of the Federal De-**
24 **posit Insurance Act (12 U.S.C. 1821(e)(8)) is**

1 amended in subparagraph (C)(i), by striking
2 “(11)” and inserting “(12)”.

3 SEC. 206. CLARIFYING AMENDMENT RELATING TO MASTER
4 AGREEMENTS.

5 Section 11(e)(8)(D)(vii) of the Federal De-
6 posit Insurance Act (12 U.S.C.
7 1821(e)(8)(D)(vii)) is amended to read as fol-
8 lows:

9 “(vii) TREATMENT OF MASTER
10 AGREEMENT AS 1 AGREEMENT.—Any
11 master agreement for any con-
12 tract or agreement described in
13 any preceding clause of this sub-
14 paragraph (or any master agree-
15 ment for such master agreement
16 or agreements), together with all
17 supplements to such master
18 agreement, shall be treated as a
19 single agreement and a single
20 qualified financial contract. If a
21 master agreement contains provi-
22 sions relating to agreements or
23 transactions that are not them-
24 selves qualified financial con-
25 tracts, the master agreement shall

1 **be deemed to be a qualified finan-**
2 **cial contract only with respect to**
3 **those transactions that are them-**
4 **selves qualified financial con-**
5 **tracts.”.**

6 **SEC. 207. FEDERAL DEPOSIT INSURANCE CORPORATION**
7 **IMPROVEMENT ACT OF 1991.**

8 **(a) DEFINITIONS.—Section 402 of the Fed-**
9 **eral Deposit Insurance Corporation Improve-**
10 **ment Act of 1991 (12 U.S.C. 4402) is amended—**

11 **(1) in paragraph (2)—**

12 **(A) by inserting “or exempt from**
13 **such registration pursuant to an**
14 **order of the Securities and Exchange**
15 **Commission” before the semicolon at**
16 **the end of subparagraph (A)(ii); and**

17 **(B) by inserting “or that has been**
18 **granted an exemption pursuant to**
19 **section 4(c)(1) of such Act” before the**
20 **period at the end of subparagraph**
21 **(B);**

22 **(2) in paragraph (6)—**

23 **(A) by redesignating subpara-**
24 **graphs (B) through (D) as subpara-**
25 **graphs (C) through (E), respectively;**

1 **(B) by inserting after subpara-**
2 **graph (A) the following new subpara-**
3 **graph:**

4 **“(B) an uninsured national bank**
5 **or an uninsured State bank that is a**
6 **member of the Federal Reserve Sys-**
7 **tem if the national bank or State**
8 **member bank is not eligible to make**
9 **application to become an insured**
10 **bank under section 5 of the Federal**
11 **Deposit Insurance Act;”;** and

12 **(C) by amending subparagraph**
13 **(C) (as redesignated) to read as fol-**
14 **lows:**

15 **“(C) a branch or agency of a for-**
16 **foreign bank, a foreign bank and any**
17 **branch or agency of the foreign bank,**
18 **or the foreign bank that established**
19 **the branch or agency, as those terms**
20 **are defined in section 1(b) of the**
21 **International Banking Act of 1978;”;**

22 **(3) in paragraph (11), by adding be-**
23 **fore the period “and any other clearing**
24 **organization with which such clearing**
25 **organization has a netting contract”;**

1 **(4) by amending paragraph (14)(A)(i)**
2 **to read as follows:**

3 **“(i) means a contract or agree-**
4 **ment between two or more finan-**
5 **cial institutions, clearing organi-**
6 **zations, or members that provides**
7 **for netting present or future pay-**
8 **ment obligations or payment enti-**
9 **tlements (including liquidation or**
10 **closeout values relating to such**
11 **obligations or entitlements)**
12 **among the parties to the agree-**
13 **ment; and”;** and

14 **(5) by adding at the end the following**
15 **new paragraph:**

16 **“(15) PAYMENT.—The term ‘payment’**
17 **means a payment of United States dol-**
18 **lars, another currency, or a composite**
19 **currency, and a noncash delivery, includ-**
20 **ing a payment or delivery to liquidate an**
21 **unmatured obligation.”.**

22 **(b) ENFORCEABILITY OF BILATERAL NETTING**
23 **CONTRACTS.—Section 403 of the Federal De-**
24 **posit Insurance Corporation Improvement**
25 **Act of 1991 (12 U.S.C. 4403) is amended—**

1 **(1) by amending subsection (a) to**
2 **read as follows:**

3 **“(a) GENERAL RULE.—Notwithstanding any**
4 **other provision of State or Federal law (other**
5 **than paragraphs (8)(E), (8)(F), and (10)(B) of**
6 **section 11(e) of the Federal Deposit Insurance**
7 **Act or any order authorized under section**
8 **5(b)(2) of the Securities Investor Protection**
9 **Act of 1970), the covered contractual payment**
10 **obligations and the covered contractual pay-**
11 **ment entitlements between any two financial**
12 **institutions shall be netted in accordance**
13 **with, and subject to the conditions of, the**
14 **terms of any applicable netting contract (ex-**
15 **cept as provided in section 561(b)(2) of title**
16 **11, United States Code).”;** and

17 **(2) by adding at the end the following**
18 **new subsection:**

19 **“(f) ENFORCEABILITY OF SECURITY AGREE-**
20 **MENTS.—The provisions of any security agree-**
21 **ment or arrangement or other credit enhance-**
22 **ment related to 1 or more netting contracts**
23 **between any two financial institutions shall**
24 **be enforceable in accordance with their terms**
25 **(except as provided in section 561(b)(2) of title**

1 11, United States Code) and shall not be
2 stayed, avoided, or otherwise limited by any
3 State or Federal law (other than paragraphs
4 (8)(E), (8)(F), and (10)(B) of section 11(e) of the
5 Federal Deposit Insurance Act and section
6 5(b)(2) of the Securities Investor Protection
7 Act of 1970).”.

8 (c) ENFORCEABILITY OF CLEARING ORGANI-
9 ZATION NETTING CONTRACTS.—Section 404 of
10 the Federal Deposit Insurance Corporation
11 Improvement Act of 1991 (12 U.S.C. 4404) is
12 amended—

13 (1) by amending subsection (a) to
14 read as follows:

15 “(a) GENERAL RULE.—Notwithstanding any
16 other provision of State or Federal law (other
17 than paragraphs (8)(E), (8)(F), and (10)(B) of
18 section 11(e) of the Federal Deposit Insurance
19 Act and any order authorized under section
20 5(b)(2) of the Securities Investor Protection
21 Act of 1970), the covered contractual payment
22 obligations and the covered contractual pay-
23 ment entitlements of a member of a clearing
24 organization to and from all other members of
25 a clearing organization shall be netted in ac-

1 cordance with and subject to the conditions
2 of any applicable netting contract (except as
3 provided in section 561(b)(2) of title 11,
4 United States Code).”; and

5 (2) by adding at the end the following
6 new subsection:

7 “(h) ENFORCEABILITY OF SECURITY AGREE-
8 MENTS.—The provisions of any security agree-
9 ment or arrangement or other credit enhance-
10 ment related to 1 or more netting contracts
11 between any two members of a clearing orga-
12 nization shall be enforceable in accordance
13 with their terms (except as provided in sec-
14 tion 561(b)(2) of title 11, United States Code)
15 and shall not be stayed, avoided, or otherwise
16 limited by any State or Federal law (other
17 than paragraphs (8)(E), (8)(F), and (10)(B) of
18 section 11(e) of the Federal Deposit Insurance
19 Act and section 5(b)(2) of the Securities Inves-
20 tor Protection Act of 1970).”.

21 (d) ENFORCEABILITY OF CONTRACTS WITH
22 UNINSURED NATIONAL BANKS AND UNINSURED
23 FEDERAL BRANCHES AND AGENCIES.—The Fed-
24 eral Deposit Insurance Corporation Improve-

1 **ment Act of 1991 (12 U.S.C. 4401 et seq.) is**
2 **amended—**

3 **(1) by redesignating section 407 as**
4 **section 407A; and**

5 **(2) by adding after section 406 the fol-**
6 **lowing new section:**

7 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
8 **NATIONAL BANKS AND UNINSURED FEDERAL**
9 **BRANCHES AND AGENCIES.**

10 **“(a) IN GENERAL.—Notwithstanding any**
11 **other provision of law, paragraphs (8), (9),**
12 **(10), and (11) of section 11(e) of the Federal**
13 **Deposit Insurance Act shall apply to an unin-**
14 **sured national bank or uninsured Federal**
15 **branch or Federal agency except—**

16 **“(1) any reference to the ‘Corporation**
17 **as receiver’ or ‘the receiver or the Cor-**
18 **poration’ shall refer to the receiver of an**
19 **uninsured national bank or uninsured**
20 **Federal branch or Federal agency ap-**
21 **pointed by the Comptroller of the Cur-**
22 **rency;**

23 **“(2) any reference to the ‘Corporation’**
24 **(other than in section 11(e)(8)(D) of such**
25 **Act), the ‘Corporation, whether acting as**

1 **such or as conservator or receiver’, a ‘re-**
2 **ceiver’, or a ‘conservator’ shall refer to**
3 **the receiver or conservator of an unin-**
4 **insured national bank or uninsured Fed-**
5 **eral branch or Federal agency appointed**
6 **by the Comptroller of the Currency; and**

7 **“(3) any reference to an ‘insured de-**
8 **pository institution’ or ‘depository insti-**
9 **tution’ shall refer to an uninsured na-**
10 **tional bank or an uninsured Federal**
11 **branch or Federal agency.**

12 **“(b) LIABILITY.—The liability of a receiver**
13 **or conservator of an uninsured national bank**
14 **or uninsured Federal branch or agency shall**
15 **be determined in the same manner and sub-**
16 **ject to the same limitations that apply to re-**
17 **ceivers and conservators of insured deposi-**
18 **tory institutions under section 11(e) of the**
19 **Federal Deposit Insurance Act.**

20 **“(c) REGULATORY AUTHORITY.—**

21 **“(1) IN GENERAL.—The Comptroller of**
22 **the Currency, in consultation with the**
23 **Federal Deposit Insurance Corporation,**
24 **may promulgate regulations to imple-**
25 **ment this section.**

1 **“(2) SPECIFIC REQUIREMENT.—In pro-**
2 **mulgating regulations to implement this**
3 **section, the Comptroller of the Currency**
4 **shall ensure that the regulations gen-**
5 **erally are consistent with the regulations**
6 **and policies of the Federal Deposit Insur-**
7 **ance Corporation adopted pursuant to**
8 **the Federal Deposit Insurance Act.**

9 **“(d) DEFINITIONS.—For purposes of this**
10 **section, the terms ‘Federal branch’, ‘Federal**
11 **agency’, and ‘foreign bank’ have the same**
12 **meaning as in section 1(b) of the International**
13 **Banking Act.”.**

14 **SEC. 208. BANKRUPTCY CODE AMENDMENTS.**

15 **(a) DEFINITIONS OF FORWARD CONTRACT,**
16 **REPURCHASE AGREEMENT, SECURITIES CLEARING**
17 **AGENCY, SWAP AGREEMENT, COMMODITY CON-**
18 **TRACT, AND SECURITIES CONTRACT.—Title 11,**
19 **United States Code, is amended—**

20 **(1) in section 101—**

21 **(A) in paragraph (25)—**

22 **(i) by striking “means a con-**
23 **tract” and inserting “means—**
24 **“(A) a contract”;**

1 (ii) by striking “, or any com-
2 bination thereof or option there-
3 on;” and inserting “, or any other
4 similar agreement;”; and

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

7 “(B) any combination of agree-
8 ments or transactions referred to in
9 subparagraphs (A) and (C);

10 “(C) any option to enter into an
11 agreement or transaction referred to
12 in subparagraph (A) or (B);

13 “(D) a master agreement that pro-
14 vides for an agreement or transaction
15 referred to in subparagraph (A), (B),
16 or (C), together with all supplements
17 to any such master agreement, with-
18 out regard to whether such master
19 agreement provides for an agreement
20 or transaction that is not a forward
21 contract under this paragraph, ex-
22 cept that such master agreement
23 shall be considered to be a forward
24 contract under this paragraph only
25 with respect to each agreement or

1 **transaction under such master agree-**
2 **ment that is referred to in subpara-**
3 **graph (A), (B) or (C); or**

4 **“(E) any security agreement or ar-**
5 **rangement, or other credit enhance-**
6 **ment related to any agreement or**
7 **transaction referred to in subpara-**
8 **graph (A), (B), (C), or (D), but not to**
9 **exceed the actual value of such con-**
10 **tract on the date of the filing of the**
11 **petition;”;**

12 **(B) in paragraph (46), by striking**
13 **“on any day during the period begin-**
14 **ning 90 days before the date of” and**
15 **replacing it with “at any time before”;**

16 **(C) by amending paragraph (47)**
17 **to read as follows:**

18 **“(47) ‘repurchase agreement’ (which**
19 **definition also applies to a ‘reverse repur-**
20 **chase agreement’)—**

21 **(A) means—**

22 **“(i) an agreement, including**
23 **related terms, which provides for**
24 **the transfer of 1 or more certifi-**
25 **cates of deposit, mortgage-related**

1 securities (as defined in the Secu-
2 rities Exchange Act of 1934),
3 mortgage loans, interests in mort-
4 gage-related securities or mort-
5 gage loans, eligible bankers' ac-
6 ceptances, qualified foreign gov-
7 ernment securities, or securities
8 that are direct obligations of, or
9 that are fully guaranteed by, the
10 United States or any agency of
11 the United States against the
12 transfer of funds by the trans-
13 feree of such certificates of de-
14 posit, eligible bankers' accept-
15 ances, securities, loans, or inter-
16 ests, with a simultaneous agree-
17 ment by such transferee to trans-
18 fer to the transferor thereof cer-
19 tificates of deposit, eligible bank-
20 ers' acceptance, securities, loans,
21 or interests of the kind described
22 above, at a date certain not later
23 than 1 year after such transfer or
24 on demand, against the transfer
25 of funds;

1 “(ii) any combination of agree-
2 ments or transactions referred to
3 in clauses (i) and (iii);

4 “(iii) an option to enter into
5 an agreement or transaction re-
6 ferred to in clause (i) or (ii);

7 “(iv) a master agreement that
8 provides for an agreement or
9 transaction referred to in clause
10 (i), (ii), or (iii), together with all
11 supplements to any such master
12 agreement, without regard to
13 whether such master agreement
14 provides for an agreement or
15 transaction that is not a repur-
16 chase agreement under this para-
17 graph, except that such master
18 agreement shall be considered to
19 be a repurchase agreement under
20 this paragraph only with respect
21 to each agreement or transaction
22 under the master agreement that
23 is referred to in clause (i), (ii), or
24 (iii); or

1 “(v) any security agreement
2 or arrangement or other credit
3 enhancement related to any
4 agreement or transaction referred
5 to in clause (i), (ii), (iii), or (iv),
6 but not to exceed the actual value
7 of such contract on the date of
8 the filing of the petition; and

9 “(B) does not include a repur-
10 chase obligation under a participa-
11 tion in a commercial mortgage loan,
12 and, for purposes of this paragraph, the
13 term ‘qualified foreign government secu-
14 rity’ means a security that is a direct ob-
15 ligation of, or that is fully guaranteed by,
16 the central government of a member of
17 the Organization for Economic Coopera-
18 tion and Development;”;

19 (D) in paragraph (48) by inserting
20 “or exempt from such registration
21 under such section pursuant to an
22 order of the Securities and Exchange
23 Commission” after “1934”; and

24 (E) by amending paragraph (53B)
25 to read as follows:

1 **“(53B) ‘swap agreement’—**

2 **“(A) means—**

3 **“(i) any agreement, including**
4 **the terms and conditions incor-**
5 **porated by reference in such**
6 **agreement, which is an interest**
7 **rate swap, option, future, or for-**
8 **ward agreement, including a rate**
9 **floor, rate cap, rate collar, cross-**
10 **currency rate swap, and basis**
11 **swap; a spot, same day-tomorrow,**
12 **tomorrow-next, forward, or other**
13 **foreign exchange or precious met-**
14 **als agreement; a currency swap,**
15 **option, future, or forward agree-**
16 **ment; an equity index or an eq-**
17 **uity swap, option, future, or for-**
18 **ward agreement; a debt index or**
19 **a debt swap, option, future, or**
20 **forward agreement; a credit**
21 **spread or a credit swap, option,**
22 **future, or forward agreement; a**
23 **commodity index or a commodity**
24 **swap, option, future, or forward**
25 **agreement; or a weather swap,**

1 weather derivative, or weather
2 option;

3 “(ii) any agreement or trans-
4 action similar to any other agree-
5 ment or transaction referred to in
6 this paragraph that—

7 “(I) is presently, or in the
8 future becomes, regularly en-
9 tered into in the swap market
10 (including terms and condi-
11 tions incorporated by ref-
12 erence therein); and

13 “(II) is a forward, swap,
14 future, or option on 1 or more
15 rates, currencies, commod-
16 ities, equity securities, or
17 other equity instruments,
18 debt securities or other debt
19 instruments, or economic in-
20 dices or measures of economic
21 risk or value;

22 “(iii) any combination of
23 agreements or transactions re-
24 ferred to in this paragraph;

1 “(iv) any option to enter into
2 an agreement or transaction re-
3 ferred to in this paragraph;

4 “(v) a master agreement that
5 provides for an agreement or
6 transaction referred to in clause
7 (i), (ii), (iii), or (iv), together with
8 all supplements to any such mas-
9 ter agreement, and without re-
10 gard to whether the master agree-
11 ment contains an agreement or
12 transaction that is not a swap
13 agreement under this paragraph,
14 except that the master agreement
15 shall be considered to be a swap
16 agreement under this paragraph
17 only with respect to each agree-
18 ment or transaction under the
19 master agreement that is referred
20 to in clause (i), (ii), (iii), or (iv); or

21 “(B) any security agreement or ar-
22 rangement or other credit enhance-
23 ment related to any agreements or
24 transactions referred to in subpara-
25 graph (A), but not to exceed the ac-

1 **tual value of such contract on the**
2 **date of the filing of the petition; and**

3 **“(C) is applicable for purposes of**
4 **this title only and shall not be con-**
5 **strued or applied so as to challenge**
6 **or affect the characterization, defini-**
7 **tion, or treatment of any swap agree-**
8 **ment under any other statute, regula-**
9 **tion, or rule, including the Securities**
10 **Act of 1933, the Securities Exchange**
11 **Act of 1934, the Public Utility Holding**
12 **Company Act of 1935, the Trust In-**
13 **denture Act of 1939, the Investment**
14 **Company Act of 1940, the Investment**
15 **Advisers Act of 1940, the Securities**
16 **Investor Protection Act of 1970, the**
17 **Commodity Exchange Act, and the**
18 **regulations prescribed by the Securi-**
19 **ties and Exchange Commission or the**
20 **Commodity Futures Trading Commis-**
21 **sion.”;**

22 **(2) by amending section 741(7) to read**
23 **as follows:**

24 **“(7) ‘securities contract’—**

25 **“(A) means—**

1 “(i) a contract for the pur-
2 chase, sale, or loan of a security,
3 a certificate of deposit, a mort-
4 gage loan or any interest in a
5 mortgage loan, a group or index
6 of securities, certificates of de-
7 posit or mortgage loans or inter-
8 ests therein (including an interest
9 therein or based on the value
10 thereof), or option on any of the
11 foregoing, including an option to
12 purchase or sell any such secu-
13 rity, certificate of deposit, loan,
14 interest, group or index, or op-
15 tion;

16 “(ii) any option entered into
17 on a national securities exchange
18 relating to foreign currencies;

19 “(iii) the guarantee by or to
20 any securities clearing agency of
21 a settlement of cash, securities,
22 certificates of deposit, mortgage
23 loans or interests therein, group
24 or index of securities, or mort-
25 gage loans or interests therein

1 (including any interest therein or
2 based on the value thereof), or op-
3 tion on any of the foregoing, in-
4 cluding an option to purchase or
5 sell any such security, certificate
6 of deposit, loan, interest, group or
7 index, or option;

8 “(iv) any margin loan;

9 “(v) any other agreement or
10 transaction that is similar to an
11 agreement or transaction referred
12 to in this paragraph;

13 “(vi) any combination of the
14 agreements or transactions re-
15 ferred to in this paragraph;

16 “(vii) any option to enter into
17 any agreement or transaction re-
18 ferred to in this paragraph;

19 “(viii) a master agreement
20 that provides for an agreement or
21 transaction referred to in clause
22 (i), (ii), (iii), (iv), (v), (vi), or (vii),
23 together with all supplements to
24 any such master agreement, with-
25 out regard to whether the master

1 **agreement provides for an agree-**
2 **ment or transaction that is not a**
3 **securities contract under this**
4 **paragraph, except that such mas-**
5 **ter agreement shall be considered**
6 **to be a securities contract under**
7 **this paragraph only with respect**
8 **to each agreement or transaction**
9 **under such master agreement**
10 **that is referred to in clause (i),**
11 **(ii), (iii), (iv), (v), (vi), or (vii); or**

12 **“(ix) any security agreement**
13 **or arrangement or other credit**
14 **enhancement related to any**
15 **agreement or transaction referred**
16 **to in this paragraph, but not to**
17 **exceed the actual value of such**
18 **contract on the date of the filing**
19 **of the petition; and**

20 **“(B) does not include any pur-**
21 **chase, sale, or repurchase obligation**
22 **under a participation in a commer-**
23 **cial mortgage loan.”; and**

24 **(3) in section 761(4)—**

1 (A) by striking “or” at the end of
2 subparagraph (D); and

3 (B) by adding at the end the fol-
4 lowing:

5 “(F) any other agreement or
6 transaction that is similar to an
7 agreement or transaction referred to
8 in this paragraph;

9 “(G) any combination of the
10 agreements or transactions referred
11 to in this paragraph;

12 “(H) any option to enter into an
13 agreement or transaction referred to
14 in this paragraph;

15 “(I) a master agreement that pro-
16 vides for an agreement or transaction
17 referred to in subparagraph (A), (B),
18 (C), (D), (E), (F), (G), or (H), together
19 with all supplements to such master
20 agreement, without regard to wheth-
21 er the master agreement provides for
22 an agreement or transaction that is
23 not a commodity contract under this
24 paragraph, except that the master
25 agreement shall be considered to be a

1 commodity contract under this para-
2 graph only with respect to each
3 agreement or transaction under the
4 master agreement that is referred to
5 in subparagraph (A), (B), (C), (D), (E),
6 (F), (G), or (H); or

7 “(J) any security agreement or ar-
8 rangement or other credit enhance-
9 ment related to any agreement or
10 transaction referred to in this para-
11 graph, but not to exceed the actual
12 value of such contract on the date of
13 the filing of the petition;”.

14 (b) **DEFINITIONS OF FINANCIAL PARTICIPANT**
15 **AND FORWARD CONTRACT MERCHANT.**—Section
16 101 of title 11, United States Code, is
17 amended—

18 (1) by inserting after paragraph (22)
19 the following:

20 “(22A) ‘financial participant’ means
21 an entity that, at the time it enters into a
22 securities contract, commodity contract
23 or forward contract, or at the time of the
24 filing of the petition, has 1 or more agree-
25 ments or transactions described in para-

1 **graph (1), (2), (3), (4), (5), or (6) of section**
2 **561(a) with the debtor or any other entity**
3 **(other than an affiliate) of a total gross**
4 **dollar value of at least \$1,000,000,000 in**
5 **notional or actual principal amount out-**
6 **standing on any day during the previous**
7 **15-month period, or has gross mark-to-**
8 **market positions of at least \$100,000,000**
9 **(aggregated across counterparties) in 1**
10 **or more such agreement or transaction**
11 **with the debtor or any other entity (other**
12 **than an affiliate) on any day during the**
13 **previous 15-month period;”;** and

14 **(2) by amending paragraph (26) to**
15 **read as follows:**

16 **“(26) ‘forward contract merchant’**
17 **means a Federal reserve bank, or an enti-**
18 **ty whose business consists in whole or in**
19 **part of entering into forward contracts as**
20 **or with merchants or in a commodity, as**
21 **defined or in section 761, or any similar**
22 **good, article, service, right, or interest**
23 **which is presently or in the future be-**
24 **comes the subject of dealing or in the for-**
25 **ward contract trade;”.**

1 **(c) DEFINITION OF MASTER NETTING AGREE-**
2 **MENT AND MASTER NETTING AGREEMENT PAR-**
3 **TICIPANT.—Section 101 of title 11, United**
4 **States Code, is amended by inserting after**
5 **paragraph (38) the following new paragraphs:**

6 **“(38A) ‘master netting agreement’**
7 **means an agreement providing for the ex-**
8 **ercise of rights, including rights of net-**
9 **ting, setoff, liquidation, termination, ac-**
10 **celeration, or closeout, under or in con-**
11 **nection with 1 or more contracts that are**
12 **described in any 1 or more of paragraphs**
13 **(1) through (5) of section 561(a), or any**
14 **security agreement or arrangement or**
15 **other credit enhancement related to 1 or**
16 **more of the foregoing. If a master netting**
17 **agreement contains provisions relating to**
18 **agreements or transactions that are not**
19 **contracts described in paragraphs (1)**
20 **through (5) of section 561(a), the master**
21 **netting agreement shall be deemed to be**
22 **a master netting agreement only with re-**
23 **spect to those agreements or transactions**
24 **that are described in any 1 or more of the**

1 paragraphs (1) through (5) of section
2 561(a);

3 “(38B) ‘master netting agreement par-
4 ticipant’ means an entity that, at any
5 time before the filing of the petition, is a
6 party to an outstanding master netting
7 agreement with the debtor;”.

8 (d) SWAP AGREEMENTS, SECURITIES CON-
9 TRACTS, COMMODITY CONTRACTS, FORWARD CON-
10 TRACTS, REPURCHASE AGREEMENTS, AND MASTER
11 NETTING AGREEMENTS UNDER THE AUTOMATIC-
12 STAY.—

13 (1) IN GENERAL.—Section 362(b) of title
14 11, United States Code, is amended—

15 (A) in paragraph (6), by inserting
16 “, pledged to and under the control
17 of,” after “held by”;

18 (B) in paragraph (7), by inserting
19 “, pledged to and under the control
20 of,” after “held by”;

21 (C) by amending paragraph (17)
22 to read as follows:

23 “(17) under subsection (a), of the
24 setoff by a swap participant of a mutual
25 debt and claim under or in connection

1 with 1 or more swap agreements that
2 constitutes the setoff of a claim against
3 the debtor for any payment or other
4 transfer of property due from the debtor
5 under or in connection with any swap
6 agreement against any payment due to
7 the debtor from the swap participant
8 under or in connection with any swap
9 agreement or against cash, securities, or
10 other property held by, pledged to and
11 under the control of, or due from such
12 swap participant to margin, guarantee,
13 secure, or settle any swap agreement;”;

14 (D) in paragraph (18) by striking
15 the period at the end and inserting “;
16 or”; and

17 (E) by inserting after paragraph
18 (18) the following new paragraph:

19 “(19) under subsection (a), of the
20 setoff by a master netting agreement par-
21 ticipant of a mutual debt and claim
22 under or in connection with 1 or more
23 master netting agreements or any con-
24 tract or agreement subject to such agree-
25 ments that constitutes the setoff of a

1 **claim against the debtor for any payment**
2 **or other transfer of property due from**
3 **the debtor under or in connection with**
4 **such agreements or any contract or**
5 **agreement subject to such agreements**
6 **against any payment due to the debtor**
7 **from such master netting agreement par-**
8 **ticipant under or in connection with such**
9 **agreements or any contract or agreement**
10 **subject to such agreements or against**
11 **cash, securities, or other property held**
12 **by, pledged to and under the control of,**
13 **or due from such master netting agree-**
14 **ment participant to margin, guarantee,**
15 **secure, or settle such agreements or any**
16 **contract or agreement subject to such**
17 **agreements, to the extent such partici-**
18 **part is eligible to exercise such offset**
19 **rights under paragraph (6), (7), or (17) for**
20 **each individual contract covered by the**
21 **master netting agreement in issue.”.**

22 **(2) LIMITATION.—Section 362 of title**
23 **11, United States Code, is amended by**
24 **adding at the end the following:**

1 “(i) **LIMITATION.—The exercise of rights**
2 **not subject to the stay arising under sub-**
3 **section (a) pursuant to paragraph (6), (7), or**
4 **(17), or (32) of subsection (b) shall not be**
5 **stayed by any order of a court or administra-**
6 **tive agency in any proceeding under this**
7 **title.”.**

8 **(e) LIMITATION OF AVOIDANCE POWERS**
9 **UNDER MASTER NETTING AGREEMENT.—Section**
10 **546 of title 11, United States Code, is**
11 **amended—**

12 **(1) in subsection (g) (as added by sec-**
13 **tion 103 of Public Law 101-311)—**

14 **(A) by striking “under a swap**
15 **agreement”; and**

16 **(B) by striking “in connection**
17 **with a swap agreement” and insert-**
18 **ing “under or in connection with any**
19 **swap agreement”; and**

20 **(2) by adding at the end the fol-**
21 **lowing:**

22 **“(j) Notwithstanding sections 544, 545, 547,**
23 **548(a)(1)(B), and 548(b), the trustee may not**
24 **avoid a transfer made by or to a master net-**
25 **ting agreement participant under or in con-**

1 nection with any master netting agreement or
2 any individual contract covered thereby that
3 is made before the commencement of the case,
4 except under section 548(a)(1)(A), and except
5 to the extent the trustee could otherwise
6 avoid such a transfer made under an indi-
7 vidual contract covered by such master net-
8 ting agreement.”.

9 (f) FRAUDULENT TRANSFERS OF MASTER
10 NETTING AGREEMENTS.—Section 548(d)(2) of
11 title 11, United States Code, is amended—

12 (1) in subparagraph (C), by striking
13 “and”;

14 (2) in subparagraph (D), by striking
15 the period and inserting “; and”; and

16 (3) by adding at the end the following
17 new subparagraph:

18 “(E) a master netting agreement par-
19 ticipant that receives a transfer in con-
20 nection with a master netting agreement
21 or any individual contract covered there-
22 by takes for value to the extent of such
23 transfer, except, with respect to a trans-
24 fer under any individual contract cov-
25 ered thereby, to the extent such master

1 **netting agreement participant otherwise**
2 **did not take (or is otherwise not deemed**
3 **to have taken) such transfer for value.”.**

4 **(g) TERMINATION OR ACCELERATION OF SE-**
5 **CURITIES CONTRACTS.—Section 555 of title 11,**
6 **United States Code, is amended—**

7 **(1) by amending the section heading**
8 **to read as follows:**

9 **“§ 555. Contractual right to liquidate, terminate, or**
10 **accelerate a securities contract”;**

11 **and**

12 **(2) in the first sentence, by striking**
13 **“liquidation” and inserting “liquidation,**
14 **termination, or acceleration”.**

15 **(h) TERMINATION OR ACCELERATION OF COM-**
16 **MODITIES OR FORWARD CONTRACTS.—Section**
17 **556 of title 11, United States Code, is**
18 **amended—**

19 **(1) by amending the section heading**
20 **to read as follows:**

21 **“§ 556. Contractual right to liquidate, terminate, or**
22 **accelerate a commodities contract or for-**
23 **ward contract”;**

24 **and**

1 (2) in the first sentence, by striking
2 “liquidation” and inserting “liquidation,
3 termination, or acceleration”.

4 (i) TERMINATION OR ACCELERATION OF RE-
5 PURCHASE AGREEMENTS.—Section 559 of title
6 11, United States Code, is amended—

7 (1) by amending the section heading
8 to read as follows:

9 “§ 559. Contractual right to liquidate, terminate, or
10 accelerate a repurchase agreement”;

11 and

12 (2) in the first sentence, by striking
13 “liquidation” and inserting “liquidation,
14 termination, or acceleration”.

15 (j) LIQUIDATION, TERMINATION, OR ACCEL-
16 ERATION OF SWAP AGREEMENTS.—Section 560 of
17 title 11, United States Code, is amended—

18 (1) by amending the section heading
19 to read as follows:

20 “§ 560. Contractual right to liquidate, terminate, or
21 accelerate a swap agreement”;

22 (2) in the first sentence, by striking
23 “termination of a swap agreement” and
24 inserting “liquidation, termination, or ac-

1 **celeration of 1 or more swap agree-**
2 **ments”; and**

3 **(3) by striking “in connection with**
4 **any swap agreement” and inserting “in**
5 **connection with the termination, liquida-**
6 **tion, or acceleration of 1 or more swap**
7 **agreements”.**

8 **(k) LIQUIDATION, TERMINATION, ACCELERA-**
9 **TION, OR OFFSET UNDER A MASTER NETTING**
10 **AGREEMENT AND ACROSS CONTRACTS.—(1) Title**
11 **11, United States Code, is amended by insert-**
12 **ing after section 560 the following:**

13 **“§ 561. Contractual right to terminate, liquidate, ac-**
14 **celerate, or offset under a master netting**
15 **agreement and across contracts**

16 **“(a) IN GENERAL.—Subject to subsection**
17 **(b), the exercise of any contractual right, be-**
18 **cause of a condition of the kind specified in**
19 **section 365(e)(1), to cause the termination, liq-**
20 **uidation, or acceleration of or to offset or net**
21 **termination values, payment amounts or**
22 **other transfer obligations arising under or in**
23 **connection with 1 or more (or the termi-**
24 **nation, liquidation, or acceleration of 1 or**
25 **more)—**

1 **“(1) securities contracts, as defined in**
2 **section 741(7);**

3 **“(2) commodity contracts, as defined**
4 **in section 761(4);**

5 **“(3) forward contracts;**

6 **“(4) repurchase agreements;**

7 **“(5) swap agreements; or**

8 **“(6) master netting agreements,**

9 **shall not be stayed, avoided, or otherwise lim-**
10 **ited by operation of any provision of this title**
11 **or by any order of a court or administrative**
12 **agency in any proceeding under this title.**

13 **“(b) EXCEPTION.—**

14 **“(1) A party may exercise a contrac-**
15 **tual right described in subsection (a) to**
16 **terminate, liquidate, or accelerate only to**
17 **the extent that such party could exercise**
18 **such a right under section 555, 556, 559,**
19 **or 560 for each individual contract cov-**
20 **ered by the master netting agreement in**
21 **issue.**

22 **“(2) If a debtor is a commodity broker**
23 **subject to subchapter IV of chapter 7—**

24 **“(A) a party may not net or offset**
25 **an obligation to the debtor arising**

1 under, or in connection with, a com-
2 modity contract against any claim
3 arising under, or in connection with,
4 other instruments, contracts, or
5 agreements listed in subsection (a),
6 except to the extent the party has
7 positive net equity in the commodity
8 accounts at the debtor, as calculated
9 under such subchapter; and

10 “(B) another commodity broker
11 may not net or offset an obligation to
12 the debtor arising under, or in con-
13 nection with, a commodity contract
14 entered into or held on behalf of a
15 customer of the debtor against any
16 claim arising under, or in connection
17 with, other instruments, contracts, or
18 agreements listed in subsection (a).

19 “(c) **RULE OF APPLICATION.**—Subpara-
20 graphs (A) and (B) of subsection (b)(2) shall
21 not be construed as prohibiting the offset of
22 claims and obligations arising pursuant to—

23 “(1) a cross-margining arrangement
24 that has been approved by the Com-
25 modity Futures Trading Commission or

1 that has been submitted to such Commis-
2 sion pursuant to section 5a(a)(12) of the
3 Commodity Exchange Act and has been
4 permitted to go into effect; or

5 “(2) another netting arrangement, be-
6 tween a clearing organization (as defined
7 in section 761) and another entity, that
8 has been approved by the Commodity Fu-
9 tures Trading Commission.

10 “(d) DEFINITION.—As used in this section,
11 the term ‘contractual right’ includes a right
12 set forth in a rule or bylaw of a national secu-
13 rities exchange, a national securities associa-
14 tion, or a securities clearing agency, a right
15 set forth in a bylaw of a clearing organization
16 or contract market or in a resolution of the
17 governing board thereof, and a right, whether
18 or not evidenced in writing, arising under
19 common law, under law merchant, or by rea-
20 son of normal business practice.”.

21 (2) CONFORMING AMENDMENT.—The table of
22 sections of chapter 5 of title 11, United States
23 Code, is amended by inserting after the item
24 relating to section 560 the following:

 “561. Contractual right to terminate, liquidate, accelerate, or
 offset under a master netting agreement and
 across contracts.”.

1 **(l) MUNICIPAL BANKRUPTCIES.—Section**
2 **901(a) of title 11, United States Code, is**
3 **amended—**

4 **(1) by inserting “555, 556,” after**
5 **“553,”; and**

6 **(2) by inserting “559, 560, 561, 562,”**
7 **after “557.”.**

8 **(m) ANCILLARY PROCEEDINGS.—Section 304**
9 **of title 11, United States Code, is amended by**
10 **adding at the end the following new sub-**
11 **section:**

12 **“(d) Any provisions of this title relating to**
13 **securities contracts, commodity contracts,**
14 **forward contracts, repurchase agreements,**
15 **swap agreements, or master netting agree-**
16 **ments shall apply in a case ancillary to a for-**
17 **ign proceeding under this section or any**
18 **other section of this title so that enforcement**
19 **of contractual provisions of such contracts**
20 **and agreements in accordance with their**
21 **terms will not be stayed or otherwise limited**
22 **by operation of any provision of this title or**
23 **by order of a court in any proceeding under**
24 **this title, and to limit avoidance powers to the**
25 **same extent as in a proceeding under chapter**

1 **7 or 11 (such enforcement not to be limited**
2 **based on the presence or absence of assets of**
3 **the debtor in the United States).”.**

4 **(n) COMMODITY BROKER LIQUIDATIONS.—**
5 **Title 11, United States Code, is amended by in-**
6 **serting after section 766 the following:**

7 **“§ 767. Commodity broker liquidation and forward**
8 **contract merchants, commodity brokers,**
9 **stockbrokers, financial institutions, fi-**
10 **nancial participants, securities clearing**
11 **agencies, swap participants, repo partici-**
12 **pants, and master netting agreement par-**
13 **ticipants**

14 **“Notwithstanding any other provision of**
15 **this title, the exercise of rights by a forward**
16 **contract merchant, commodity broker, stock-**
17 **broker, financial institution, financial partici-**
18 **pant, securities clearing agency, swap partici-**
19 **pant, repo participant, or master netting**
20 **agreement participant under this title shall**
21 **not affect the priority of any unsecured claim**
22 **it may have after the exercise of such rights.”.**

23 **(o) STOCKBROKER LIQUIDATIONS.—Title 11,**
24 **United States Code, is amended by inserting**
25 **after section 752 the following:**

1 **“§ 753. Stockbroker liquidation and forward contract**
2 **merchants, commodity brokers, stock-**
3 **brokers, financial institutions, financial**
4 **participants, securities clearing agencies,**
5 **swap participants, repo participants, and**
6 **master netting agreement participants**

7 **“Notwithstanding any other provision of**
8 **this title, the exercise of rights by a forward**
9 **contract merchant, commodity broker, stock-**
10 **broker, financial institution, securities clear-**
11 **ing agency, swap participant, repo partici-**
12 **pant, financial participant, or master netting**
13 **agreement participant under this title shall**
14 **not affect the priority of any unsecured claim**
15 **it may have after the exercise of such rights.”.**

16 **(p) SETOFF.—Section 553 of title 11, United**
17 **States Code, is amended—**

18 **(1) in subsection (a)(3)(C), by insert-**
19 **ing “(except for a setoff of a kind de-**
20 **scribed in section 362(b)(6), 362(b)(7),**
21 **362(b)(17), 362(b)(32), 555, 556, 559, 560 or**
22 **561)” before the period; and**

23 **(2) in subsection (b)(1), by striking**
24 **“362(b)(14)” and inserting “362(b)(17),**
25 **362(b)(32), 555, 556, 559, 560, 561”.**

1 **(q) SECURITIES CONTRACTS, COMMODITY**
2 **CONTRACTS, AND FORWARD CONTRACTS.—Title**
3 **11, United States Code, is amended—**

4 **(1) in section 362(b)(6), by striking “fi-**
5 **ancial institutions,” each place such**
6 **term appears and inserting “financial in-**
7 **stitution, financial participant”;**

8 **(2) in section 546(e), by inserting “fi-**
9 **ancial participant,” after “financial in-**
10 **stitution,”;**

11 **(3) in section 548(d)(2)(B), by insert-**
12 **ing “financial participant,” after “finan-**
13 **cial institution,”;**

14 **(4) in section 555—**

15 **(A) by inserting “financial partici-**
16 **pant,” after “financial institution,”;**
17 **and**

18 **(B) by inserting before the period**
19 **at the end “, a right set forth in a**
20 **bylaw of a clearing organization or**
21 **contract market or in a resolution of**
22 **the governing board thereof, and a**
23 **right, whether or not in writing, aris-**
24 **ing under common law, under law**

1 merchant, or by reason of normal
2 business practice”; and

3 (5) in section 556, by inserting “, fi-
4 nancial participant” after “commodity
5 broker”.

6 (r) CONFORMING AMENDMENTS.—Title 11,
7 United States Code, is amended—

8 (1) in the table of sections of chapter
9 5—

10 (A) by amending the items relat-
11 ing to sections 555 and 556 to read as
12 follows:

“555. Contractual right to liquidate, terminate, or accelerate a
securities contract.

“556. Contractual right to liquidate, terminate, or accelerate a
commodities contract or forward contract.”;

13 and

14 (B) by amending the items relat-
15 ing to sections 559 and 560 to read as
16 follows:

“559. Contractual right to liquidate, terminate, or accelerate a
repurchase agreement.

“560. Contractual right to liquidate, terminate, or accelerate a
swap agreement.”;

17 and

18 (2) in the table of sections of chapter
19 7—

20 (A) by inserting after the item re-
21 lating to section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”;

1 **and**

2 **(B) by inserting after the item re-**
3 **lating to section 752 the following:**

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

4 **SEC. 209. RECORDKEEPING REQUIREMENTS.**

5 **Section 11(e)(8) of the Federal Deposit In-**
6 **surance Act (12 U.S.C. 1821(e)(8)) is amended**
7 **by adding at the end the following new sub-**
8 **paragraph:**

9 **“(H) RECORDKEEPING REQUIRE-**
10 **MENTS.—The Corporation, in consulta-**
11 **tion with the appropriate Federal**
12 **banking agencies, may prescribe reg-**
13 **ulations requiring more detailed rec-**
14 **ordkeeping with respect to qualified**
15 **financial contracts (including market**
16 **valuations) by insured depository in-**
17 **stitutions.”.**

1 SEC. 210. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-
2 TION REQUIREMENT.

3 Section 13(e)(2) of the Federal Deposit In-
4 surance Act (12 U.S.C. 1823(e)(2)) is amended
5 to read as follows:

6 “(2) EXEMPTIONS FROM CONTEMPORA-
7 NEOUS EXECUTION REQUIREMENT.—An
8 agreement to provide for the lawful
9 collateralization of—

10 “(A) deposits of, or other credit
11 extension by, a Federal, State, or
12 local governmental entity, or of any
13 depositor referred to in section
14 11(a)(2), including an agreement to
15 provide collateral in lieu of a surety
16 bond;

17 “(B) bankruptcy estate funds pur-
18 suant to section 345(b)(2) of title 11,
19 United States Code;

20 “(C) extensions of credit, includ-
21 ing any overdraft, from a Federal re-
22 serve bank or Federal home loan
23 bank; or

24 “(D) 1 or more qualified financial
25 contracts, as defined in section
26 11(e)(8)(D),

1 shall not be deemed invalid pursuant to
2 paragraph (1)(B) solely because such
3 agreement was not executed contempora-
4 neously with the acquisition of the collat-
5 eral or because of pledges, delivery, or
6 substitution of the collateral made in ac-
7 cordance with such agreement.”.

8 SEC. 211. DAMAGE MEASURE.

9 (a) IN GENERAL.—Title 11, United States
10 Code, is amended—

11 (1) by inserting after section 561 the
12 following:

13 “§ 562. Damage measure in connection with swap
14 agreements, securities contracts, forward
15 contracts, commodity contracts, repur-
16 chase agreements, or master netting
17 agreements

18 “If the trustee rejects a swap agreement,
19 securities contract as defined in section 741,
20 forward contract, commodity contract (as de-
21 fined in section 761) repurchase agreement,
22 or master netting agreement pursuant to sec-
23 tion 365(a), or if a forward contract merchant,
24 stockbroker, financial institution, securities
25 clearing agency, repo participant, financial

1 participant, master netting agreement partic-
2 ipant, or swap participant liquidates, termi-
3 nates, or accelerates such contract or agree-
4 ment, damages shall be measured as of the
5 earlier of—

6 “(1) the date of such rejection; or

7 “(2) the date of such liquidation, ter-
8 mination, or acceleration.”; and

9 (2) in the table of sections of chapter
10 5 by inserting after the item relating to
11 section 561 the following:

“562. Damage measure in connection with swap agreements, se-
curities contracts, forward contracts, commodity
contracts, repurchase agreements, or master net-
ting agreements.”.

12 (b) CLAIMS ARISING FROM REJECTION.—Sec-
13 tion 502(g) of title 11, United States Code, is
14 amended—

15 (1) by designating the existing text as
16 paragraph (1); and

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

19 “(2) A claim for damages calculated in ac-
20 cordance with section 562 shall be allowed
21 under subsection (a), (b), or (c), or disallowed
22 under subsection (d) or (e), as if such claim

1 had arisen before the date of the filing of the
2 petition.”.

3 SEC. 212. SIPC STAY.

4 Section 5(b)(2) of the Securities Investor
5 Protection Act of 1970 (15 U.S.C. 78eee(b)(2))
6 is amended by adding after subparagraph (B)
7 the following new subparagraph:

8 “(C) EXCEPTION FROM STAY.—

9 “(i) Notwithstanding section
10 362 of title 11, United States Code,
11 neither the filing of an applica-
12 tion under subsection (a)(3) nor
13 any order or decree obtained by
14 the Securities Investor Protection
15 Corporation from the court shall
16 operate as a stay of any contrac-
17 tual rights of a creditor to liq-
18 uidate, terminate, or accelerate a
19 securities contract, commodity
20 contract, forward contract, repur-
21 chase agreement, swap agree-
22 ment, or master netting agree-
23 ment, each as defined in title 11,
24 United States Code, to offset or
25 net termination values, payment

1 **amounts, or other transfer obliga-**
2 **tions arising under or in connec-**
3 **tion with 1 or more of such con-**
4 **tracts or agreements, or to fore-**
5 **close on any cash collateral**
6 **pledged by the debtor whether or**
7 **not with respect to 1 or more of**
8 **such contracts or agreements.**

9 **“(ii) Notwithstanding clause**
10 **(i), such application, order, or de-**
11 **creed may operate as a stay of the**
12 **foreclosure on or disposition of**
13 **securities collateral pledged by**
14 **the debtor, whether or not with**
15 **respect to 1 or more of such con-**
16 **tracts or agreements, securities**
17 **sold by the debtor under a repur-**
18 **chase agreement or securities**
19 **lent under a securities lending**
20 **agreement.**

21 **“(iii) As used in this section,**
22 **the term ‘contractual right’ in-**
23 **cludes a right set forth in a rule**
24 **or bylaw of a national securities**
25 **exchange, a national securities as-**

1 **sociation, or a securities clearing**
2 **agency, a right set forth in a**
3 **bylaw of a clearing organization**
4 **or contract market or in a resolu-**
5 **tion of the governing board there-**
6 **of, and a right, whether or not in**
7 **writing, arising under common**
8 **law, under law merchant, or by**
9 **reason of normal business prac-**
10 **tice.”.**

11 **SEC. 213. ASSET-BACKED SECURITIZATIONS.**

12 **Section 541 of title 11, United States Code,**
13 **is amended—**

14 **(1) in subsection (b)—**

15 **(A) by striking “or” at the end of**
16 **paragraph (4)(B)(ii);**

17 **(B) by redesignating paragraph**
18 **(5) as paragraph (6); and**

19 **(C) by inserting after paragraph**
20 **(4) the following new paragraph:**

21 **“(5) any eligible asset (or proceeds**
22 **thereof), to the extent that such eligible**
23 **asset was transferred by the debtor be-**
24 **fore the date of commencement of the**
25 **case, to an eligible entity in connection**

1 with an asset-backed securitization, ex-
2 cept to the extent such asset (or proceeds
3 or value thereof) may be recovered by the
4 trustee under section 550 by virtue of
5 avoidance under section 548(a)(1); or”;
6 and

7 (2) by adding at the end the following
8 new subsection:

9 “(e) For purposes of this section, the fol-
10 lowing definitions shall apply:

11 “(1) the term ‘asset-backed
12 securitization’ means a transaction in
13 which eligible assets transferred to an el-
14 igible entity are used as the source of
15 payment on securities, including all secu-
16 rities issued by governmental units, at
17 least 1 class or tranche of which is rated
18 investment grade by 1 or more nationally
19 recognized securities rating organiza-
20 tions, when the securities are initially
21 issued by an issuer;

22 “(2) the term ‘eligible asset’ means—

23 “(A) financial assets (including in-
24 terests therein and proceeds thereof),
25 either fixed or revolving, whether or

1 not such assets are in existence as of
2 the date of the transfer, including
3 residential and commercial mortgage
4 loans, consumer receivables, trade re-
5 ceivables, assets of governmental
6 units (including payment obligations
7 relating to taxes, receipts, fines, tick-
8 ets, and other sources of revenue),
9 and lease receivables, that, by their
10 terms, convert into cash within a fi-
11 nite time period, plus any residual in-
12 terest in property subject to receiv-
13 ables included in such financial as-
14 sets plus any rights or other assets
15 designed to assure the servicing or
16 timely distribution of proceeds to se-
17 curity holders;

18 “(B) cash; and

19 “(C) securities, including all secu-
20 rities issued by governmental units.

21 “(3) the term ‘eligible entity’ means—

22 “(A) an issuer; or

23 “(B) a trust, corporation, partner-
24 ship, governmental unit, limited li-
25 ability company (including a single

1 **member limited liability company), or**
2 **other entity engaged exclusively in**
3 **the business of acquiring and trans-**
4 **ferring eligible assets directly or indi-**
5 **rectly to an issuer and taking actions**
6 **ancillary thereto;**

7 **“(4) the term ‘issuer’ means a trust,**
8 **corporation, partnership, governmental**
9 **unit, limited liability company (including**
10 **a single member limited liability com-**
11 **pany), or other entity engaged exclu-**
12 **sively in the business of acquiring and**
13 **holding eligible assets, issuing securities**
14 **backed by eligible assets, and taking ac-**
15 **tions ancillary thereto; and**

16 **“(5) the term ‘transferred’ means the**
17 **debtor, pursuant to a written agreement,**
18 **represented and warranted that eligible**
19 **assets were sold, contributed, or other-**
20 **wise conveyed with the intention of re-**
21 **moving them from the estate of the debt-**
22 **or pursuant to subsection (b)(5) (whether**
23 **or not reference is made to this title or**
24 **any section of this title), irrespective,**
25 **without limitation, of—**

1 **“(A) whether the debtor directly**
2 **or indirectly obtained or held an in-**
3 **terest in the issuer or in any securi-**
4 **ties issued by the issuer;**

5 **“(B) whether the debtor had an**
6 **obligation to repurchase or to service**
7 **or supervise the servicing of all or**
8 **any portion of such eligible assets; or**

9 **“(C) the characterization of such**
10 **sale, contribution, or other convey-**
11 **ance for tax, accounting, regulatory**
12 **reporting, or other purposes.”.**

13 **SEC. 214. APPLICATION OF AMENDMENTS.**

14 **The amendments made by this title shall**
15 **apply with respect to cases commenced or ap-**
16 **pointments made under any Federal or State**
17 **law after the date of the enactment of this Act,**
18 **but shall not apply with respect to cases com-**
19 **menced or appointments made under any**
20 **Federal or State law before the date of the en-**
21 **actment of this Act.**

Amend the title so as to read: “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, to revise the banking and bankruptcy insolvency

laws with respect to the termination and netting of financial contracts, and for other purposes.”.

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

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

5 **(b) TABLE OF CONTENTS.—The table of con-**
 6 **tents of this Act is as follows:**

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

TITLE I—COMMODITY EXCHANGE ACT AMENDMENTS

Sec. 101. Definitions.

Sec. 102. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.

Sec. 103. Legal certainty for excluded derivative transactions.

Sec. 104. Excluded electronic trading facilities.

Sec. 105. Hybrid instruments.

Sec. 106. Futures on securities.

Sec. 107. Transactions in exempt commodities and swap transactions.

Sec. 108. Protection of the public interest.

Sec. 109. Prohibited transactions.

Sec. 110. Designation of boards of trade as contract markets.

Sec. 111. Derivatives transaction execution facilities.

Sec. 112. Derivatives clearing organizations.

Sec. 113. Common provisions applicable to registered entities.

Sec. 114. Exempt boards of trade.

Sec. 115. Suspension or revocation of designation as contract market.

Sec. 116. Authorization of appropriations.

Sec. 117. Preemption.

Sec. 118. Consideration of costs and benefits and antitrust laws.

Sec. 119. Contract enforcement between eligible counterparties.

Sec. 120. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.

Sec. 121. Rule of construction.

Sec. 122. Technical and conforming amendments.

Sec. 123. Privacy.

Sec. 124. Report to Congress.

Sec. 125. Effective date.

Sec. 126. International activities of the Commodity Futures Trading Commission.

TITLE II—SECURITIES ACTS AMENDMENTS

Subtitle A—Amendments

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

Subtitle B—Conforming Amendments to the Commodity Exchange Act

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

Subtitle C—Effective Date

- Sec. 231. Effective date.*

1 **SEC. 2. PURPOSES.**

2 ***The purposes of this Act are—***

3 ***(1) to reauthorize the appropriation***
 4 ***for the Commodity Futures Trading Com-***
 5 ***mission;***

6 ***(2) to streamline and eliminate unnec-***
 7 ***essary regulation for the commodity fu-***
 8 ***tures exchanges and other entities regu-***
 9 ***lated under the Commodity Exchange Act;***

1 ***(3) to transform the role of the Com-***
2 ***modity Futures Trading Commission to***
3 ***oversight of the futures markets;***

4 ***(4) to provide a statutory and regu-***
5 ***latory framework for allowing the trading***
6 ***of futures on individual securities and***
7 ***narrow-based securities indexes in a man-***
8 ***ner equivalent with the treatment of other***
9 ***similar securities;***

10 ***(5) to provide the Commission jurisdic-***
11 ***tion over certain retail foreign ex-***
12 ***change transactions and bucket shops***
13 ***that may not be otherwise regulated;***

14 ***(6) to promote innovation for futures***
15 ***and derivatives and to reduce systemic***
16 ***risk by enhancing legal certainty in the***
17 ***markets for certain futures and deriva-***
18 ***tives transactions;***

19 ***(7) to reduce systemic risk and provide***
20 ***greater stability to markets during times***
21 ***of market disorder by allowing the clear-***
22 ***ing of transactions in over-the-counter de-***
23 ***rivatives through appropriately regulated***
24 ***clearing organizations; and***

1 *(8) to enhance the competitive position*
2 *of United States financial institutions*
3 *and financial markets.*

4 **TITLE I—COMMODITY**
5 **EXCHANGE ACT AMENDMENTS**

6 **SEC. 101. DEFINITIONS.**

7 ***Section 1a of the Commodity Exchange Act***
8 ***(7 U.S.C. 1a) is amended—***

9 ***(1) by redesignating paragraphs (1)***
10 ***through (7), (8) through (12), (13), (14),***
11 ***(15), and (16) as paragraphs (2) through***
12 ***(8), (16) through (20), (22), (23), (25), and***
13 ***(29), respectively;***

14 ***(2) by inserting before paragraph (2)***
15 ***(as redesignated by paragraph (1)) the***
16 ***following:***

17 ***“(1) ALTERNATIVE TRADING SYSTEM.—***
18 ***The term ‘alternative trading system’***
19 ***means an organization, association, or***
20 ***group of persons that is registered as a***
21 ***broker or dealer pursuant to section 15(b)***
22 ***of the Securities Exchange Act of 1934 (ex-***
23 ***cept paragraph (11) thereof) and that per-***
24 ***forms the functions commonly performed***
25 ***by an exchange (as defined in section***

1 ***3(a)(1) of such Act) but that is exempt***
2 ***from the definition of the term ‘exchange’***
3 ***under such section 3(a)(1) by rule or regu-***
4 ***lation of the Securities and Exchange***
5 ***Commission on terms that require compli-***
6 ***ance with regulations of the trading func-***
7 ***tions of such organization, association, or***
8 ***group of persons.’;***

9 ***(3) by inserting after paragraph (8)***
10 ***(as redesignated by paragraph (1)) the***
11 ***following:***

12 ***“(9) DERIVATIVES CLEARING ORGANIZA-***
13 ***TION.—***

14 ***“(A) IN GENERAL.—The term ‘de-***
15 ***rivatives clearing organization’***
16 ***means a clearinghouse, clearing asso-***
17 ***ciation, clearing corporation, or simi-***
18 ***lar entity, facility, system, or organi-***
19 ***zation that, with respect to a deriva-***
20 ***tive agreement, contract, or***
21 ***transaction—***

22 ***“(i) enables each party to the***
23 ***derivative agreement, contract, or***
24 ***transaction to substitute, through***
25 ***novation or otherwise, the credit***

1 *of the derivatives clearing organi-*
2 *zation for the credit of the parties;*

3 “(ii) *arranges or provides, on*
4 *a multilateral basis, for the settle-*
5 *ment or netting of obligations re-*
6 *sulting from such agreements,*
7 *contracts, or transactions exe-*
8 *cutted by parties in the derivatives*
9 *clearing organization; or*

10 “(iii) *otherwise provides clear-*
11 *ing services or arrangements that*
12 *mutualize or transfer among par-*
13 *ties in the derivatives clearing or-*
14 *ganization the credit risk arising*
15 *from such agreements, contracts,*
16 *or transactions executed by the*
17 *parties.*

18 “(B) *EXCLUSIONS.—The term ‘de-*
19 *rivatives clearing organization’ does*
20 *not include an entity, facility, system,*
21 *or organization solely because it ar-*
22 *ranges or provides for—*

23 “(i) *settlement, netting, or no-*
24 *vation of obligations resulting*
25 *from agreements, contracts, or*

1 *transactions, on a bilateral basis*
2 *and without a centralized*
3 *counterparty;*

4 “(ii) *settlement or netting of*
5 *cash payments through an inter-*
6 *bank payment system; or*

7 “(iii) *settlement, netting, or*
8 *novation of obligations resulting*
9 *from a sale of a commodity in a*
10 *transaction in the spot market for*
11 *the commodity.*

12 “(10) *ELECTRONIC TRADING FACILITY.—*

13 *The term ‘electronic trading facility’*
14 *means a trading facility that—*

15 “(A) *operates by means of an elec-*
16 *tronic network; and*

17 “(B) *maintains a real-time audit*
18 *trail of bids, offers, and the matching*
19 *of orders or the execution of trans-*
20 *actions.*

21 “(11) *ELIGIBLE COMMERCIAL PARTICI-*
22 *PANT.—The term ‘eligible commercial par-*
23 *ticipant’ means a party or entity de-*
24 *scribed in paragraph (11)(A)(i), (ii), (v),*

1 *or (viii) or paragraph (11)(C), who, in*
2 *connection with its business—*

3 *“(A) has a demonstrable capacity*
4 *or ability, directly or through sepa-*
5 *rate contractual arrangements, to*
6 *make or take delivery of the under-*
7 *lying physical commodity;*

8 *“(B) incurs risks, in addition to*
9 *price risk, related to the commodity;*
10 *or*

11 *“(C) is a dealer that regularly pro-*
12 *vides hedging, risk management, or*
13 *market-making services to the fore-*
14 *going entities.*

15 *“(12) ELIGIBLE CONTRACT PARTICI-*
16 *PANT.—The term ‘eligible contract partici-*
17 *pant’ means—*

18 *“(A) acting for its own account—*

19 *“(i) a financial institution;*

20 *“(ii) an insurance company*
21 *regulated by a State or a foreign*
22 *government (including a regu-*
23 *lated subsidiary or affiliate of*
24 *such an insurance company);*

1 “(iii) *an investment company*
2 *subject to regulation under the In-*
3 *vestment Company Act of 1940 (15*
4 *U.S.C. 80a-1 et seq.) or a foreign*
5 *person performing a similar role*
6 *or function subject as such to for-*
7 *ign regulation (regardless of*
8 *whether each investor in the in-*
9 *vestment company or the foreign*
10 *person is itself an eligible con-*
11 *tract participant);*

12 “(iv) *a commodity pool that—*

13 “(I) *has total assets ex-*
14 *ceeding \$5,000,000; and*

15 “(II) *is formed and oper-*
16 *ated by a person subject to*
17 *regulation under this Act or a*
18 *foreign person performing a*
19 *similar role or function sub-*
20 *ject as such to foreign regula-*
21 *tion (regardless of whether*
22 *each investor in the com-*
23 *modity pool or the foreign per-*
24 *son is itself an eligible con-*
25 *tract participant);*

1 “(v) a corporation, partner-
2 ship, proprietorship, organization,
3 trust, or other entity—

4 “(I) that has total assets
5 exceeding \$10,000,000;

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

17 “(III) that—

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

20 “(bb) enters into an
21 agreement, contract, or
22 transaction in connection
23 with the conduct of the en-
24 tity’s business or to man-
25 age the risk associated

1 *with an asset or liability*
2 *owned or incurred or rea-*
3 *sonably likely to be owned*
4 *or incurred by the entity*
5 *in the conduct of the enti-*
6 *ty's business;*

7 *“(vi) an employee benefit plan*
8 *subject to the Employee Retire-*
9 *ment Income Security Act of 1974*
10 *(29 U.S.C. 1001 et seq.) or a foreign*
11 *person performing a similar role*
12 *or function subject as such to for-*
13 *ign regulation—*

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

16 *“(II) the investment deci-*
17 *sions of which are made by—*

18 *“(aa) an investment*
19 *advisor or commodity*
20 *trading advisor subject to*
21 *regulation under the In-*
22 *vestment Advisers Act of*
23 *1940 (15 U.S.C. 80b-1 et*
24 *seq.) or this Act;*

1 “(bb) a foreign person
2 performing a similar role
3 or function subject as such
4 to foreign regulation;

5 “(cc) a financial insti-
6 tution; or

7 “(dd) an insurance
8 company regulated by a
9 State or a foreign govern-
10 ment (including a regu-
11 lated subsidiary or affil-
12 iate of such an insurance
13 company);

14 “(vii)(I) a governmental entity
15 (including the United States, a
16 State, or a foreign government) or
17 political subdivision of a govern-
18 mental entity;

19 “(II) a multinational or supra-
20 national government entity; or

21 “(III) an instrumentality,
22 agency, or department of an entity
23 described in subclause (I) or (II);

24 “(viii)(I) a broker or dealer
25 subject to regulation under the Se-

1 *curities Exchange Act of 1934 (15*
2 *U.S.C. 78a et seq.) or a foreign per-*
3 *son performing a similar role or*
4 *function subject as such to foreign*
5 *regulation, except that, if the*
6 *broker or dealer or foreign person*
7 *is a natural person or proprietor-*
8 *ship, the broker or dealer or for-*
9 *foreign person shall not be consid-*
10 *ered to be an eligible contract par-*
11 *ticipant unless the broker or deal-*
12 *er or foreign person also meets the*
13 *requirements of clause (v) or (xi);*

14 *“(II) an associated person of a*
15 *registered broker or dealer con-*
16 *cerning the financial or securities*
17 *activities of which the registered*
18 *person makes and keeps records*
19 *under section 15C(b) or 17(h) of*
20 *the Securities Exchange Act of*
21 *1934 (15 U.S.C. 78o–5(b), 78q(h));*

22 *“(III) an investment bank*
23 *holding company (as defined in*
24 *section 17(i) of the Securities Ex-*

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

3 *“(ix)(I) a futures commission*
4 *merchant subject to regulation*
5 *under this Act or a foreign person*
6 *performing a similar role or func-*
7 *tion subject as such to foreign reg-*
8 *ulation, except that, if the futures*
9 *commission merchant or foreign*
10 *person is a natural person or pro-*
11 *prietorship, the futures commis-*
12 *sion merchant or foreign person*
13 *shall not be considered to be an el-*
14 *igible contract participant unless*
15 *the futures commission merchant*
16 *or foreign person also meets the*
17 *requirements of clause (v) or (xi);*
18 *or*

19 *“(II) an affiliate of a reg-*
20 *istered futures commission mer-*
21 *chant concerning the financial ac-*
22 *tivities of which the registered*
23 *person makes and keeps records*
24 *under section 4f(c)(2)(B) of this*
25 *Act;*

1 “(x) a floor broker or floor
2 trader subject to regulation under
3 this Act in connection with any
4 transaction that takes place on or
5 through the facilities of a reg-
6 istered entity or an exempt board
7 of trade, or any affiliate thereof,
8 on which such person regularly
9 trades; or

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

12 “(B)(i) a person described in
13 clause (i), (ii), (viii), (ix), or (x) of sub-
14 paragraph (A) or in subparagraph
15 (C), acting as broker or performing an
16 equivalent agency function on behalf
17 of another person described in sub-
18 paragraph (A) or (C); or

19 “(ii) an investment adviser subject
20 to regulation under the Investment
21 Advisers Act of 1940, a commodity
22 trading advisor subject to regulation
23 under this Act, a foreign person per-
24 forming a similar role or function
25 subject as such to foreign regulation,

1 *or a person described in clause (i),*
2 *(ii), (viii), (ix), or (x) of subparagraph*
3 *(A) or in subparagraph (C), in any*
4 *such case acting as investment man-*
5 *ager or fiduciary (but excluding a per-*
6 *son acting as broker or performing an*
7 *equivalent agency function) for an-*
8 *other person described in subpara-*
9 *graph (A) or (C) and who is author-*
10 *ized by such person to commit such*
11 *person to the transaction; or*

12 *“(C) any other person that the*
13 *Commission determines to be eligible*
14 *in light of the financial or other*
15 *qualifications of the person;*

16 *except that entities that are eligible con-*
17 *tract participants under clause (v), (vi),*
18 *(vii)(I) or (III), or (xi) of subparagraph*
19 *(A) or subparagraph (C) and own and in-*
20 *vest on a discretionary basis less than*
21 *\$50,000,000 in investments, shall only be*
22 *considered eligible contract participants*
23 *if the agreement, contract, or transaction*
24 *is offered by, and entered into with, an en-*
25 *tity that is listed in any of subclauses (I)*

1 *through (VI) of section 2(c)(2)(B)(ii) of*
2 *this Act.*

3 *“(13) EXCLUDED COMMODITY.—The term*
4 *‘excluded commodity’ means—*

5 *“(A) an interest rate, exchange*
6 *rate, currency, security, security*
7 *index, credit risk or measure, debt or*
8 *equity instrument, or index or meas-*
9 *ure of inflation;*

10 *“(B) any other rate, differential,*
11 *index, or measure of economic or com-*
12 *mercial risk, return, or value that—*

13 *“(i) is not within the control of*
14 *any party to the relevant contract,*
15 *agreement, or transaction; and*

16 *“(ii) is not based in substan-*
17 *tial part on the value of a limited*
18 *number of commodities not de-*
19 *scribed in subparagraph (A) that*
20 *have a finite supply; or*

21 *“(C) an occurrence, extent of an*
22 *occurrence, or contingency associated*
23 *with commercial or economic con-*
24 *sequences beyond the control of the*

1 *parties to the relevant contract, agree-*
2 *ment, or transaction.*

3 **“(14) EXEMPT COMMODITY.—***The term*
4 *‘exempt commodity’ means a commodity*
5 *that is not an excluded commodity and is*
6 *not an agricultural commodity.*

7 **“(15) FINANCIAL INSTITUTION.—***The*
8 *term ‘financial institution’ means—*

9 **“(A) a corporation operating**
10 *under the fifth undesignated para-*
11 *graph of section 25 of the Federal Re-*
12 *serve Act (12 U.S.C. 603), commonly*
13 *known as ‘an agreement corporation’;*

14 **“(B) a corporation organized**
15 *under section 25A of the Federal Re-*
16 *serve Act (12 U.S.C. 611 et seq.), com-*
17 *monly known as an ‘Edge Act corpora-*
18 *tion’;*

19 **“(C) an institution that is regu-**
20 *lated by the Farm Credit Administra-*
21 *tion;*

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

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

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

9 “(G) a financial holding company
10 (as defined in section 2 of the Bank
11 Holding Company Act of 1956 (12
12 U.S.C. 1841));

13 “(H) a trust company; or

14 “(I) a similarly regulated sub-
15 sidiary or affiliate of an entity de-
16 scribed in any of subparagraphs (A)
17 through (H).”;

18 (4) by inserting after paragraph (20)
19 (as redesignated by paragraph (1)) the
20 following:

21 “(21) **HYBRID INSTRUMENT.**—The term
22 ‘hybrid instrument’ means a deposit (as
23 defined in section 3 of the Federal Deposit
24 Insurance Act (12 U.S.C. 1813)) offered by
25 a financial institution, or a security, hav-

1 *ing 1 or more payments indexed to the*
2 *value, level, or rate of 1 or more commod-*
3 *ities.”;*

4 *(5) by inserting after paragraph (23)*
5 *(as redesignated by paragraph (1)) the*
6 *following:*

7 *“(24)(A) MARGIN.—The term ‘margin’,*
8 *when used with respect to a security fu-*
9 *ture product, means the amount, type, and*
10 *form of collateral required to secure any*
11 *extension or maintenance of credit, or the*
12 *amount, type, and form of collateral re-*
13 *quired as a performance bond related to*
14 *the purchase, sale, or carrying of a secu-*
15 *rity future product, and all other uses of*
16 *collateral related to the purchasing, sell-*
17 *ing, or carrying of a security future prod-*
18 *uct.*

19 *“(B) The terms ‘margin level’ and*
20 *‘level of margin’, when used with respect*
21 *to a security future product, mean the*
22 *amount of margin required to secure any*
23 *extension or maintenance of credit, or the*
24 *amount of margin required as a perform-*

1 *ance bond related to the purchase, sale, or*
2 *carrying of a security future product.*

3 *“(C) The terms ‘higher margin level’*
4 *and ‘higher level of margin’, when used*
5 *with respect to a security future product,*
6 *mean a margin level established by a con-*
7 *tract market that is higher than the min-*
8 *imum amount established by the Securi-*
9 *ties and Exchange Commission pursuant*
10 *to section 7(c)(2)(B) of the Securities Ex-*
11 *change Act of 1934.”;*

12 *(6) by inserting after paragraph (25)*
13 *(as redesignated by paragraph (1)) the*
14 *following:*

15 *“(26) NARROW-BASED SECURITY INDEX.—*
16 *The term ‘narrow-based security index’*
17 *means an index of securities on which*
18 *contracts for future delivery are not per-*
19 *mitted under section 2(a)(1)(C) of this Act,*
20 *including any interest therein or based on*
21 *the value thereof.*

22 *“(27) OPTION.—The term ‘option’*
23 *means an agreement, contract, or trans-*
24 *action that is of the character of, or is*
25 *commonly known to the trade as, an ‘op-*

1 *tion*, *‘privilege*, *‘indemnity*, *‘bid*, *‘offer*,
2 *‘put*, *‘call*, *‘advance guaranty*, or *‘decline*
3 *guaranty*’.

4 **“(28) ORGANIZED EXCHANGE.—***The term*
5 *‘organized exchange’ means a trading fa-*
6 *cility that—*

7 **“(A) permits trading—**

8 **“(i) by or on behalf of a person**
9 ***that is not an eligible contract***
10 ***participant; or***

11 **“(ii) by persons other than on**
12 ***a principal-to-principal basis; or***

13 **“(B) has adopted (directly or**
14 ***through another nongovernmental en-***
15 ***tity) rules that—***

16 **“(i) govern the conduct of par-**
17 ***ticipants, other than rules that***
18 ***govern the submission of orders or***
19 ***execution of transactions on the***
20 ***trading facility; or***

21 **“(ii) include disciplinary sanc-**
22 ***tions other than the exclusion of***
23 ***participants from trading.”; and***

24 **(7) by adding at the end the following:**

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

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

5 **“(B) a derivatives transaction exe-**
6 **cution facility registered under sec-**
7 **tion 5a;**

8 **“(C) a derivatives clearing organi-**
9 **zation registered under section 5b; or**

10 **“(D) a board of trade designated**
11 **as a contract market under section 5f.**

12 **“(31) SECURITY.—The term ‘security’**
13 **means a security as defined in section**
14 **2(a)(1) of the Securities Act of 1933 (15**
15 **U.S.C. 77b(a)(1)) or section 3(a)(10) of the**
16 **Securities Exchange Act of 1934 (15 U.S.C.**
17 **78c(a)(10)).**

18 **“(32) SECURITY FUTURE.—The term ‘se-**
19 **curity future’ means a contract of sale for**
20 **future delivery of a single security or of a**
21 **narrow-based security index, including**
22 **any interest therein or based on the value**
23 **thereof, except an exempted security**
24 **under section 3(a)(12) of the Securities**
25 **Exchange Act of 1934 as in effect on the**

1 *date of enactment of the Futures Trading*
2 *Act of 1982 (other than any municipal se-*
3 *curity as defined in section 3(a)(29) of the*
4 *Securities Exchange Act of 1934 as in ef-*
5 *fect on the date of enactment of the Fu-*
6 *tures Trading Act of 1982).*

7 “(33) *SECURITY FUTURE PRODUCT.—The*
8 *term ‘security future product’ means a se-*
9 *curity future or any put, call, straddle, op-*
10 *tion, or privilege on any security future.*

11 “(34) *TRADING FACILITY.—*

12 “(A) *IN GENERAL.—The term ‘trad-*
13 *ing facility’ means a person or group*
14 *of persons that constitutes, maintains,*
15 *or provides a physical or electronic fa-*
16 *ility or system in which multiple par-*
17 *ticipants have the ability to execute or*
18 *trade agreements, contracts, or trans-*
19 *actions by accepting bids and offers*
20 *made by other participants that are*
21 *open to multiple participants in the*
22 *facility or system.*

23 “(B) *EXCLUSIONS.—The term ‘trad-*
24 *ing facility’ does not include—*

1 “(i) a person or group of per-
2 sons solely because the person or
3 group of persons—

4 “(I) constitutes, maintains,
5 or provides an electronic facil-
6 ity or system that enables par-
7 ticipants to negotiate the
8 terms of and enter into bilat-
9 eral transactions as a result
10 of communications exchanged
11 by the parties and not from
12 interaction of multiple orders
13 within a predetermined, non-
14 discretionary automated trade
15 matching algorithm; or

16 “(II) is a derivatives clear-
17 ing organization;

18 “(ii) a government securities
19 dealer or government securities
20 broker, to the extent that the deal-
21 er or broker executes or trades
22 agreements, contracts, or trans-
23 actions in government securities,
24 or assists persons in commu-
25 nicating about, negotiating, enter-

1 *ing into, executing, or trading an*
2 *agreement, contract, or trans-*
3 *action in government securities*
4 *(as the terms ‘government securi-*
5 *ties dealer’, ‘government securities*
6 *broker’, and ‘government securi-*
7 *ties’ are defined in section 3(a) of*
8 *the Securities Exchange Act of*
9 *1934 (15 U.S.C. 78c(a)); or*

10 *“(iii) facilities on which bids*
11 *and offers, and acceptances of*
12 *bids and offers effected on the fa-*
13 *cility, are not binding.”.*

14 **SEC. 102. AGREEMENTS, CONTRACTS, AND TRANSACTIONS**
15 **IN FOREIGN CURRENCY, GOVERNMENT SECU-**
16 **RITIES, AND CERTAIN OTHER COMMODITIES.**

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

20 **“(c) AGREEMENTS, CONTRACTS, AND TRANS-**
21 **ACTIONS IN FOREIGN CURRENCY, GOVERNMENT**
22 **SECURITIES, AND CERTAIN OTHER COMMOD-**
23 **ITIES.—**

24 **“(1) IN GENERAL.—Except as provided**
25 **in paragraph (2), nothing in this Act**

1 *(other than section 5b or 12(e)(2)(B)) gov-*
2 *erns or applies to an agreement, contract,*
3 *or transaction in—*

4 *“(A) foreign currency;*

5 *“(B) government securities;*

6 *“(C) security warrants;*

7 *“(D) security rights;*

8 *“(E) resales of installment loan*
9 *contracts;*

10 *“(F) repurchase agreements in an*
11 *excluded commodity; or*

12 *“(G) mortgages or mortgage pur-*
13 *chase commitments.*

14 *“(2) COMMISSION JURISDICTION.—*

15 *“(A) AGREEMENTS, CONTRACTS, AND*
16 *TRANSACTIONS THAT ARE FUTURES TRAD-*
17 *ED ON AN ORGANIZED EXCHANGE.—This*
18 *Act applies to, and the Commission*
19 *shall have jurisdiction over, an agree-*
20 *ment, contract, or transaction de-*
21 *scribed in paragraph (1) that is—*

22 *“(i) a contract of sale of a*
23 *commodity for future delivery (or*
24 *an option thereon), or an option*
25 *on a commodity (other than for-*

1 *foreign currency or a security or*
2 *group or index of securities), that*
3 *is executed or traded on an orga-*
4 *nized exchange; or*

5 *“(ii) an option on foreign cur-*
6 *rency and is executed or traded on*
7 *an organized exchange that is not*
8 *a national securities exchange*
9 *registered pursuant to section 6(a)*
10 *of the Securities Exchange Act of*
11 *1934.*

12 **“(B) AGREEMENTS, CONTRACTS, AND**
13 **TRANSACTIONS IN RETAIL FOREIGN CUR-**
14 **RENCY.—This Act applies to, and the**
15 **Commission shall have jurisdiction**
16 **over, an agreement, contract, or trans-**
17 **action in foreign currency that—**

18 *“(i) is a contract of sale for fu-*
19 *ture delivery (or an option on such*
20 *a contract) or an option; and*

21 *“(ii) is offered to, or entered*
22 *into with, a person that is not an*
23 *eligible contract participant, un-*
24 *less the counterparty, or the per-*

1 *son offering to be the*
2 *counterparty, of the person is—*

3 *“(I) a financial institu-*
4 *tion;*

5 *“(II) a broker or dealer*
6 *registered under section 15(b)*
7 *or 15C of the Securities Ex-*
8 *change Act of 1934 (15 U.S.C.*
9 *78o(b), 78o-5) or a futures*
10 *commission merchant reg-*
11 *istered under this Act;*

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

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

4 *“(IV) an insurance com-*
5 *pany that is subject to State*
6 *regulation (including a sub-*
7 *sidary or affiliate of such an*
8 *insurance company);*

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

13 *“(VI) an investment bank*
14 *holding company (as defined*
15 *in section 17(i) of the Securi-*
16 *ties Exchange Act of 1934).”.*

17 **SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**
18 **TRANSACTIONS.**

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

23 *“(d) EXCLUDED DERIVATIVE TRANS-*
24 *ACTIONS.—*

1 “(1) *IN GENERAL.—Nothing in this Act*
2 *(other than section 5b or 12(e)(2)(B)) gov-*
3 *erns or applies to an agreement, contract,*
4 *or transaction in an excluded commodity*
5 *if—*

6 “(A) *the agreement, contract, or*
7 *transaction is entered into only be-*
8 *tween persons that are eligible con-*
9 *tract participants at the time at*
10 *which the persons enter into the*
11 *agreement, contract, or transaction;*
12 *and*

13 “(B) *the agreement, contract, or*
14 *transaction is not executed or traded*
15 *on a trading facility.*

16 “(2) *ELECTRONIC TRADING FACILITY EX-*
17 *CLUSION.—Nothing in this Act (other than*
18 *section 5a, 5b, or 12(e)(2)(B)) governs or*
19 *applies to an agreement, contract, or*
20 *transaction in an excluded commodity if—*

21 “(A) *the agreement, contract, or*
22 *transaction is entered into on a prin-*
23 *cipal-to-principal basis between par-*
24 *ties trading for their own accounts or*

1 *as described in section 1a(12)(B)(ii) of*
2 *this Act;*

3 *“(B) the agreement, contract, or*
4 *transaction is entered into only be-*
5 *tween persons that are eligible con-*
6 *tract participants (as defined in sec-*
7 *tions 1a(12)(A), (B)(ii), and (C)) at the*
8 *time at which the persons enter into*
9 *the agreement, contract, or trans-*
10 *action; and*

11 *“(C) the agreement, contract, or*
12 *transaction is executed or traded on*
13 *an electronic trading facility.”.*

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

15 *Section 2 of the Commodity Exchange Act*
16 *(7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section*
17 *103) is amended by adding at the end the fol-*
18 *lowing:*

19 **“(e) EXCLUDED ELECTRONIC TRADING FACILI-**
20 **TIES.—**

21 **“(1) IN GENERAL.—Nothing in this Act**
22 **(other than section 12(e)(2)(B)) governs or**
23 **is applicable to an electronic trading fa-**
24 **cility that limits transactions authorized**
25 **to be conducted on its facilities to those**

1 *satisfying the requirements of sections*
2 *2(d)(2) and 2(h)(3) of this Act.*

3 *“(2) EFFECT ON AUTHORITY TO ESTAB-*
4 *LISH AND OPERATE.—Nothing in this Act*
5 *shall prohibit a board of trade designated*
6 *by the Commission as a contract market*
7 *or derivatives transaction execution facil-*
8 *ity, or an exempt board of trade, from es-*
9 *tablishing and operating an excluded*
10 *electronic trading facility excluded under*
11 *this Act pursuant to paragraph (1).”.*

12 *SEC. 105. HYBRID INSTRUMENTS.*

13 *Section 2 of the Commodity Exchange Act*
14 *(7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section*
15 *104) is amended by adding at the end the fol-*
16 *lowing:*

17 *“(f) EXCLUSION FOR QUALIFYING HYBRID IN-*
18 *STRUMENTS.—*

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

24 *“(2) PREDOMINANCE.—A hybrid instru-*
25 *ment shall be considered to be predomi-*

1 *nantly a security or depository instrument*
2 *if—*

3 *“(A) the issuer of the hybrid in-*
4 *strument receives payment in full of*
5 *the purchase price of the hybrid in-*
6 *strument, substantially contempora-*
7 *neously with delivery of the hybrid in-*
8 *strument;*

9 *“(B) the purchaser or holder of the*
10 *hybrid instrument is not required to*
11 *make any payment to the issuer in ad-*
12 *dition to the purchase price paid*
13 *under subparagraph (A), whether as*
14 *margin, settlement payment, or other-*
15 *wise, during the life of the hybrid in-*
16 *strument or at maturity;*

17 *“(C) the issuer of the hybrid in-*
18 *strument is not subject by the terms of*
19 *the instrument to mark-to-market*
20 *margin requirements; and*

21 *“(D) the hybrid instrument is not*
22 *marketed as a contract of sale for fu-*
23 *ture delivery of a commodity (or op-*
24 *tion on such a contract) subject to this*
25 *Act.*

1 **“(3) MARK-TO-MARKET MARGINING RE-**
2 **QUIREMENTS.—For the purposes of para-**
3 **graph (2)(C), mark-to-market margining**
4 **requirements do not include the obliga-**
5 **tion of an issuer of a secured debt instru-**
6 **ment to increase the amount of collateral**
7 **held in pledge for the benefit of the pur-**
8 **chaser of the secured debt instrument to**
9 **secure the repayment obligations of the**
10 **issuer under the secured debt instru-**
11 **ment.”.**

12 **SEC. 106. FUTURES ON SECURITIES.**

13 **Section 2 of the Commodity Exchange Act**
14 **(7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section**
15 **105) is amended by adding at the end the fol-**
16 **lowing:**

17 **“(g) Nothing in subsection (a)(1)(C) or**
18 **(a)(1)(D) governs or applies to—**

19 **“(1) an agreement, contract, or trans-**
20 **action that is excluded under subsection**
21 **(c) or (d) (whether or not the agreement,**
22 **contract, or transaction is otherwise sub-**
23 **ject to this Act);**

24 **“(2) an electronic trading facility that**
25 **is excluded under subsection (e); or**

1 **“(3) a hybrid instrument that is cov-**
 2 **ered by an exclusion under subsection (f)**
 3 **or an exemption granted by the Commis-**
 4 **sion under section 4(c) (whether or not the**
 5 **hybrid instrument is otherwise subject to**
 6 **this Act).”.**

7 **SEC. 107. TRANSACTIONS IN EXEMPT COMMODITIES AND**
 8 **SWAP TRANSACTIONS.**

9 **Section 2 of the Commodity Exchange Act**
 10 **(7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section**
 11 **106) is amended by adding at the end the fol-**
 12 **lowing:**

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

15 **“(1) Except as provided in paragraph**
 16 **(2) of this subsection, nothing in this Act**
 17 **shall apply to a contract, agreement or**
 18 **transaction in an exempt commodity**
 19 **which—**

20 **“(A) is entered into solely between**
 21 **persons that are eligible contract par-**
 22 **ticipants at the time they enter into**
 23 **the agreement, contract, or trans-**
 24 **action; and**

1 “(B) is not entered into on a trad-
2 ing facility.

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

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

8 “(B) sections 4b and 4o of this Act
9 and the regulations of the Commission
10 pursuant to section 4c(b) of this Act
11 proscribing fraud in connection with
12 commodity option transactions, to the
13 extent such agreement, contract, or
14 transaction is not between eligible
15 commercial participants and would
16 otherwise be subject to those provi-
17 sions; and

18 “(C) sections 6(c) and 9(a)(2) of
19 this Act to the extent they prohibit ma-
20 nipulation of the market price of any
21 commodity in interstate commerce, to
22 the extent such agreement, contract,
23 or transaction would otherwise be
24 subject to those provisions.

1 ***“(3) Except as provided in paragraph***
2 ***(4) of this subsection, nothing in this Act***
3 ***shall apply to an agreement, contract, or***
4 ***transaction in an exempt commodity***
5 ***which—***

6 ***“(A) is entered into on a principal-***
7 ***to-principal basis solely between per-***
8 ***sons that are eligible contract partici-***
9 ***pants at the time at which the persons***
10 ***enter into the agreement, contract, or***
11 ***transaction;***

12 ***“(B) entered into only between per-***
13 ***sons that are eligible contract partici-***
14 ***pants (as defined in sections***
15 ***1a(12)(A), (B)(ii), (B)(iii), and (C) at***
16 ***the time at which the persons enter***
17 ***into the agreement, contract, or trans-***
18 ***action; and***

19 ***“(C) is executed or traded on an***
20 ***electronic trading facility.***

21 ***“(4) An agreement, contract, or trans-***
22 ***action described in paragraph (3) shall be***
23 ***subject to—***

1 “(A) sections 5a (to the extent so
2 provided in section 5a(g)), 5b, and
3 12(e)(2)(B) of this Act;

4 “(B) sections 4b and 4o of this Act
5 and the regulations of the Commission
6 pursuant to section 4c(b) of this Act
7 proscribing fraud in connection with
8 commodity option transactions to the
9 extent such agreement, contract, or
10 transaction would otherwise be sub-
11 ject to those provisions;

12 “(C) sections 6(c) and 9(a)(2) of
13 this Act, to the extent they prohibit
14 manipulation of the market price of
15 any commodity in interstate commerce
16 and to the extent such agreement, con-
17 tract, or transaction would otherwise
18 be subject to those provisions; and

19 “(D) such rules and regulations as
20 the Commission may prescribe if nec-
21 essary to ensure timely dissemination
22 by the electronic trading facility of
23 price, trading volume, and other trad-
24 ing data to the extent appropriate, if
25 the Commission determines that the

1 *electronic trading facility performs a*
2 *significant price discovery function*
3 *for transactions in the cash market*
4 *for the commodity underlying any*
5 *agreement, contract, or transaction*
6 *executed or traded on the electronic*
7 *trading facility.*

8 “(i) *APPLICATION OF THE ACT.—Nothing in*
9 *this Act shall be construed (1) as implying or*
10 *creating any presumption that (A) any agree-*
11 *ment, contract, or transaction that is eligible*
12 *for an exclusion or exemption from regulation*
13 *under this Act or (B) any agreement, contract,*
14 *or transaction that is not eligible for an exclu-*
15 *sion or exemption from regulation under this*
16 *Act is or would otherwise be subject to this Act*
17 *or (2) as conferring jurisdiction on the Com-*
18 *mission with respect to any such agreement,*
19 *contract, or transaction, except as expressly*
20 *provided in section 5a (to the extent so pro-*
21 *vided in section 5a(g)) and 5b.”.*

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

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

1 **“SEC. 3. FINDINGS AND PURPOSE.**

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

11 **“(b) PURPOSE.—***It is the purpose of this Act*
12 *to serve the public interests described in sub-*
13 *section (a) through a system of effective self-*
14 *regulation of trading facilities, clearing sys-*
15 *tems, market participants and market profes-*
16 *sionals under the oversight of the Commission.*
17 *To foster these public interests, it is further the*
18 *purpose of this Act to deter and prevent price*
19 *manipulation or any other disruptions to mar-*
20 *ket integrity; to ensure the financial integrity*
21 *of all transactions subject to this Act and the*
22 *avoidance of systemic risk; to protect all mar-*
23 *ket participants from fraudulent or other abu-*
24 *sive sales practices and misuses of customer*
25 *assets; and to promote responsible innovation*

1 *and fair competition among boards of trade,*
2 *other markets and market participants.”.*

3 *SEC. 109. PROHIBITED TRANSACTIONS.*

4 *Section 4c of the Commodity Exchange Act*
5 *(7 U.S.C. 6c) is amended by striking “SEC. 4c.”*
6 *and all that follows through subsection (a)*
7 *and inserting the following:*

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

9 *“(a) IN GENERAL.—*

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

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

20 *“(B) determine the price basis of*
21 *any such transaction in interstate*
22 *commerce in the commodity; or*

23 *“(C) deliver any such commodity*
24 *sold, shipped, or received in interstate*

1 *commerce for the execution of the*
2 *transaction.*

3 “(2) *TRANSACTION.—A transaction re-*
4 *ferred to in paragraph (1) is a trans-*
5 *action that—*

6 “(A)(i) *is, is of the character of, or*
7 *is commonly known to the trade as, a*
8 *‘wash sale’ or ‘accommodation trade’;*
9 *or*

10 “(ii) *is a fictitious sale; or*

11 “(B) *is used to cause any price to*
12 *be reported, registered, or recorded*
13 *that is not a true and bona fide*
14 *price.”.*

15 *SEC. 110. DESIGNATION OF BOARDS OF TRADE AS CON-*
16 *TRACT MARKETS.*

17 *The Commodity Exchange Act is*
18 *amended—*

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

21 (2) *by striking sections 5 and 5a (7*
22 *U.S.C. 7, 7a) and inserting the following:*

1 *“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-*
2 *TRACT MARKETS.*

3 *“(a) APPLICATIONS.—A board of trade ap-*
4 *plying to the Commission for designation as a*
5 *contract market shall submit an application*
6 *to the Commission that includes any relevant*
7 *materials and records the Commission may re-*
8 *quire consistent with this Act.*

9 *“(b) CRITERIA FOR DESIGNATION.—*

10 *“(1) IN GENERAL.—To be designated as*
11 *a contract market, the board of trade*
12 *shall demonstrate to the Commission that*
13 *the board of trade meets the criteria spec-*
14 *ified in this subsection.*

15 *“(2) PREVENTION OF MARKET MANIPULA-*
16 *TION.—The board of trade shall have the*
17 *capacity to prevent market manipulation*
18 *through market surveillance, compliance,*
19 *and enforcement practices and proce-*
20 *dures, including methods for conducting*
21 *real-time monitoring of trading and com-*
22 *prehensive and accurate trade reconstruc-*
23 *tions.*

24 *“(3) FAIR AND EQUITABLE TRADING.—*
25 *The board of trade shall establish and en-*
26 *force trading rules to ensure fair and eq-*

1 *uitable trading through the facilities of*
2 *the contract market, and the capacity to*
3 *detect, investigate, and discipline any per-*
4 *son that violates the rules. Such rules*
5 *may authorize—*

6 *“(A) an exchange of—*

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

9 *“(ii) futures for cash commod-*
10 *ities;*

11 *“(iii) transfer trades or office*
12 *trades; or*

13 *“(iv) futures for swaps; and*

14 *“(B) a futures commission mer-*
15 *chant, acting as principal or agent, to*
16 *enter into or confirm the execution of*
17 *a contract for the purchase or sale of*
18 *a commodity for future delivery if the*
19 *contract is reported, recorded, or*
20 *cleared in accordance with the rules*
21 *of the contract market or a deriva-*
22 *tives clearing organization.*

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

1 “(A) *establish and enforce rules*
2 *defining, or specifications detailing,*
3 *the manner of operation of the trade*
4 *execution facility maintained by the*
5 *board of trade, including rules or*
6 *specifications describing the oper-*
7 *ation of any electronic matching plat-*
8 *form; and*

9 “(B) *demonstrate that the trading*
10 *facility operates in accordance with*
11 *the rules or specifications.*

12 “(5) *FINANCIAL INTEGRITY OF TRANS-*
13 *ACTIONS.—The board of trade shall estab-*
14 *lish and enforce rules and procedures for*
15 *ensuring the financial integrity of trans-*
16 *actions entered into by or through the fa-*
17 *cilities of the contract market.*

18 “(6) *DISCIPLINARY PROCEDURES.—The*
19 *board of trade shall establish and enforce*
20 *disciplinary procedures that authorize*
21 *the board of trade to discipline, suspend,*
22 *or expel members or market participants*
23 *that violate the rules of the board of*
24 *trade, or similar methods for performing*

1 *the same functions, including delegation*
2 *of the functions to third parties.*

3 “(7) *PUBLIC ACCESS.—The board of*
4 *trade shall provide the public with access*
5 *to the rules, regulations, and contract*
6 *specifications of the board of trade.*

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

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

22 “(d) *CORE PRINCIPLES FOR CONTRACT MAR-*
23 *KETS.—*

24 “(1) *IN GENERAL.—To maintain the*
25 *designation of a board of trade as a con-*

1 *tract market, a board of trade shall com-*
2 *ply with the core principles specified in*
3 *this subsection.*

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

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

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

21 **“(5) POSITION LIMITATIONS OR ACCOUNT-**
22 **ABILITY.—***To reduce the potential threat of*
23 *market manipulation or congestion, espe-*
24 *cially during trading in the delivery*
25 *month, the board of trade shall adopt po-*

1 *sition limitations or position account-*
2 *ability for speculators, where necessary*
3 *and appropriate.*

4 “(6) *EMERGENCY AUTHORITY.—The*
5 *board of trade shall adopt rules to pro-*
6 *vide for the exercise of emergency author-*
7 *ity, in consultation or cooperation with*
8 *the Commission, where necessary and ap-*
9 *propriate, including the authority to—*

10 “(A) *liquidate or transfer open po-*
11 *sitions in any contract;*

12 “(B) *suspend or curtail trading in*
13 *any contract; and*

14 “(C) *require market participants*
15 *in any contract to meet special mar-*
16 *gin requirements.*

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

22 “(A) *the terms and conditions of*
23 *the contracts of the contract market;*
24 *and*

1 ***“(B) the mechanisms for executing***
2 ***transactions on or through the facili-***
3 ***ties of the contract market.***

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

10 ***“(9) EXECUTION OF TRANSACTIONS.—The***
11 ***board of trade shall provide a competi-***
12 ***tive, open, and efficient market and mech-***
13 ***anism for executing transactions.***

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

24 ***“(11) FINANCIAL INTEGRITY OF CON-***
25 ***TRACTS.—The board of trade shall estab-***

1 *lish and enforce rules providing for the fi-*
2 *nancial integrity of any contracts traded*
3 *on the contract market, including rules to*
4 *ensure the financial integrity of any fu-*
5 *tures commission merchants and intro-*
6 *ducing brokers and the protection of cus-*
7 *tomers funds.*

8 **“(12) PROTECTION OF MARKET PARTICI-**
9 **PANTS.—***The board of trade shall establish*
10 *and enforce rules to protect market par-*
11 *ticipants from abusive practices com-*
12 *mitted by any party acting as an agent for*
13 *the participants.*

14 **“(13) DISPUTE RESOLUTION.—***The board*
15 *of trade shall establish and enforce rules*
16 *regarding and provide facilities for alter-*
17 *native dispute resolution as appropriate*
18 *for market participants and any market*
19 *intermediaries.*

20 **“(14) GOVERNANCE FITNESS STAND-**
21 **ARDS.—***The board of trade shall establish*
22 *and enforce appropriate fitness standards*
23 *for directors, members of any disciplinary*
24 *committee, members of the contract mar-*
25 *ket, and any other persons with direct ac-*

1 *cess to the facility (including any parties*
2 *affiliated with any of the persons de-*
3 *scribed in this paragraph).*

4 *“(15) CONFLICTS OF INTEREST.—The*
5 *board of trade shall establish and enforce*
6 *rules to minimize conflicts of interest in*
7 *the decisionmaking process of the con-*
8 *tract market and establish a process for*
9 *resolving such conflicts of interest.*

10 *“(16) COMPOSITION OF BOARDS OF MUTU-*
11 *ALLY OWNED CONTRACT MARKETS.—In the*
12 *case of a mutually owned contract mar-*
13 *ket, the board of trade shall ensure that*
14 *the composition of the governing board re-*
15 *fects market participants.*

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

18 *“(A) maintain full records of all*
19 *activities related to the business of the*
20 *contract market in a form and man-*
21 *ner acceptable to the Commission for*
22 *a period of at least 5 years;*

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

1 *the records to the Commission at the*
2 *expense of the person required to*
3 *maintain the records; and*

4 “(C) *keep the records open to in-*
5 *spection by any representative of the*
6 *Commission or the Department of Jus-*
7 *tice.*

8 “(18) *ANTITRUST CONSIDERATIONS.—Un-*
9 *less necessary or appropriate to achieve*
10 *the purposes of this Act, the board of*
11 *trade shall not—*

12 “(A) *adopt any rules or taking any*
13 *actions that result in any unreason-*
14 *able restraints of trade; or*

15 “(B) *impose any material anti-*
16 *competitive burden on trading on the*
17 *contract market.*

18 “(e) *CURRENT AGRICULTURAL AND METAL*
19 *COMMODITIES.—*

20 “(1) *Subject to paragraph (2), a con-*
21 *tract for purchase or sale for future deliv-*
22 *ery of an agricultural or metal commodity*
23 *enumerated in section 1a(4) that is avail-*
24 *able for trade on a contract market, as of*
25 *the date of the enactment of this sub-*

1 *section, may be traded only on a contract*
2 *market designated under this section.*

3 *“(2) In order to promote responsible*
4 *economic or financial innovation and fair*
5 *competition, the Commission, on applica-*
6 *tion by any person, after notice and public*
7 *comment and opportunity for hearing,*
8 *may prescribe rules and regulations to*
9 *provide for the offer and sale of contracts*
10 *for future delivery or options thereon to be*
11 *conducted on a derivatives transaction*
12 *execution facility.”.*

13 *SEC. 111. DERIVATIVES TRANSACTION EXECUTION FACILI-*
14 *TIES.*

15 *The Commodity Exchange Act (7 U.S.C. 1*
16 *et seq.) is amended by inserting after section*
17 *5 (as amended by section 110(2)) the following:*

18 *“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-*
19 *TIES.*

20 *“(a) IN GENERAL.—In lieu of compliance*
21 *with the contract market designation require-*
22 *ments of section 5, a board of trade may elect*
23 *to operate as a registered derivatives trans-*
24 *action execution facility if the facility is—*

1 “(1) *designated as a contract market*
2 *and meets the requirements of this sec-*
3 *tion; or*

4 “(2) *registered as a derivatives trans-*
5 *action execution facility under subsection*
6 *(c).*

7 “(b) **REQUIREMENTS FOR TRADING FUTURES**
8 **CONTRACTS OR OTHER DERIVATIVES TRANS-**
9 **ACTIONS.—**

10 “(1) **IN GENERAL.—**A *registered deriva-*
11 *tives transaction execution facility under*
12 *subsection (a) may trade any futures con-*
13 *tract (or option on such a contract) on or*
14 *through the facility only by satisfying the*
15 *requirements of this section.*

16 “(2) **REQUIREMENTS FOR UNDERLYING**
17 **COMMODITIES.—**A *registered derivatives*
18 *transaction execution facility may trade*
19 *any futures contract only if—*

20 “(A) *the underlying commodity*
21 *has a nearly inexhaustible deliverable*
22 *supply;*

23 “(B) *the underlying commodity*
24 *has a deliverable supply that is suffi-*

1 *ciently large that the contract is not*
2 *readily susceptible to manipulation;*

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

5 “(D) *the Commission determines,*
6 *based on the market characteristics,*
7 *surveillance history, self-regulatory*
8 *record, or capacity of the facility that*
9 *trading in the futures contract is not*
10 *readily susceptible to manipulation.*

11 “(3) *ELIGIBLE TRADERS.—To trade on a*
12 *registered derivatives transaction execu-*
13 *tion facility, a person shall—*

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

16 “(B)(i) *be an eligible contract par-*
17 *ticipant; or*

18 “(ii) *be a person trading through*
19 *a futures commission merchant that—*

20 “(I) *is registered with the Com-*
21 *mission;*

22 “(II) *is a member of a futures*
23 *self-regulatory organization;*

1 “(III) *is a clearing member of*
2 *a derivatives clearing organiza-*
3 *tion; and*

4 “(IV) *has net capital of at*
5 *least \$20,000,000.*

6 “(4) *TRADING BY CONTRACT MARKETS.—*
7 *A board of trade that is designated as a*
8 *contract market shall, to the extent that*
9 *the contract market also operates a reg-*
10 *istered derivatives transaction execution*
11 *facility—*

12 “(A) *provide a physical location*
13 *for the contract market trading of the*
14 *board of trade that is separate from*
15 *trading on the derivatives transaction*
16 *execution facility of the board of*
17 *trade; or*

18 “(B) *if the board of trade uses the*
19 *same electronic trading system for*
20 *trading on the contract market and*
21 *derivatives transaction execution fa-*
22 *ility of the board of trade, identify*
23 *whether the electronic trading is tak-*
24 *ing place on the contract market or*

1 *the derivatives transaction execution*
2 *facility.*

3 “(5) *IMPERMISSIBLE PRODUCTS.—It shall*
4 *be unlawful for any person to execute or*
5 *trade a security future product or other*
6 *future involving a security, except an ex-*
7 *empt security as defined in section*
8 *3(a)(12) of the Securities Exchange Act of*
9 *1934 as in effect on the date of enactment*
10 *of the Futures Trading Act of 1982, on a*
11 *designated transaction execution facility.*

12 “(c) *CRITERIA FOR REGISTRATION.—*

13 “(1) *IN GENERAL.—To be registered as a*
14 *registered derivatives transaction execu-*
15 *tion facility, the board of trade shall dem-*
16 *onstrate to the Commission that the board*
17 *of trade meets the criteria specified in*
18 *this subsection.*

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

1 “(A) *obtain information necessary*
2 *to perform the functions required*
3 *under this section; or*

4 “(B) *use technological means to—*

5 “(i) *provide market partici-*
6 *pants with impartial access to the*
7 *market; and*

8 “(ii) *capture information that*
9 *may be used in establishing*
10 *whether rule violations have oc-*
11 *curred.*

12 “(3) *TRADING PROCEDURES.—The board*
13 *of trade shall establish and enforce rules*
14 *or terms and conditions defining, or speci-*
15 *fications detailing, trading procedures to*
16 *be used in entering and executing orders*
17 *traded on the facilities of the board of*
18 *trade. Such rules may authorize—*

19 “(A) *an exchange of—*

20 “(i) *futures in connection with*
21 *a cash commodity transaction;*

22 “(ii) *futures for cash commod-*
23 *ities;*

24 “(iii) *transfer trades or office*
25 *trades; or*

1 “(iv) *futures for swaps; and*

2 “(B) *a futures commission mer-*
3 *chant, acting as principal or agent, to*
4 *enter into or confirm the execution of*
5 *a contract for the purchase or sale of*
6 *a commodity for future delivery if the*
7 *contract is reported, recorded, or*
8 *cleared in accordance with the rules*
9 *of the registered derivatives trans-*
10 *action execution facility or a deriva-*
11 *tives clearing organization.*

12 “(4) *FINANCIAL INTEGRITY OF TRANS-*
13 *ACTIONS.—The board of trade shall estab-*
14 *lish and enforce rules or terms and condi-*
15 *tions providing for the financial integrity*
16 *of transactions entered on or through the*
17 *facilities of the board of trade, including*
18 *rules or terms and conditions to ensure*
19 *the financial integrity of any futures com-*
20 *mission merchants and introducing bro-*
21 *kers and the protection of customer funds.*

22 “(d) *CORE PRINCIPLES FOR REGISTERED DE-*
23 *RIVATIVES TRANSACTION EXECUTION FACILI-*
24 *TIES.—*

1 “(1) *IN GENERAL.—To maintain the*
2 *registration of a board of trade as a de-*
3 *rivatives transaction execution facility, a*
4 *board of trade shall comply with the core*
5 *principles specified in this subsection.*

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

12 “(3) *MONITORING OF TRADING.—The*
13 *board of trade shall monitor trading in*
14 *the contracts of the facility to ensure or-*
15 *derly trading in the contract and to main-*
16 *tain an orderly market while providing*
17 *any necessary trading information to the*
18 *Commission to allow the Commission to*
19 *discharge the responsibilities of the Com-*
20 *mission under the Act.*

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

1 “(A) *contract terms and condi-*
2 *tions;*

3 “(B) *trading conventions, mecha-*
4 *nisms, and practices;*

5 “(C) *financial integrity protec-*
6 *tions; and*

7 “(D) *other information relevant to*
8 *participation in trading on the facil-*
9 *ity.*

10 “(5) *DAILY PUBLICATION OF TRADING IN-*
11 *FORMATION.—The board of trade shall*
12 *make public daily information on settle-*
13 *ment prices, volume, open interest, and*
14 *opening and closing ranges for actively*
15 *traded contracts on the facility.*

16 “(6) *FITNESS STANDARDS.—The board of*
17 *trade shall establish and enforce appro-*
18 *priate fitness standards for directors,*
19 *members of any disciplinary committee,*
20 *members, and any other persons with di-*
21 *rect access to the facility, including any*
22 *parties affiliated with any of the persons*
23 *described in this paragraph.*

24 “(7) *CONFLICTS OF INTEREST.—The*
25 *board of trade shall establish and enforce*

1 *rules to minimize conflicts of interest in*
2 *the decisionmaking process of the deriva-*
3 *tives transaction execution facility and es-*
4 *tablish a process for resolving such con-*
5 *licts of interest.*

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

8 “(A) *maintain full records of all*
9 *activities related to the business of the*
10 *derivatives transaction execution fa-*
11 *cility in a form and manner accept-*
12 *able to the Commission for a period of*
13 *at least 5 years;*

14 “(B) *make the records readily*
15 *available during at least the first 2*
16 *years of the 5-year period and provide*
17 *the records to the Commission at the*
18 *expense of the person required to*
19 *maintain the records; and*

20 “(C) *keep the records open to in-*
21 *spection by any representatives of the*
22 *Commission or the Department of Jus-*
23 *tice.*

24 “(9) *ANTITRUST CONSIDERATIONS.—Un-*
25 *less necessary or appropriate to achieve*

1 *the purposes of this Act, the board of*
2 *trade shall not—*

3 *“(A) adopt any rules or take any*
4 *actions that result in any unreason-*
5 *able restraint of trade; or*

6 *“(B) impose any material anti-*
7 *competitive burden on trading on the*
8 *derivatives transaction execution fa-*
9 *cility.*

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

13 *“(1) IN GENERAL.—A registered deriva-*
14 *tives transaction execution facility may by*
15 *rule allow a broker-dealer, depository in-*
16 *stitution, or institution of the Farm Credit*
17 *System that meets the requirements of*
18 *paragraph (2) to—*

19 *“(A) act as an intermediary in*
20 *transactions executed on the facility*
21 *on behalf of customers of the broker-*
22 *dealer, depository institution, or insti-*
23 *tution of the Farm Credit System; and*

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

4 “(2) **REQUIREMENTS.**—The require-
5 ments referred to in paragraph (1) are
6 that—

7 “(A) the broker-dealer be in good
8 standing with the Securities and Ex-
9 change Commission, or the depository
10 institution or institution of the Farm
11 Credit System be in good standing
12 with Federal bank regulatory agen-
13 cies (including the Farm Credit Ad-
14 ministration), as applicable; and

15 “(B) if the broker-dealer, deposi-
16 tory institution, or institution of the
17 Farm Credit System carries or holds
18 customer accounts or funds for trans-
19 actions on the derivatives transaction
20 execution facility for more than 1
21 business day, the broker-dealer, deposi-
22 tory institution, or institution of the
23 Farm Credit System is registered as a
24 futures commission merchant and is a

1 *member of a registered futures asso-*
2 *ciation.*

3 “(3) **IMPLEMENTATION.**—*The Commis-*
4 *sion shall cooperate and coordinate with*
5 *the Securities and Exchange Commission,*
6 *the Secretary of the Treasury, and Federal*
7 *banking regulatory agencies (including*
8 *the Farm Credit Administration) in*
9 *adopting rules and taking any other ap-*
10 *propriate action to facilitate the imple-*
11 *mentation of this subsection.*

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

1 “(g) *ELECTION TO TRADE EXCLUDED COM-*
2 *MODITIES.—*

3 “(1) *IN GENERAL.—A board of trade*
4 *that is a registered derivatives trans-*
5 *action execution facility may trade on the*
6 *facility any agreements, contracts, or*
7 *transactions involving excluded commod-*
8 *ities other than securities, except exempt*
9 *securities under section 3(a)(12) of the Se-*
10 *curities Exchange Act of 1934 as in effect*
11 *on the date of enactment of the Futures*
12 *Trading Act of 1982, that are otherwise*
13 *excluded or exempt from this Act under*
14 *section 2(c), 2(d), or 2(h). Notwithstanding*
15 *section 5a(b)(2), a board of trade on*
16 *which agreements, contracts, or trans-*
17 *actions excluded or exempt from this Act*
18 *under section 2(c), 2(d), or 2(h) are traded*
19 *may elect, but shall not be required, to*
20 *register as a derivatives transaction exe-*
21 *cution facility with respect to such agree-*
22 *ments, contracts, or transactions, other*
23 *than any agreement, contract, or trans-*
24 *action in a security other than such an*
25 *exempt security.*

1 **“(2) EXCLUSIVE JURISDICTION OF THE**
2 **COMMISSION.—The Commission shall have**
3 **exclusive jurisdiction over agreements,**
4 **contracts, or transactions described in**
5 **paragraph (1) to the extent that the agree-**
6 **ments, contracts, or transactions are trad-**
7 **ed on a derivatives transaction execution**
8 **facility.”.**

9 **SEC. 112. DERIVATIVES CLEARING ORGANIZATIONS.**

10 **The Commodity Exchange Act (7 U.S.C. 1**
11 **et seq.) is amended by inserting after section**
12 **5a (as added by section 111) the following:**

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

14 **“(a) REGISTRATION REQUIREMENT.—Except**
15 **as provided in subsection (b), it shall be un-**
16 **lawful for a derivatives clearing organization,**
17 **unless registered with the Commission, di-**
18 **rectly or indirectly to make use of the mails or**
19 **any means or instrumentality of interstate**
20 **commerce to perform the functions of a deriva-**
21 **tives clearing organization described in sec-**
22 **tion 1a(9).**

23 **“(b) EXCLUSION OF DERIVATIVES CLEARING**
24 **ORGANIZATIONS SUBJECT TO OTHER REGULATORY**
25 **AUTHORITIES.—A derivatives clearing organi-**

1 *zation shall not be required to register with*
2 *the Commission, and the Commission shall*
3 *have no jurisdiction with respect to the deriva-*
4 *tives clearing organization, if the derivatives*
5 *clearing organization—*

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

9 “(B) *is subject to the supervisory juris-*
10 *isdiction of a Federal banking agency (as*
11 *defined in section 3 of the Federal Deposit*
12 *Insurance Act (12 U.S.C. 1813)) or the Na-*
13 *tional Credit Union Administration; or*

14 “(C) *is subject to the supervisory juris-*
15 *isdiction of a foreign regulatory authority*
16 *that is recognized by the Securities and*
17 *Exchange Commission, the Board of Gov-*
18 *ernors of the Federal Reserve System, the*
19 *Comptroller of the Currency, or the Com-*
20 *mission as overseeing a system of consoli-*
21 *dated supervision comparable to that pro-*
22 *vided under applicable United States law;*
23 *and*

24 “(2) *does not clear—*

1 “(A) *a contract of sale for future*
2 *delivery other than a security future*
3 *product;*

4 “(B) *an option on a contract of*
5 *sale for future delivery other than a*
6 *security future product; or*

7 “(C) *an option on a commodity*
8 *other than a security.*

9 “(c) *VOLUNTARY REGISTRATION.—A deriva-*
10 *tives clearing organization that is not exempt*
11 *from registration under subsection (b) may*
12 *register with the Commission as a derivatives*
13 *clearing organization.*

14 “(d) *REGISTRATION OF DERIVATIVES CLEAR-*
15 *ING ORGANIZATIONS.—*

16 “(1) *APPLICATION.—A person desiring*
17 *to register as a derivatives clearing orga-*
18 *nization shall submit to the Commission*
19 *an application in such form and con-*
20 *taining such information as the Commis-*
21 *sion may require for the purpose of mak-*
22 *ing the determinations required for ap-*
23 *proval under paragraph (2).*

24 “(2) *CORE PRINCIPLES.—*

1 “(A) *IN GENERAL.—To be registered*
2 *and to maintain registration as a de-*
3 *rivatives clearing organization, an*
4 *applicant shall demonstrate to the*
5 *Commission that the applicant com-*
6 *plies with the core principles specified*
7 *in this paragraph.*

8 “(B) *FINANCIAL RESOURCES.—The*
9 *applicant shall demonstrate that the*
10 *applicant has adequate financial,*
11 *operational, and managerial re-*
12 *sources to discharge the responsibil-*
13 *ities of a derivatives clearing organi-*
14 *zation without interruption in various*
15 *market conditions.*

16 “(C) *PARTICIPANT AND PRODUCT ELI-*
17 *GIBILITY.—The applicant shall*
18 *establish—*

19 “(i) *appropriate admission*
20 *and continuing eligibility stand-*
21 *ards (including appropriate min-*
22 *imum financial requirements) for*
23 *members of and participants in*
24 *the organization; and*

1 “(ii) *appropriate standards*
2 *for determining eligibility of*
3 *agreements, contracts, or trans-*
4 *actions submitted to the appli-*
5 *cant.*

6 “(D) *RISK MANAGEMENT.—The ap-*
7 *plicant shall have the ability to man-*
8 *age the risks associated with dis-*
9 *charging the responsibilities of a de-*
10 *rivatives clearing organization*
11 *through the use of appropriate tools*
12 *and procedures.*

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

16 “(i) *complete settlements on a*
17 *timely basis under varying cir-*
18 *cumstances;*

19 “(ii) *maintain an adequate*
20 *record of the flow of funds associ-*
21 *ated with each transaction that*
22 *the applicant clears; and*

23 “(iii) *comply with the terms*
24 *and conditions of any permitted*

1 *netting or offset arrangements*
2 *with other clearing organizations.*

3 “(F) *TREATMENT OF FUNDS.—The*
4 *applicant shall have standards and*
5 *procedures designed to protect and en-*
6 *sure the safety of member and partici-*
7 *part funds.*

8 “(G) *DEFAULT RULES AND PROCE-*
9 *DURES.—The applicant shall have*
10 *rules and procedures designed to*
11 *allow for efficient, fair, and safe man-*
12 *agement of events when members or*
13 *participants become insolvent or oth-*
14 *erwise default on their obligations to*
15 *the derivatives clearing organization.*

16 “(H) *RULE ENFORCEMENT.—The ap-*
17 *plicant shall—*

18 “(i) *maintain adequate ar-*
19 *rangements and resources for the*
20 *effective monitoring and enforce-*
21 *ment of compliance with rules of*
22 *the applicant and for resolution of*
23 *disputes; and*

24 “(ii) *have the authority and*
25 *ability to discipline, limit, sus-*

1 *pend, or terminate a member’s or*
2 *participant’s activities for viola-*
3 *tions of rules of the applicant.*

4 “(I) *SYSTEM SAFEGUARDS.—The ap-*
5 *plicant shall demonstrate that the*
6 *applicant—*

7 “(i) *has established and will*
8 *maintain a program of oversight*
9 *and risk analysis to ensure that*
10 *the automated systems of the ap-*
11 *plicant function properly and*
12 *have adequate capacity and secu-*
13 *rity; and*

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

21 “(J) *REPORTING.—The applicant*
22 *shall provide to the Commission all*
23 *information necessary for the Commis-*
24 *sion to conduct the oversight function*
25 *of the applicant with respect to the ac-*

1 *activities of the derivatives clearing or-*
2 *ganization.*

3 “(K) **RECORDKEEPING.**—*The appli-*
4 *cant shall—*

5 “(i) *maintain full records of*
6 *all activities related to the busi-*
7 *ness of the applicant as a deriva-*
8 *tives clearing organization in a*
9 *form and manner acceptable to*
10 *the Commission for a period of at*
11 *least 5 years;*

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

19 “(iii) *keep the records open to*
20 *inspection by any representative of*
21 *the Commission or the Department*
22 *of Justice.*

23 “(L) **PUBLIC INFORMATION.**—*The ap-*
24 *plicant shall make information con-*
25 *cerning the rules and operating proce-*

1 *dures governing the clearing and set-*
2 *tlement systems (including default*
3 *procedures) available to market par-*
4 *ticipants.*

5 **“(M) INFORMATION SHARING.—***The*
6 *applicant shall—*

7 *“(i) enter into and abide by*
8 *the terms of all appropriate and*
9 *applicable domestic and inter-*
10 *national information-sharing*
11 *agreements; and*

12 *“(ii) use relevant information*
13 *obtained from the agreements in*
14 *carrying out the clearing organi-*
15 *zation’s risk management pro-*
16 *gram.*

17 **“(N) ANTITRUST CONSIDERATIONS.—**
18 *Unless necessary or appropriate to*
19 *achieve the purposes of this Act, the*
20 *derivatives clearing organization*
21 *shall not—*

22 *“(i) adopt any rule or take any*
23 *action that results in any unrea-*
24 *sonable restraint of trade; or*

1 “(ii) *impose any material anti-*
2 *competitive burden on trading on*
3 *the contract market.*

4 “(3) *ORDERS CONCERNING COMPETI-*
5 *TION.—A derivatives clearing organization*
6 *may request the Commission to issue an*
7 *order concerning whether a rule or prac-*
8 *tice of the applicant is the least anti-*
9 *competitive means of achieving the objec-*
10 *tives, purposes, and policies of this Act.*

11 “(e) *EXISTING DERIVATIVES CLEARING ORGA-*
12 *NIZATIONS.—A derivatives clearing organiza-*
13 *tion shall be deemed to be registered under*
14 *this section to the extent that—*

15 “(1) *the derivatives clearing organiza-*
16 *tion clears agreements, contracts, or*
17 *transactions for a board of trade that has*
18 *been designated by the Commission as a*
19 *contract market for such agreements, con-*
20 *tracts, or transactions before the date of*
21 *enactment of this section; and*

22 “(2) *the Commission has reviewed and*
23 *approved the rules of the derivatives*
24 *clearing organization before that date.*

25 “(f) *APPOINTMENT OF TRUSTEE.—*

1 “(1) *IN GENERAL.—If a proceeding*
2 *under section 5e results in the suspension*
3 *or revocation of the registration of a de-*
4 *rivatives clearing organization, or if a de-*
5 *rivatives clearing organization withdraws*
6 *from registration, the Commission, on no-*
7 *tice to the derivatives clearing organiza-*
8 *tion, may apply to the appropriate United*
9 *States district court where the derivatives*
10 *clearing organization is located for the*
11 *appointment of a trustee.*

12 “(2) *ASSUMPTION OF JURISDICTION.—If*
13 *the Commission applies for appointment*
14 *of a trustee under paragraph (1)—*

15 “(A) *the court may take exclusive*
16 *jurisdiction over the derivatives clear-*
17 *ing organization and the records and*
18 *assets of the derivatives clearing orga-*
19 *nization, wherever located; and*

20 “(B) *if the court takes jurisdiction*
21 *under subparagraph (A), the court*
22 *shall appoint the Commission, or a*
23 *person designated by the Commission,*
24 *as trustee with power to take posses-*
25 *sion and continue to operate or termi-*

1 *nate the operations of the derivatives*
2 *clearing organization in an orderly*
3 *manner for the protection of partici-*
4 *pants, subject to such terms and con-*
5 *ditions as the court may prescribe.*

6 “(g) **LINKING OF REGULATED CLEARING FA-**
7 **CILITIES.—**

8 “(1) **IN GENERAL.—***The Commission*
9 *shall facilitate the linking or coordina-*
10 *tion of derivatives clearing organizations*
11 *registered under this Act with other regu-*
12 *lated clearance facilities for the coordi-*
13 *nated settlement of cleared transactions.*

14 “(2) **COORDINATION.—***In carrying out*
15 *paragraph (1), the Commission shall co-*
16 *ordinate with the Federal banking agen-*
17 *cies and the Securities and Exchange*
18 *Commission.”.*

19 **SEC. 113. COMMON PROVISIONS APPLICABLE TO REG-**
20 **ISTERED ENTITIES.**

21 *The Commodity Exchange Act (7 U.S.C. 1*
22 *et seq.) is amended by inserting after section*
23 *5b (as added by section 112) the following:*

1 “SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-
2 ISTERED ENTITIES.

3 “(a) ACCEPTABLE BUSINESS PRACTICES
4 UNDER CORE PRINCIPLES.—

5 “(1) IN GENERAL.—Consistent with the
6 purposes of this Act, the Commission may
7 issue interpretations, or approve interpre-
8 tations submitted to the Commission, of
9 sections 5(d), 5a(d), and 5b(d)(2) to de-
10 scribe what would constitute an accept-
11 able business practice under such sec-
12 tions.

13 “(2) EFFECT OF INTERPRETATION.—An
14 interpretation issued under paragraph (1)
15 shall not provide the exclusive means for
16 complying with such sections.

17 “(b) DELEGATION OF FUNCTIONS UNDER
18 CORE PRINCIPLES.—

19 “(1) IN GENERAL.—A contract market
20 or derivatives transaction execution facil-
21 ity may comply with any applicable core
22 principle through delegation of any rel-
23 evant function to a registered futures as-
24 sociation or another registered entity.

25 “(2) RESPONSIBILITY.—A contract mar-
26 ket or derivatives transaction execution

1 *facility that delegates a function under*
2 *paragraph (1) shall remain responsible*
3 *for carrying out the function.*

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

6 **“(1) IN GENERAL.—***Except as provided*
7 *in sections 2(a)(1)(C) and 2(a)(1)(D), and*
8 *subject to paragraph (2), a registered en-*
9 *tity may elect to list for trading any new*
10 *contract or other instrument, or may elect*
11 *to approve and implement any new rule or*
12 *rule amendment, by providing to the Com-*
13 *mission (and the Secretary of the Treas-*
14 *ury, in the case of a contract of sale for*
15 *future delivery of a government security*
16 *(or option thereon) or a rule or rule*
17 *amendment specifically related to such a*
18 *contract) a written certification that the*
19 *new contract, new rule, or rule amend-*
20 *ment complies with this Act (including*
21 *regulations under this Act).*

22 **“(2) PRIOR APPROVAL.—**

23 **“(A) IN GENERAL.—***A registered en-*
24 *tity may request that the Commission*
25 *grant prior approval to any new con-*

1 *tract or other instrument, new rule, or*
2 *rule amendment.*

3 **“(B) PRIOR APPROVAL REQUIRED.—**
4 *Notwithstanding any other provision*
5 *of this section, a designated contract*
6 *market shall submit to the Commis-*
7 *sion for prior approval each rule*
8 *amendment that materially changes*
9 *the terms and conditions, as deter-*
10 *mined by the Commission, in any con-*
11 *tract of sale for future delivery of a*
12 *commodity specifically enumerated in*
13 *section 1a(4) of this Act (or any option*
14 *thereon) traded through its facilities*
15 *if such rule amendment applies to*
16 *contracts and delivery months which*
17 *have already been listed for trading*
18 *and have open interest.*

19 **“(C) DEADLINE.—***If prior approval*
20 *is requested under subparagraph (A),*
21 *the Commission shall take final ac-*
22 *tion on the request not later than 90*
23 *days after submission of the request,*
24 *unless the person submitting the re-*
25 *quest agrees to an extension of the*

1 *time limitation established under this*
2 *subparagraph.*

3 “(3) *APPROVAL.—The Commission shall*
4 *approve any such new contract or instru-*
5 *ment, new rule, or rule amendment unless*
6 *the Commission finds that the new con-*
7 *tract or instrument, new rule, or rule*
8 *amendment would violate this Act.*

9 “(d) *RESERVATION OF EMERGENCY AUTHOR-*
10 *ITY.—Nothing in this section shall limit or in*
11 *any way affect the emergency powers of the*
12 *Commission provided in section 8a(9) of this*
13 *Act.”.*

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

15 *The Commodity Exchange Act (7 U.S.C. 1*
16 *et seq.) is amended by inserting after section*
17 *5c (as added by section 113) the following:*

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

19 *“(a) IN GENERAL.—Except as otherwise pro-*
20 *vided in this section, a contract of sale (or op-*
21 *tion on such a contract) of a commodity for fu-*
22 *ture delivery traded on or through the facili-*
23 *ties of an exempt board of trade shall be ex-*
24 *empt from all provisions of this Act, other than*
25 *section 2(g).*

1 **“(b) CRITERIA FOR EXEMPTION.—To qualify**
2 **for an exemption under subsection (a), a board**
3 **of trade shall limit trading on or through the**
4 **facilities of the board of trade to contracts of**
5 **sale of a commodity for future delivery (or op-**
6 **tions on such contracts)—**

7 **“(1) that have—**

8 **“(A) a nearly inexhaustible deliv-**
9 **erable supply;**

10 **“(B) a deliverable supply that is**
11 **sufficiently large, and a cash market**
12 **sufficiently liquid, to render any con-**
13 **tract traded on the commodity highly**
14 **unlikely to be susceptible to the threat**
15 **of manipulation; or**

16 **“(C) no cash market;**

17 **“(2) that are entered into only between**
18 **persons that are eligible contract partici-**
19 **pants at the time at which the persons**
20 **enter into the contract; and**

21 **“(3) that are not contracts of sale (or**
22 **options on the contract) for future deliv-**
23 **ery of any security, including any group**
24 **or index of securities or any interest in, or**

1 *interest that is based on the value of, any*
2 *security.*

3 **“(c) ANTIMANIPULATION REQUIREMENTS.—A**
4 *party to a futures contract or related option*
5 *that is traded on an exempt board of trade*
6 *shall be subject to sections 4b, 4o, 6(c), and*
7 *9(a)(2), and the Commission shall enforce*
8 *those provisions with respect to any such trad-*
9 *ing.*

10 **“(d) PRICE DISCOVERY.—If the Commission**
11 *finds that an exempt board of trade is a sig-*
12 *nificant source of price discovery for any un-*
13 *derlying commodity in any transaction traded*
14 *on or through the facilities of the board of*
15 *trade, the board of trade shall disseminate*
16 *publicly on a daily basis trading volume, open-*
17 *ing and closing price ranges, open interest,*
18 *and other trading data as appropriate to the*
19 *market.*

20 **“(e) JURISDICTION.—The Commission shall**
21 *have exclusive jurisdiction over any account,*
22 *agreement, or transaction involving a contract*
23 *of sale of a commodity, or related option, to the*
24 *extent that such account, agreement, or trans-*
25 *action is traded on an exempt board of trade.*

1 “(f) *SUBSIDIARIES.*—A board of trade that is
2 *designated as a contract market or registered*
3 *as a derivatives transaction execution facility*
4 *may operate an exempt board of trade by es-*
5 *tablishing a separate subsidiary or other legal*
6 *entity and otherwise satisfying the require-*
7 *ments of this section.*”.

8 *SEC. 115. SUSPENSION OR REVOCATION OF DESIGNATION*
9 *AS CONTRACT MARKET.*

10 *Section 5e of the Commodity Exchange Act*
11 *(7 U.S.C. 7b) (as redesignated by section*
12 *110(1)) is amended to read as follows:*

13 *“SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION*
14 *AS REGISTERED ENTITY.*

15 *“The failure of a registered entity to com-*
16 *ply with any provision of this Act, or any regu-*
17 *lation or order of the Commission under this*
18 *Act, shall be cause for the suspension of the*
19 *registered entity for a period not to exceed 180*
20 *days, or revocation of designation as a reg-*
21 *istered entity in accordance with the proce-*
22 *dures and subject to the judicial review pro-*
23 *vided in section 6(b).*”.

1 *SEC. 116. AUTHORIZATION OF APPROPRIATIONS.*

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

5 *SEC. 117. PREEMPTION.*

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

9 *“(2) the application of any Federal or*
10 *State law to an agreement, contract, or*
11 *transaction in or involving any com-*
12 *modity, product, right, service, or interest,*
13 *except that this Act shall supersede and*
14 *preempt—*

15 *“(A) any Federal or State law,*
16 *other than antifraud provisions of*
17 *general applicability and the securi-*
18 *ties laws (as defined in section*
19 *3(a)(47) of the Securities Exchange*
20 *Act of 1934), as such Federal or State*
21 *law applies to any such agreement,*
22 *contract, or transaction—*

23 *“(i) that is conducted on or*
24 *subject to the rules of a registered*
25 *entity or exempt board of trade;*

1 “(ii) that is conducted on or
2 subject to the rules of any board of
3 trade, exchange, or market lo-
4 cated outside the United States, or
5 any territory or possession of the
6 United States (in accordance with
7 any terms or conditions specified
8 by the Commission by regulation);
9 or

10 “(iii) that is subject to regula-
11 tion by the Commission under sec-
12 tion 4c or 19; and

13 “(B) any State or local law that
14 prohibits or regulates gaming or the
15 operation of bucket shops (other than
16 antifraud provisions of general appli-
17 cability) in the case of—

18 “(i) an electronic trading fa-
19 cility under section 2(e); or

20 “(ii) an agreement, contract,
21 or transaction that is excluded or
22 exempt under section 2(c), 2(d),
23 2(f), or 2(h) or is covered by the
24 terms of an exemption granted by
25 the Commission under section 4(c)

1 *(regardless of whether any such*
2 *agreement, contract, or trans-*
3 *action is otherwise subject to this*
4 *Act); or”.*

5 *SEC. 118. CONSIDERATION OF COSTS AND BENEFITS AND*
6 *ANTITRUST LAWS.*

7 *Section 15 of the Commodity Exchange Act*
8 *(7 U.S.C. 19) is amended by striking “SEC. 15.*
9 *The Commission” and inserting the following:*
10 *“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND*
11 *ANTITRUST LAWS.*

12 *“(a) COSTS AND BENEFITS.—*

13 *“(1) IN GENERAL.—Before promul-*
14 *gating a regulation under this Act or*
15 *issuing an order (except as provided in*
16 *paragraph (3)), the Commission shall con-*
17 *sider the costs and benefits of the action*
18 *of the Commission.*

19 *“(2) CONSIDERATIONS.—The costs and*
20 *benefits of the proposed Commission ac-*
21 *tion shall be evaluated in light of—*

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

1 “(B) *considerations of the effi-*
2 *ciency, competitiveness, and financial*
3 *integrity of futures markets;*

4 “(C) *considerations of price dis-*
5 *covery;*

6 “(D) *considerations of sound risk*
7 *management practices; and*

8 “(E) *other public interest consider-*
9 *ations.*

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

13 “(A) *An order that initiates, is*
14 *part of, or is the result of an adjudica-*
15 *tory or investigative process of the*
16 *Commission.*

17 “(B) *An emergency action.*

18 “(C) *A finding of fact regarding*
19 *compliance with a requirement of the*
20 *Commission.*

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

1 **SEC. 119. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
2 **COUNTERPARTIES.**

3 ***Section 22(a) of the Commodity Exchange***
4 ***Act (7 U.S.C. 25(a)) is amended by adding at***
5 ***the end the following:***

6 ***“(4) CONTRACT ENFORCEMENT BETWEEN ELI-***
7 ***GIBLE COUNTERPARTIES.—No agreement, con-***
8 ***tract, or transaction a party to which is rea-***
9 ***sonably believed by another party to which to***
10 ***be an eligible contract participant shall be***
11 ***void, voidable, or unenforceable, and no such***
12 ***reasonably believed eligible contract partici-***
13 ***pant shall be entitled to rescind, or recover***
14 ***any payment made with respect to, such an***
15 ***agreement, contract, or transaction, under***
16 ***this section based solely on the failure of the***
17 ***agreement, contract, or transaction to comply***
18 ***with the terms or conditions of an exemption***
19 ***or exclusion from any provision of this Act or***
20 ***regulations of the Commission.”.***

21 **SEC. 120. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
22 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
23 **TURAL PRODUCERS.**

24 ***The Commodity Exchange Act is amended***
25 ***by inserting after section 4p the following:***

1 *“SEC. 4q. SPECIAL PROCEDURES TO ENCOURAGE AND FA-*
2 *CILITATE BONA FIDE HEDGING BY AGRICUL-*
3 *TURAL PRODUCERS.*

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

6 *“(1) prescribe procedures under which*
7 *each contract market is to provide for or-*
8 *derly delivery, including temporary stor-*
9 *age costs, of any agricultural commodity*
10 *enumerated in section 1a(4) which is the*
11 *subject of a contract for purchase or sale*
12 *for future delivery;*

13 *“(2) increase the ease with which do-*
14 *mestic agricultural producers may par-*
15 *ticipate in contract markets, including by*
16 *addressing cost and margin requirements,*
17 *so as to better enable such producers to*
18 *hedge price risk associated with their pro-*
19 *duction;*

20 *“(3) provide flexibility in the min-*
21 *imum quantities of such agricultural*
22 *commodities that may be the subject of a*
23 *contract for purchase or sale for future*
24 *delivery that is traded on a contract mar-*
25 *ket, to better allow domestic agricultural*
26 *producers to hedge such price risk; and*

1 “(4) *encourage exchanges to provide*
2 *information and otherwise facilitate the*
3 *participation of domestic agricultural*
4 *producers in contract markets.*

5 “(b) *REPORT.—Within 1 year after the date*
6 *of enactment of this section, the Commission*
7 *shall submit to the Committee on Agriculture*
8 *of the House of Representatives and the Com-*
9 *mittee on Agriculture, Nutrition, and Forestry*
10 *of the Senate a report on the steps it has taken*
11 *to implement this section and on the activities*
12 *of contract markets pursuant to this section.”.*

13 *SEC. 121. RULE OF CONSTRUCTION.*

14 *Except as expressly provided in this title or*
15 *an amendment made by this title, nothing in*
16 *this title or an amendment made by this title*
17 *supersedes, affects, or otherwise limits or ex-*
18 *pands the scope and applicability of laws gov-*
19 *erning the Securities and Exchange Commis-*
20 *sion.*

21 *SEC. 122. TECHNICAL AND CONFORMING AMENDMENTS.*

22 “(a) *COMMODITY EXCHANGE ACT.—*

23 (1) *Section 1a of the Commodity Ex-*
24 *change Act (7 U.S.C. 1a) is amended—*

1 (A) *in paragraphs (5), (6), (16),*
2 *(17), (20), and (23) (as redesignated by*
3 *section 101), by inserting “or deriva-*
4 *tives transaction execution facility”*
5 *after “contract market” each place it*
6 *appears; and*

7 (B) *in paragraph (25) (as redesign-*
8 *ated by section 101)—*

9 (i) *in the paragraph heading,*
10 *by striking “CONTRACT MARKET”*
11 *and inserting “REGISTERED ENTI-*
12 *TY”;*

13 (ii) *by striking “contract mar-*
14 *ket” each place it appears and in-*
15 *serting “registered entity”; and*

16 (iii) *by inserting at the end the*
17 *following:*

18 *“A participant in an alternative trading*
19 *system that is designated as a contract*
20 *market pursuant to section 5f shall be*
21 *deemed a member of such contract market*
22 *for purposes of transactions in security*
23 *future products through such contract*
24 *market.”.*

1 **(2) Section 2 of the Commodity Ex-**
2 **change Act (7 U.S.C. 2, 2a, 4, 4a, 3) is**
3 **amended—**

4 **(A) by striking “SEC. 2. (a)(1)(A)(i)**

5 **The” and inserting the following:**

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

10 **“(a) JURISDICTION OF COMMISSION; COM-**
11 **MODITY FUTURES TRADING COMMISSION.—**

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

13 **“(A) IN GENERAL.—The”;**

14 **(B) in subsection (a)(1)(A) (as**
15 **amended by subparagraph (A) of this**
16 **paragraph)—**

17 **(i) by striking “subparagraph**
18 **(B) of this paragraph” and insert-**
19 **ing “subparagraphs (C) and (D) of**
20 **this paragraph and subsections**
21 **(c), (d), (e), (f), (g), and (h) of this**
22 **section”;**

23 **(ii) by striking “contract mar-**
24 **ket designated pursuant to section**
25 **5 of this Act” and inserting “con-**

1 *tract market designated or deriva-*
2 *tives transaction execution facility*
3 *registered pursuant to section 5 or*
4 *5a”;*

5 *(iii) by striking clause (ii);*

6 *and*

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

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

12 *(C) in subsection (a)(1)(B)—*

13 *(i) by striking “(B)” and in-*
14 *serting “(C)”;*

15 *(ii) in clause (ii)(I), by striking*
16 *“section 3 of the Securities Act of*
17 *1933 or”;*

18 *(iii) in clause (iv), by striking*
19 *“(I)” and all that follows through*
20 *“(II)”;*

21 *(iv) in clause (v)—*

22 *(I) by striking “section 3 of*
23 *the Securities Act of 1933 or”;*
24 *and*

1 ***(II) by inserting “or sub-***
2 ***paragraph (D)” after “sub-***
3 ***paragraph”;*** and

4 ***(v) by moving clauses (i)***
5 ***through (v) 4 ems to the right;***

6 ***(D) in subsection (a)(7), by strik-***
7 ***ing “contract market” and inserting***
8 ***“registered entity”;***

9 ***(E) in subsection (a)(8)(B)(ii)—***

10 ***(i) in the first sentence, by***
11 ***striking “designation as a con-***
12 ***tract market” and inserting “des-***
13 ***ignation or registration as a con-***
14 ***tract market or derivatives trans-***
15 ***action execution facility”;***

16 ***(ii) in the second sentence, by***
17 ***striking “designate a board of***
18 ***trade as a contract market” and***
19 ***inserting “designate or register a***
20 ***board of trade as a contract mar-***
21 ***ket or derivatives transaction exe-***
22 ***cution facility”;*** and

23 ***(iii) in the fourth sentence, by***
24 ***striking “designating, or refusing,***
25 ***suspending, or revoking the des-***

1 *ignation of, a board of trade as a*
2 *contract market involving trans-*
3 *actions for future delivery referred*
4 *to in this clause or in considering*
5 *possible emergency action under*
6 *section 8a(9) of this Act” and in-*
7 *serting “designating, registering,*
8 *or refusing, suspending, or revok-*
9 *ing the designation or registration*
10 *of, a board of trade as a contract*
11 *market or derivatives transaction*
12 *execution facility involving trans-*
13 *actions for future delivery referred*
14 *to in this clause or in considering*
15 *any possible action under this Act*
16 *(including without limitation*
17 *emergency action under section*
18 *8a(9))”, and by striking “designa-*
19 *tion, suspension, revocation, or*
20 *emergency action” and inserting*
21 *“designation, registration, suspen-*
22 *sion, revocation, or action”; and*
23 *(F) in subsection (a), by moving*
24 *paragraphs (2) through (9) 2 ems to*
25 *the right.*

1 **(3) Section 4 of the Commodity Ex-**
2 **change Act (7 U.S.C. 6) is amended—**

3 **(A) in subsection (a)—**

4 **(i) in paragraph (1), by strik-**
5 **ing “designated by the Commis-**
6 **sion as a ‘contract market’ for”**
7 **and inserting “designated or reg-**
8 **istered by the Commission as a**
9 **contract market or derivatives**
10 **transaction execution facility for”;**

11 **(ii) in paragraph (2), by strik-**
12 **ing “member of such”; and**

13 **(iii) in paragraph (3), by in-**
14 **serting “or derivatives transaction**
15 **execution facility” after “contract**
16 **market”; and**

17 **(B) in subsection (c)—**

18 **(i) in paragraph (1)—**

19 **(I) by striking “designated**
20 **as a contract market” and in-**
21 **serting “designated or reg-**
22 **istered as a contract market**
23 **or derivatives transaction exe-**
24 **cution facility”; and**

1 ***(II) by striking “section***
2 ***2(a)(1)(B)” and inserting “sec-***
3 ***tions 2(a)(1)(C) and***
4 ***2(a)(1)(D)”***; and

5 ***(ii) in paragraph (2)(B)(ii), by***
6 ***inserting “or derivatives trans-***
7 ***action execution facility” after***
8 ***“contract market”***.

9 ***(4) Section 4a of the Commodity Ex-***
10 ***change Act (7 U.S.C. 6a) is amended—***

11 ***(A) in subsection (a)—***

12 ***(i) in the first sentence, by in-***
13 ***serting “or derivatives transaction***
14 ***execution facilities” after “con-***
15 ***tract markets”***; and

16 ***(ii) in the second sentence, by***
17 ***inserting “or derivatives trans-***
18 ***action execution facility” after***
19 ***“contract market”***;

20 ***(B) in subsection (b)—***

21 ***(i) in paragraph (1), by insert-***
22 ***ing “, or derivatives transaction***
23 ***execution facility or facilities,”***
24 ***after “markets”***; and

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

5 (C) *in subsection (e)—*

6 (i) *by striking “contract mar-*
7 *ket or” each place it appears and*
8 *inserting “contract market, de-*
9 *rivatives transaction execution fa-*
10 *cility, or”;*

11 (ii) *by striking “licensed or*
12 *designated” each place it appears*
13 *and inserting “licensed, des-*
14 *ignated, or registered”; and*

15 (iii) *by striking “contract mar-*
16 *ket, or” and inserting “contract*
17 *market or derivatives transaction*
18 *execution facility, or”.*

19 (5) *Section 4b(a) of the Commodity Ex-*
20 *change Act (7 U.S.C. 6b(a)) is amended by*
21 *striking “contract market” each place it*
22 *appears and inserting “registered entity”.*

23 (6) *Sections 4c(g), 4d, 4e, and 4f of the*
24 *Commodity Exchange Act (7 U.S.C. 6c(g),*
25 *6d, 6e, 6f) are amended by inserting “or*

1 *derivatives transaction execution facility”*
2 *after “contract market” each place it ap-*
3 *pears.*

4 (7) *Section 4g of the Commodity Ex-*
5 *change Act (7 U.S.C. 6g) is amended—*

6 (A) *in subsection (b), by striking*
7 *“clearinghouse and contract market”*
8 *and inserting “registered entity”; and*

9 (B) *in subsection (f), by striking*
10 *“clearinghouses, contract markets,*
11 *and exchanges” and inserting “reg-*
12 *istered entities”.*

13 (8) *Section 4h of the Commodity Ex-*
14 *change Act (7 U.S.C. 6h) is amended by*
15 *striking “contract market” each place it*
16 *appears and inserting “registered entity”.*

17 (9) *Section 4i of the Commodity Ex-*
18 *change Act (7 U.S.C. 6i) is amended in the*
19 *first sentence by inserting “or derivatives*
20 *transaction execution facility” after “con-*
21 *tract market”.*

22 (10) *Section 4j(a) of the Commodity*
23 *Exchange Act (7 U.S.C. 6j(a)) is*
24 *amended—*

1 (A) *in paragraph (1), by inserting*
2 *“for security future products” after*
3 *“contract market”;*

4 (B) *in paragraph (3)—*

5 (i) *in the matter preceding*
6 *subparagraph (A), by inserting “,*
7 *other than a designated contract*
8 *market in a security future prod-*
9 *uct,” after “exempt a contract*
10 *market”;* and

11 (ii) *in subparagraph (A), by*
12 *striking “section 5a(b)” and in-*
13 *serting “section 5”;* and

14 (C) *in paragraph (6)(ii), by strik-*
15 *ing “section 5b” and inserting “section*
16 *5e”.*

17 (11) *Section 4l of the Commodity Ex-*
18 *change Act (7 U.S.C. 6l) is amended by in-*
19 *serting “or derivatives transaction execu-*
20 *tion facilities” after “contract markets”*
21 *each place it appears.*

22 (12) *Section 4p of the Commodity Ex-*
23 *change Act (7 U.S.C. 6p) is amended—*

24 (A) *in the third sentence of sub-*
25 *section (a), by striking “Act or con-*

1 *tract markets” and inserting “Act,*
2 *contract markets, or derivatives trans-*
3 *action execution facilities”;* and

4 *(B) in subsection (b), by inserting*
5 *“derivatives transaction execution fa-*
6 *cility,” after “contract market,”.*

7 *(13) Section 6 of the Commodity Ex-*
8 *change Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15)*
9 *is amended—*

10 *(A) in subsection (a)—*

11 *(i) in the first sentence—*

12 *(I) by striking “board of*
13 *trade desiring to be des-*
14 *ignated a ‘contract market’*
15 *shall make application to the*
16 *Commission for such designa-*
17 *tion” and inserting “person*
18 *desiring to be designated or*
19 *registered as a contract mar-*
20 *ket or derivatives transaction*
21 *execution facility shall make*
22 *application to the Commission*
23 *for such designation or reg-*
24 *istration”;*

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

5 ***(III) by striking “above re-***
6 ***quirements” and inserting***
7 ***“the requirements of this Act”;***

8 ***(ii) in the second sentence, by***
9 ***striking “designation as a con-***
10 ***tract market within one year” and***
11 ***inserting “designation or registra-***
12 ***tion as a contract market or de-***
13 ***rivatives transaction execution fa-***
14 ***cility within 180 days”;***

15 ***(iii) in the third sentence—***

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

19 ***(II) by striking “one-year***
20 ***period” and inserting “180-day***
21 ***period”;*** ***and***

22 ***(iv) in the last sentence, by***
23 ***striking “designate as a ‘contract***
24 ***market’ any board of trade that***
25 ***has made application therefor,***

1 *such board of trade” and insert-*
2 *ing “designate or register as a*
3 *contract market or derivatives*
4 *transaction execution facility any*
5 *person that has made application*
6 *therefor, such person”;*

7 **(B) in subsection (b)—**

8 **(i) in the first sentence—**

9 **(I) by striking “designa-**
10 **tion of any board of trade as a**
11 **‘contract market’ upon” and**
12 **inserting “designation or reg-**
13 **istration of any contract mar-**
14 **ket or derivatives transaction**
15 **execution facility on”;**

16 **(II) by striking “board of**
17 **trade” each place it appears**
18 **and inserting “contract mar-**
19 **ket or derivatives transaction**
20 **execution facility”;** and

21 **(III) by striking “designa-**
22 **tion as set forth in section 5 of**
23 **this Act” and inserting “des-**
24 **ignation or registration as set**

1 *forth in section 5, 5a, 5b, or*
2 *5f”;*

3 *(ii) in the second sentence—*

4 *(I) by striking “board of*
5 *trade” the first place it ap-*
6 *pears and inserting “contract*
7 *market or derivatives trans-*
8 *action execution facility”;* and

9 *(II) by striking “board of*
10 *trade” the second and third*
11 *places it appears and insert-*
12 *ing “person”;* and

13 *(iii) in the last sentence, by*
14 *striking “board of trade” each*
15 *place it appears and inserting*
16 *“person”;*

17 *(C) in subsection (c)—*

18 *(i) by striking “contract mar-*
19 *ket” each place it appears and in-*
20 *serting “registered entity”;*

21 *(ii) by striking “contract mar-*
22 *kets” each place it appears and*
23 *inserting “registered entities”;* and

1 *(iii) by striking “trading privi-*
2 *leges” each place it appears and*
3 *inserting “privileges”;*

4 *(D) in subsection (d), by striking*
5 *“contract market” each place it ap-*
6 *pears and inserting “registered enti-*
7 *ty”;* and

8 *(E) in subsection (e), by striking*
9 *“trading on all contract markets”*
10 *each place it appears and inserting*
11 *“the privileges of all registered enti-*
12 *ties”.*

13 *(14) Section 6a of the Commodity Ex-*
14 *change Act (7 U.S.C. 10a) is amended—*

15 *(A) in the first sentence of sub-*
16 *section (a), by striking “designated as*
17 *a ‘contract market’ shall” and insert-*
18 *ing “designated or registered as a con-*
19 *tract market or a derivatives trans-*
20 *action execution facility”;* and

21 *(B) in subsection (b), by striking*
22 *“designated as a contract market”*
23 *and inserting “designated or reg-*
24 *istered as a contract market or a de-*

1 *derivatives transaction execution facil-*
2 *ity”.*

3 ***(15) Section 6b of the Commodity Ex-***
4 ***change Act (7 U.S.C. 13a) is amended—***

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

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

13 ***(C) in the last sentence, by strik-***
14 ***ing “the contract market’s ability”***
15 ***and inserting “the ability of the reg-***
16 ***istered entity”.***

17 ***(16) Section 6c(a) of the Commodity***
18 ***Exchange Act (7 U.S.C. 13a–1(a)) by strik-***
19 ***ing “contract market” and inserting “reg-***
20 ***istered entity”.***

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

1 ***(18) Section 7 of the Commodity Ex-***
2 ***change Act (7 U.S.C. 11) is amended—***

3 ***(A) in the first sentence—***

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

6 ***(ii) by inserting “or reg-***
7 ***istered” after “designated”;***

8 ***(iii) by inserting “or registra-***
9 ***tion” after “designation” each***
10 ***place it appears; and***

11 ***(iv) by striking “contract mar-***
12 ***ket” each place it appears and in-***
13 ***serting “registered entity”;***

14 ***(B) in the second sentence—***

15 ***(i) by striking “designation of***
16 ***such board of trade as a contract***
17 ***market” and inserting “designa-***
18 ***tion or registration of the reg-***
19 ***istered entity”;* and**

20 ***(ii) by striking “contract mar-***
21 ***kets” and inserting “registered en-***
22 ***tities”;* and**

23 ***(C) in the last sentence—***

24 ***(i) by striking “board of trade”***
25 ***and inserting “person”;* and**

1 (ii) *by striking “designated*
2 *again a contract market” and in-*
3 *serting “designated or registered*
4 *again a registered entity”.*

5 (19) *Section 8(c) of the Commodity Ex-*
6 *change Act (7 U.S.C. 12(c)) is amended in*
7 *the first sentence by striking “board of*
8 *trade” and inserting “registered entity”.*

9 (20) *Section 8a of the Commodity Ex-*
10 *change Act (7 U.S.C. 12a) is amended—*

11 (A) *by striking “contract market”*
12 *each place it appears and inserting*
13 *“registered entity”; and*

14 (B) *in paragraph (2)(F), by strik-*
15 *ing “trading privileges” and inserting*
16 *“privileges”.*

17 (21) *Sections 8b and 8c(e) of the Com-*
18 *modity Exchange Act (7 U.S.C. 12b, 12c(e))*
19 *are amended by striking “contract mar-*
20 *ket” each place it appears and inserting*
21 *“registered entity”.*

22 (22) *Section 8e of the Commodity Ex-*
23 *change Act (7 U.S.C. 12e) is amended—*

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

4 (B) *in subsection (a), by striking*
5 *“section 5a(b)” and inserting “sections*
6 *5 through 5c”;*

7 (C) *in subsection (b)—*

8 (i) *in paragraph (1), by strik-*
9 *ing “contract market’s trade moni-*
10 *toring system implemented pursu-*
11 *ant to section 5a(b)” and inserting*
12 *“the trade monitoring system of a*
13 *registered entity implemented pur-*
14 *suant to sections 5 through 5c”;*

15 (ii) *by striking paragraph (3)*
16 *and inserting the following:*

17 “(3) *REMEDIES.—On becoming final,*
18 *the Commission deficiency order may re-*
19 *quire the registered entity to—*

20 “(A) *institute appropriate im-*
21 *provements in its trade monitoring*
22 *system necessary to correct the defi-*
23 *ciencies in the order;*

1 “(B) *satisfy stated objective per-*
2 *formance criteria to correct the defi-*
3 *ciencies;*

4 “(C) *upgrade or reconfigure exist-*
5 *ing systems for collecting or proc-*
6 *essing relevant data on trading and*
7 *trader or broker activity, including,*
8 *where appropriate, the commitment of*
9 *additional resources.”; and*

10 *(iii) in paragraph (5)—*

11 *(I) in the paragraph head-*
12 *ing, by striking “DESIGNATION*
13 *AS CONTRACT MARKET” and in-*
14 *serting “DESIGNATION OR REG-*
15 *ISTRATION AS REGISTERED ENTI-*
16 *TY”;*

17 *(II) by inserting “or reg-*
18 *istration” after “designation”;*
19 *and*

20 *(III) by striking “board of*
21 *trade” and inserting “person”;*

22 *(D) in subsection (d)(2), by strik-*
23 *ing “section 5b” and inserting “section*
24 *5e”; and*

1 ***(E) in the paragraph heading of***
2 ***subsection (e)(2), by striking “CON-***
3 ***TRACT MARKETS” and inserting “REG-***
4 ***ISTERED ENTITIES”.***

5 ***(23) Section 9 of the Commodity Ex-***
6 ***change Act (7 U.S.C. 13) is amended by***
7 ***striking “contract market” each place it***
8 ***appears and inserting “registered entity”.***

9 ***(24) Section 14 of the Commodity Ex-***
10 ***change Act (7 U.S.C. 18) is amended—***

11 ***(A) in subsection (a)(1)(B), by***
12 ***striking “contract market” and insert-***
13 ***ing “registered entity”; and***

14 ***(B) in subsection (f), by striking***
15 ***“contract markets” and inserting***
16 ***“registered entities”.***

17 ***(25) Section 17 of the Commodity Ex-***
18 ***change Act (7 U.S.C. 21) is amended by***
19 ***striking “contract market” each place it***
20 ***appears and inserting “registered entity”.***

21 ***(26) Section 22 of the Commodity Ex-***
22 ***change Act (7 U.S.C. 25) is amended—***

23 ***(A) in subsection (a)—***

24 ***(i) in paragraph (1)—***

1 **(I) by striking “contract**
2 **market, clearing organization**
3 **of a contract market, licensed**
4 **board of trade,” and inserting**
5 **“registered entity or a deriva-**
6 **tives clearing organization ex-**
7 **empt from registration pursu-**
8 **ant to section 5b(b)”;** and

9 **(II) in subparagraph**
10 **(C)(i), by striking “contract**
11 **market” and inserting “reg-**
12 **istered entity”;**

13 **(ii) in paragraph (2), by strik-**
14 **ing “sections 5a(11),” and insert-**
15 **ing “sections 5(d)(13),**
16 **5b(b)(1)(E),”;** and

17 **(iii) in paragraph (3), by strik-**
18 **ing “contract market” and insert-**
19 **ing “registered entity”;** and

20 **(B) in subsection (b)—**

21 **(i) in paragraph (1)—**

22 **(I) by striking “contract**
23 **market or clearing organiza-**
24 **tion of a contract market” and**
25 **inserting “registered entity”;**

1 ***(II) by striking “section***
2 ***5a(8) and section 5a(9) of this***
3 ***Act” and inserting “sections 5***
4 ***through 5c”;***

5 ***(III) by striking “contract***
6 ***market, clearing organization***
7 ***of a contract market, or li-***
8 ***icensed board of trade” and in-***
9 ***serting “registered entity”;***
10 ***and***

11 ***(IV) by striking “contract***
12 ***market or licensed board of***
13 ***trade” and inserting “reg-***
14 ***istered entity”;***

15 ***(ii) in paragraph (3)—***

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

21 ***(II) by striking “contract***
22 ***market, licensed board of***
23 ***trade” and inserting “reg-***
24 ***istered entity”;***

1 (iii) *in paragraph (4), by strik-*
2 *ing “contract market, licensed*
3 *board of trade, clearing organiza-*
4 *tion,” and inserting “registered*
5 *entity”;* and

6 (iv) *in paragraph (5), by strik-*
7 *ing “contract market, licensed*
8 *board of trade, clearing organiza-*
9 *tion,” and inserting “registered*
10 *entity”.*

11 **(b) FEDERAL DEPOSIT INSURANCE CORPORA-**
12 **TION IMPROVEMENT ACT OF 1991.—Section**
13 **402(2) of the Federal Deposit Insurance Cor-**
14 **poration Improvement Act of 1991 (12 U.S.C.**
15 **4402(2)) is amended by striking subparagraph**
16 **(B) and inserting the following:**

17 **“(B) that is registered as a deriva-**
18 **tives clearing organization under sec-**
19 **tion 5b of the Commodity Exchange**
20 **Act.”.**

21 **SEC. 123. PRIVACY.**

22 **The Commodity Exchange Act (7 U.S.C. 1**
23 **et seq.) is amended by inserting after section**
24 **5f (as added by section 222) the following:**

1 *“SEC. 5g. PRIVACY.*

2 *“(a) TREATMENT AS FINANCIAL INSTITU-*
3 *TIONS.—Notwithstanding section 509(3)(B) of*
4 *the Gramm-Leach-Bliley Act, any person or en-*
5 *tity that is subject to the jurisdiction of the*
6 *Commission under this Act with respect to any*
7 *financial activity shall be treated as a finan-*
8 *cial institution for purposes of title V of such*
9 *Act with respect to such financial activity.*

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

18 *SEC. 124. REPORT TO CONGRESS.*

19 *(a) The Commodity Futures Trading Com-*
20 *mission (in this section referred to as the*
21 *“Commission”) shall undertake and complete*
22 *a study of the Commodity Exchange Act (in*
23 *this section referred to as “the Act”) and the*
24 *Commission’s rules, regulations and orders*
25 *governing the conduct of persons required to*
26 *be registered under the Act, not later than 1*

1 *year after the date of the enactment of this Act.*

2 *The study shall identify—*

3 (1) *the core principles and interpreta-*
4 *tions of acceptable business practices that*
5 *the Commission has adopted or intends to*
6 *adopt to replace the provisions of the Act*
7 *and the Commission’s rules and regula-*
8 *tions thereunder;*

9 (2) *the rules and regulations that the*
10 *Commission has determined must be re-*
11 *tained and the reasons therefor;*

12 (3) *the extent to which the Commis-*
13 *sion believes it can effect the changes*
14 *identified in paragraph (1) of this sub-*
15 *section through its exemptive authority*
16 *under section 4(c) of the Act; and*

17 (4) *the regulatory functions the Com-*
18 *mission currently performs that can be*
19 *delegated to a registered futures associa-*
20 *tion (within the meaning of the Act) and*
21 *the regulatory functions that the Commis-*
22 *sion has determined must be retained and*
23 *the reasons therefor.*

24 (b) *In conducting the study, the Commis-*
25 *sion shall solicit the views of the public as well*

1 *as Commission registrants, registered entities,*
2 *and registered futures associations (all within*
3 *the meaning of the Act).*

4 (c) *The Commission shall transmit to the*
5 *Committee on Agriculture of the House of Rep-*
6 *resentatives and the Committee on Agri-*
7 *culture, Nutrition, and Forestry of the Senate*
8 *a report of the results of its study, which shall*
9 *include an analysis of comments received.*

10 *SEC. 125. EFFECTIVE DATE.*

11 *This title takes effect on the date of enact-*
12 *ment of this Act.*

13 *SEC. 126. INTERNATIONAL ACTIVITIES OF THE COMMODITY*
14 *FUTURES TRADING COMMISSION.*

15 (a) *FINDINGS.—The Congress finds that—*

16 (1) *derivatives markets serving United*
17 *States industry are increasingly global in*
18 *scope;*

19 (2) *developments in data processing*
20 *and communications technologies enable*
21 *users of risk management services to ana-*
22 *lyze and compare those services on a*
23 *worldwide basis;*

24 (3) *financial services regulatory policy*
25 *must be flexible to account for rapidly*

1 *changing derivatives industry business*
2 *practices;*

3 (4) *regulatory impediments to the op-*
4 *eration of global business interests can*
5 *compromise the competitiveness of United*
6 *States businesses;*

7 (5) *events that disrupt financial mar-*
8 *kets and economies are often global in*
9 *scope, require rapid regulatory response,*
10 *and coordinated regulatory effort across*
11 *international jurisdictions;*

12 (6) *through its membership in the*
13 *International Organization of Securities*
14 *Commissions, the Commodity Futures*
15 *Trading Commission has promoted bene-*
16 *ficial communication among market regu-*
17 *lators and international regulatory co-*
18 *operation; and*

19 (7) *the Commodity Futures Trading*
20 *Commission and other United States fi-*
21 *nancial regulators and self-regulatory or-*
22 *ganizations should continue to foster pro-*
23 *ductive and cooperative working relation-*
24 *ships with their counterparts in foreign*
25 *jurisdictions.*

1 ***(b) SENSE OF THE CONGRESS.—It is the sense***
2 ***of the Congress that, consistent with its re-***
3 ***sponsibilities under the Commodity Exchange***
4 ***Act, the Commodity Futures Trading Commis-***
5 ***sion should, as part of its international activi-***
6 ***ties, continue to coordinate with foreign regu-***
7 ***latory authorities, to participate in inter-***
8 ***national regulatory organizations and fo-***
9 ***rum, and to provide technical assistance to***
10 ***foreign government authorities, in order to***
11 ***encourage—***

12 ***(1) the facilitation of cross-border***
13 ***transactions through the removal or less-***
14 ***ening of any unnecessary legal or prac-***
15 ***tical obstacles;***

16 ***(2) the development of internationally***
17 ***accepted regulatory standards of best***
18 ***practice;***

19 ***(3) the enhancement of international***
20 ***supervisory cooperation and emergency***
21 ***procedures;***

22 ***(4) the strengthening of international***
23 ***cooperation for customer and market pro-***
24 ***tection; and***

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

4 **TITLE II—SECURITIES ACTS**
5 **AMENDMENTS**

6 **Subtitle A—Amendments**

7 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EXCHANGE**

8 **ACT OF 1934.**

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

11 (1) *in paragraph (10), by inserting “se-*
12 *curity future,” after “treasury stock,”;*

13 (2) *by striking paragraph (11) and in-*
14 *serting the following:*

15 **“(11) The term ‘equity security’ means**
16 ***any stock or similar security; or any secu-***
17 ***rity future; or any security convertible,***
18 ***with or without consideration, into such a***
19 ***security, or carrying any warrant or right***
20 ***to subscribe to or purchase such a secu-***
21 ***rity; or any such warrant or right; or any***
22 ***put, call, straddle, option, or privilege on***
23 ***any such security; or any other security***
24 ***which the Commission shall deem to be of***
25 ***similar nature and consider necessary or***

1 *appropriate, by such rules and regula-*
2 *tions as it may prescribe in the public in-*
3 *terest or for the protection of investors, to*
4 *treat as an equity security.”;*

5 *(3) in paragraph (13), by adding at*
6 *the end the following: “For security future*
7 *products, such term includes any con-*
8 *tract, agreement, or transaction for future*
9 *delivery.”;*

10 *(4) in paragraph (14), by adding at*
11 *the end the following: “For security future*
12 *products, such term includes any con-*
13 *tract, agreement, or transaction for future*
14 *delivery.”; and*

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

16 *“(55)(A) The term ‘security future’*
17 *means a contract of sale for future deliv-*
18 *ery of a single security or of a narrow-*
19 *based security index, including any inter-*
20 *est therein or based on the value thereof,*
21 *except an exempted security under section*
22 *3(a)(12) of the Securities Exchange Act of*
23 *1934 as in effect on the date of enactment*
24 *of the Futures Trading Act of 1982 (other*
25 *than any municipal security as defined in*

1 *section 3(a)(29) as in effect on the date of*
2 *enactment of the Futures Trading Act of*
3 *1982). The term ‘security future’ does not*
4 *include any agreement, contract, or trans-*
5 *action excluded under subsection (c), (d),*
6 *or (f) of section 2 of the Commodity Ex-*
7 *change Act as in effect on the date of en-*
8 *actment of the Commodity Futures Mod-*
9 *ernization Act of 2000.*

10 *“(B) The term ‘narrow-based security*
11 *index’ means an index of securities on*
12 *which contracts for future delivery are*
13 *not permitted under section 2(a)(1)(C) of*
14 *the Commodity Exchange Act, including*
15 *any interest therein or based on the value*
16 *thereof.*

17 *“(C) The term ‘security future product’*
18 *means a security future or any put, call,*
19 *straddle, option, or privilege on any secu-*
20 *rity future.*

21 *“(56)(A) The term ‘margin’, when used*
22 *with respect to a security future product,*
23 *means the amount, type, and form of col-*
24 *lateral required to secure any extension*
25 *or maintenance of credit, or the amount,*

1 *type, and form of collateral required as a*
2 *performance bond related to the pur-*
3 *chase, sale, or carrying of a security fu-*
4 *ture product, and all other uses of collat-*
5 *eral related to the purchasing, selling, or*
6 *carrying of a security future product.*

7 *“(B) The terms ‘margin level’ and*
8 *‘level of margin’, when used with respect*
9 *to a security future product, mean the*
10 *amount of margin required to secure any*
11 *extension or maintenance of credit, or the*
12 *amount of margin required as a perform-*
13 *ance bond related to the purchase, sale, or*
14 *carrying of a security future product.*

15 *“(C) The terms ‘higher margin level’*
16 *and ‘higher level of margin’, when used*
17 *with respect to a security future product,*
18 *mean a margin level established by a na-*
19 *tional securities exchange registered pur-*
20 *suant to section 6(g) that is higher than*
21 *the minimum amount established by the*
22 *Commission pursuant to section*
23 *7(c)(2)(B).”.*

1 *SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING SE-*
2 *CURITY FUTURE PRODUCTS.*

3 *(a) EXPEDITED REGISTRATION AND EXEMP-*
4 *TION.—Section 6 of the Securities Exchange Act*
5 *of 1934 (15 U.S.C. 78f) is amended by adding*
6 *at the end the following:*

7 *“(g) NOTICE REGISTRATION OF SECURITY FU-*
8 *TURE PRODUCT EXCHANGES.—*

9 *“(1) REGISTRATION REQUIRED.—An ex-*
10 *change that lists or trades security future*
11 *products may be registered as a national*
12 *securities exchange solely for the purposes*
13 *of trading security future products if—*

14 *“(A) the exchange is a board of*
15 *trade, as that term is defined by the*
16 *Commodity Exchange Act (7 U.S.C.*
17 *1a(2)), that has been designated a*
18 *contract market by the Commodity Fu-*
19 *tures Trading Commission and such*
20 *designation is not suspended by order*
21 *by the Commodity Futures Trading*
22 *Commission; and*

23 *“(B) such exchange does not serve*
24 *as a market place for transactions in*
25 *securities other than—*

1 “(i) *security future products;*
2 *or*

3 “(ii) *futures on exempted secu-*
4 *rities or groups or indexes of secu-*
5 *rities or options thereon that have*
6 *been authorized under section*
7 *2(a)(1)(C) of the Commodity Ex-*
8 *change Act by Commodity Futures*
9 *Trading Commission order.*

10 “(2) *REGISTRATION BY NOTICE FILING.—*

11 “(A) *FORM AND CONTENT.—An ex-*
12 *change required to register only be-*
13 *cause such exchange lists or trades se-*
14 *curity future products may register for*
15 *purposes of this section by filing with*
16 *the Commission a written notice in*
17 *such form, and containing the rules of*
18 *the exchange and such other informa-*
19 *tion and documents concerning such*
20 *exchange as the Commission, by rule,*
21 *may prescribe as necessary or appro-*
22 *priate in the public interest or for the*
23 *protection of investors.*

24 “(B) *IMMEDIATE EFFECTIVENESS.—*
25 *Such registration shall be effective*

1 *immediately upon filing of the written*
2 *notice with the Commission, except*
3 *that such registration shall not be ef-*
4 *fective if such registration would be*
5 *subject to suspension or revocation.*

6 “(C) *TERMINATION.*—*Such registra-*
7 *tion shall be terminated immediately*
8 *if any of the conditions for registra-*
9 *tion set forth in this subsection are no*
10 *longer satisfied.*

11 “(3) *PUBLIC AVAILABILITY.*—*The Com-*
12 *mission shall make available to the pub-*
13 *lic all notices it receives under this sub-*
14 *section.*

15 “(4) *EXEMPTION OF EXCHANGES FROM*
16 *SPECIFIED PROVISIONS.*—

17 “(A) *TRANSACTION EXEMPTIONS.*—
18 *An exchange that is registered under*
19 *paragraph (1) of this subsection shall*
20 *be exempt from, and shall not be re-*
21 *quired to enforce compliance by its*
22 *members with, and its members shall*
23 *not, solely with respect to those trans-*
24 *actions effected on such exchange in*
25 *security future products, be required*

1 *to comply with, the following provi-*
2 *sions of this title and the rules there-*
3 *under:*

4 *“(i) Subsections (b)(2), (b)(3),*
5 *(b)(4), (b)(7), (b)(9), (c), (d), and*
6 *(e) of this section.*

7 *“(ii) Subsection (a) of section*
8 *10.*

9 *“(iii) Section 11.*

10 *“(iv) Subsections (d), (f), and*
11 *(k) of section 17.*

12 *“(v) Subsections (a), (f), and*
13 *(h) of section 19.*

14 *“(B) RULE CHANGE EXEMPTIONS.—*
15 *An exchange that is subject to the reg-*
16 *istration requirement of paragraph*
17 *(1) of this subsection shall also be ex-*
18 *empt from submitting proposed rule*
19 *changes pursuant to section 19(b) of*
20 *this title, except that—*

21 *“(i) such exchange shall file*
22 *proposed rule changes related to*
23 *higher margin levels, fraud or ma-*
24 *nipulation, recordkeeping, report-*
25 *ing, listing standards, or decimal*

1 *pricing for security future prod-*
2 *ucts, sales practices for security*
3 *future products for persons who*
4 *effect transactions in security fu-*
5 *ture products or rules effectuating*
6 *such exchange’s obligation to en-*
7 *force the securities laws pursuant*
8 *to section 19(b)(7);*

9 *“(ii) such exchange shall file*
10 *pursuant to sections 19(b)(1) and*
11 *19(b)(2) proposed rule changes re-*
12 *lated to margin, except for*
13 *changes resulting in higher mar-*
14 *gin levels; and*

15 *“(iii) such exchange shall file*
16 *pursuant to section 19(b)(1) pro-*
17 *posed rule changes that have been*
18 *abrogated by the Commission pur-*
19 *suant to section 19(b)(7)(C).*

20 **“(5) ASSOCIATION COMPLIANCE WITH RE-**
21 **QUIREMENTS.—***No exchange that is reg-*
22 *istered under paragraph (1) of this sub-*
23 *section shall trade any security future*
24 *product until a futures association reg-*
25 *istered under section 17 of the Commodity*

1 *Exchange Act has met the requirements*
2 *set forth in section 15A(k)(2) of this title.*

3 **“(6) TRADING IN SECURITY FUTURE**
4 **PRODUCTS.—It shall be unlawful for any**
5 **person to execute or trade a security fu-**
6 **ture product until the later of—**

7 **“(A) one year after the date of en-**
8 **actment of the Commodity Futures**
9 **Modernization Act of 2000; or**

10 **“(B) such date as the Federal in-**
11 **come tax treatment applicable to the**
12 **security future products permitted**
13 **under this title are equivalent to the**
14 **Federal income tax treatment of eq-**
15 **uity options traded on a national se-**
16 **curities exchange.”.**

17 **(b) COMMISSION REVIEW OF PROPOSED RULE**
18 **CHANGES.—**

19 **(1) EXPEDITED REVIEW.—Section 19(b)**
20 **of the Securities Exchange Act of 1934 (15**
21 **U.S.C. 78s(b)) is amended by adding at the**
22 **end the following:**

23 **“(7) SECURITY FUTURE PRODUCT RULE**
24 **CHANGES.—**

1 “(A) **FILING REQUIRED.**—A *self-regu-*
2 *latory organization that is an ex-*
3 *change registered with the Commis-*
4 *sion pursuant to section 6(g) of this*
5 *title or that is a national securities*
6 *association registered pursuant to sec-*
7 *tion 15A(k) of this title shall file with*
8 *the Commission, in accordance with*
9 *such rules as the Commission may*
10 *prescribe, copies of any proposed rule*
11 *change or any proposed change in,*
12 *addition to, or deletion from the rules*
13 *of such self-regulatory organization*
14 *(hereinafter in this paragraph collec-*
15 *tively referred to as a ‘proposed rule*
16 *change’) that relates to higher margin*
17 *levels, fraud or manipulation, record-*
18 *keeping, reporting, listing standards,*
19 *or decimal pricing for security future*
20 *products, sales practices for security*
21 *future products for persons who effect*
22 *transactions in security future prod-*
23 *ucts or rules effectuating such self-*
24 *regulatory organization’s obligation*
25 *to enforce the securities laws. Such*

1 *proposed rule change shall be accom-*
2 *panied by a concise general statement*
3 *of the basis and purpose of such pro-*
4 *posed rule change. The Commission*
5 *shall, upon the filing of any proposed*
6 *rule change, publish notice thereof to-*
7 *gether with the terms of substance of*
8 *the proposed rule change or a descrip-*
9 *tion of the subjects and issues in-*
10 *involved. The Commission shall give in-*
11 *terested persons an opportunity to*
12 *submit written data, views, and argu-*
13 *ments concerning such proposed rule*
14 *change.*

15 *“(B) FILING WITH CFTC.—A pro-*
16 *posed rule change filed with the Com-*
17 *mission pursuant to subparagraph (A)*
18 *shall be filed concurrently with the*
19 *Commodity Futures Trading Commis-*
20 *sion. Such proposed rule change may*
21 *take effect upon filing of a written*
22 *certification with the Commodity Fu-*
23 *tures Trading Commission, upon a de-*
24 *termination by the Commodity Fu-*
25 *tures Trading Commission that review*

1 *of the proposed rule change is not nec-*
2 *essary or upon approval of the pro-*
3 *posed rule change by the Commodity*
4 *Futures Trading Commission.*

5 “(C) **ABROGATION OF RULE**
6 **CHANGES.—***Any proposed rule change*
7 *of a self-regulatory organization that*
8 *has taken effect pursuant to subpara-*
9 *graph (B) may be enforced by such*
10 *self-regulatory organization to the ex-*
11 *tent such rule is not inconsistent with*
12 *the provisions of this title, the rules*
13 *and regulations thereunder, and ap-*
14 *licable Federal law. At any time*
15 *within 60 days of the date of the filing*
16 *of a written certification with the*
17 *Commodity Futures Trading Commis-*
18 *sion, the date the Commodity Futures*
19 *Trading Commission determines that*
20 *review of such proposed rule change is*
21 *not necessary, or the date the Com-*
22 *modity Futures Trading Commission*
23 *approves such proposed rule change,*
24 *the Commission, after consultation*
25 *with the Commodity Futures Trading*

1 ***Commission, summarily may abrogate***
2 ***the proposed rule change and require***
3 ***that the proposed rule change be***
4 ***refiled in accordance with the provi-***
5 ***sions of paragraph (1), if it appears to***
6 ***the Commission that such proposed***
7 ***rule change unduly burdens competi-***
8 ***tion, conflicts with the securities laws,***
9 ***does not promote efficiency, or is in-***
10 ***consistent with the public interest and***
11 ***the protection of investors. Commis-***
12 ***sion action pursuant to the preceding***
13 ***sentence shall not affect the validity***
14 ***or force of the rule change during the***
15 ***period it was in effect and shall not be***
16 ***reviewable under section 25 nor***
17 ***deemed to be a final agency action for***
18 ***purposes of section 704 of title 5,***
19 ***United States Code.***

20 ***“(D) REVIEW OF RESUBMITTED ABRO-***
21 ***GATED RULES.—***

22 ***“(i) PROCEEDINGS.—Within 35***
23 ***days of the date of publication of***
24 ***notice of the filing of a proposed***
25 ***rule change that is abrogated in***

1 *accordance with subparagraph*
2 *(C) and refiled in accordance with*
3 *paragraph (1), or within such*
4 *longer period as the Commission*
5 *may designate up to 90 days after*
6 *such date if the Commission finds*
7 *such longer period to be appro-*
8 *priate and publishes its reasons*
9 *for so finding or as to which the*
10 *self-regulatory organization con-*
11 *sents, the Commission shall—*

12 *“(I) by order approve such*
13 *proposed rule change; or*

14 *“(II) after consultation*
15 *with the Commodity Futures*
16 *Trading Commission, institute*
17 *proceedings to determine*
18 *whether the proposed rule*
19 *change should be disapproved.*

20 *Proceedings under subclause (II)*
21 *shall include notice of the*
22 *grounds for disapproval under*
23 *consideration and opportunity for*
24 *hearing and be concluded within*
25 *180 days after the date of publica-*

1 *tion of notice of the filing of the*
2 *proposed rule change. At the con-*
3 *clusion of such proceedings, the*
4 *Commission, by order, shall ap-*
5 *prove or disapprove such proposed*
6 *rule change. The Commission may*
7 *extend the time for conclusion of*
8 *such proceedings for up to 60 days*
9 *if it finds good cause for such ex-*
10 *ension and publishes its reasons*
11 *for so finding or for such longer*
12 *period as to which the self-regu-*
13 *latory organization consents.*

14 *“(i) GROUNDS FOR APPROVAL.—*
15 *The Commission shall approve a*
16 *proposed rule change of a self-reg-*
17 *ulatory organization under this*
18 *subparagraph if it finds that such*
19 *proposed rule change promotes ef-*
20 *iciency, does not unduly burden*
21 *competition, does not conflict with*
22 *the securities laws, and is not in-*
23 *consistent with the public interest*
24 *or the protection of investors. The*
25 *Commission shall disapprove such*

1 *a proposed rule change of a self-*
2 *regulatory organization if it does*
3 *not make such finding. The Com-*
4 *mission shall not approve any pro-*
5 *posed rule change prior to the*
6 *30th day after the date of publica-*
7 *tion of notice of the filing thereof,*
8 *unless the Commission finds good*
9 *cause for so doing and publishes*
10 *its reasons for so finding.”.*

11 **(2) DECIMAL PRICING PROVISIONS.—***Sec-*
12 *tion 19(b) of the Securities Exchange Act*
13 *of 1934 (15 U.S.C. 78s(b)) is amended by*
14 *inserting after paragraph (7), as added by*
15 *paragraph (1), the following:*

16 **“(8) DECIMAL PRICING.—***Not later than*
17 *9 months after the later of the dates speci-*
18 *fied in section 6(g)(5), all self-regulatory*
19 *organizations listing or trading security*
20 *future products shall file proposed rule*
21 *changes necessary to implement decimal*
22 *pricing of security future products. The*
23 *Commission may not require such rules to*
24 *contain equal minimum increments in*
25 *such decimal pricing.”.*

1 **(3) CONSULTATION PROVISIONS.—***Section 19(b) of the Securities Exchange Act*
2 *of 1934 (15 U.S.C. 78s(b)) is amended by*
3 *inserting after paragraph (8), as added by*
4 *paragraph (2), the following:*
5

6 **“(9) CONSULTATION WITH CFTC.—**

7 **“(A) CONSULTATION REQUIRED.—**
8 *The Commission shall consult with*
9 *and consider the views of the Com-*
10 *modity Futures Trading Commission*
11 *prior to approving a proposed rule*
12 *change filed by a national securities*
13 *association registered pursuant to sec-*
14 *tion 15A(a) or a national securities ex-*
15 *change subject to the provisions of*
16 *subsection (a) that primarily concerns*
17 *conduct related to transactions in se-*
18 *curity futures products, except where*
19 *the Commission determines that an*
20 *emergency exists requiring expedi-*
21 *tious or summary action and pub-*
22 *lishes its reasons therefor.*

23 **“(B) RESPONSES TO CFTC COMMENTS**
24 **AND FINDINGS.—***If the Commodity Fu-*
25 *tures Trading Commission comments*

1 *in writing to the Commission on a*
2 *proposed rule that has been published*
3 *for comment, the Commission shall re-*
4 *spond in writing to such written com-*
5 *ment before approving the proposed*
6 *rule. If the Commodity Futures Trad-*
7 *ing Commission determines, and noti-*
8 *fies the Commission, that such rule, if*
9 *implemented or as applied, would—*

10 *“(i) adversely affect the liquid-*
11 *ity or efficiency of the market for*
12 *security future products; or*

13 *“(ii) impose any burden on*
14 *competition not necessary or ap-*
15 *propriate in furtherance of the*
16 *purposes of this section,*

17 *the Commission shall, prior to approv-*
18 *ing the proposed rule, find that such*
19 *rule is necessary and appropriate in*
20 *furtherance of the purposes of this*
21 *section notwithstanding the Com-*
22 *modity Futures Trading Commission’s*
23 *determination.*

24 *“(C) CONSIDERATIONS OF EXISTING*
25 *REGULATION.—In approving rules de-*

1 *scribed in subparagraph (A), the Com-*
2 *mission shall consider the sufficiency*
3 *and appropriateness of then existing*
4 *laws and rules applicable to security*
5 *futures products.”.*

6 **(c) REVIEW OF DISCIPLINARY PRO-**
7 **CEEDINGS.—Section 19(d) of the Securities Ex-**
8 **change Act of 1934 (15 U.S.C. 78s(d)) is amend-**
9 **ed by adding at the end the following:**

10 **“(3) The provisions of this subsection shall**
11 **apply to an exchange registered pursuant to**
12 **section 6(g) of this title or a national securities**
13 **association registered pursuant to section**
14 **15A(k) of this title only to the extent that such**
15 **exchange or association imposes any final dis-**
16 **ciplinary sanction for—**

17 **“(A) a violation of the federal securi-**
18 **ties laws or the rules and regulations**
19 **thereunder; or**

20 **“(B) a violation of a rule of such ex-**
21 **change or association, as to which a pro-**
22 **posed change would be required to be**
23 **filed under section 19 of this title, except**
24 **that, to the extent that the exchange or as-**
25 **sociation rule violation relates to any ac-**

1 *count, agreement, or transaction, this sub-*
2 *section shall apply only to the extent such*
3 *violation involves a security future prod-*
4 *uct.”.*

5 **SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES**
6 **TRADING SECURITY FUTURE PRODUCTS.**

7 **(a) EXPEDITED REGISTRATION AND EXEMP-**
8 **TIONS.—**

9 **(1) AMENDMENT.—***Section 15(b) of the*
10 *Securities Exchange Act of 1934 (15 U.S.C.*
11 *78o(b)) is amended by adding at the end*
12 *the following:*

13 **“(11) BROKER/DEALER REGISTRATION**
14 **WITH RESPECT TO TRANSACTIONS IN SECU-**
15 **RITY FUTURE PRODUCTS.—**

16 **“(A) NOTICE REGISTRATION.—**

17 **“(i) CONTENTS OF NOTICE.—***Not-*
18 *withstanding paragraphs (1) and*
19 *(2), a broker or dealer required to*
20 *register only because it effects*
21 *transactions in security future*
22 *products on an exchange reg-*
23 *istered pursuant to section 6(g)*
24 *may register for purposes of this*
25 *section by filing with the Commis-*

1 *sion a written notice in such form*
2 *and containing such information*
3 *concerning such broker or dealer*
4 *and any persons associated with*
5 *such broker or dealer as the Com-*
6 *mission, by rule, may prescribe as*
7 *necessary or appropriate in the*
8 *public interest or for the protec-*
9 *tion of investors. A broker or deal-*
10 *er may not register under this*
11 *paragraph unless that broker or*
12 *dealer is a member of a national*
13 *securities association registered*
14 *under section 15A(k).*

15 *“(ii) IMMEDIATE EFFECTIVE-*
16 *NESS.—Such registration shall be*
17 *effective immediately upon filing*
18 *of the written notice with the Com-*
19 *mission, except that such registra-*
20 *tion shall not be effective if the*
21 *registration would be subject to*
22 *suspension or revocation under*
23 *paragraph (4).*

24 *“(iii) SUSPENSION.—Such reg-*
25 *istration shall be suspended im-*

1 *mediately if a national securities*
2 *association registered pursuant to*
3 *section 15A(k) of this title sus-*
4 *pends the membership of that*
5 *broker or dealer.*

6 “(iv) *TERMINATION.*—*Such reg-*
7 *istration shall be terminated im-*
8 *mediately if any of the above stat-*
9 *ed conditions for registration set*
10 *forth in this paragraph are no*
11 *longer satisfied.*

12 “(B) *EXEMPTIONS FOR REGISTERED*
13 *BROKERS AND DEALERS.*—*A broker or*
14 *dealer registered pursuant to the re-*
15 *quirements of subparagraph (A) shall*
16 *be exempt from the following provi-*
17 *sions of this title and the rules there-*
18 *under with respect to transactions in*
19 *security future products:*

20 “(i) *Section 8.*

21 “(ii) *Subsection (a) of section*
22 *10.*

23 “(iii) *Section 11.*

24 “(iv) *Subsections (c)(3) and*
25 *(c)(5) of this section.*

1 “(v) *Section 15B.*

2 “(vi) *Section 15C.*

3 “(vii) *Subsections (d), (e), (f),*
4 *(g), (h), and (i) of section 17.”.*

5 (2) *CONFORMING AMENDMENT.—Section*
6 *28(e) of the Securities Exchange Act of*
7 *1934 (15 U.S.C. 78bb(e)) is amended by*
8 *adding at the end the following:*

9 “(4) *The provisions of this subsection shall*
10 *not apply with regard to securities that are se-*
11 *curity future products.”.*

12 (b) *FLOOR BROKERS AND FLOOR TRADERS.—*
13 *Section 15(b) of the Securities Exchange Act of*
14 *1934 (15 U.S.C. 78o(b)) is amended by inserting*
15 *after paragraph (11), as added by subsection*
16 *(a), the following:*

17 “(12) *EXEMPTION FOR SECURITY FUTURE*
18 *PRODUCT EXCHANGE MEMBERS.—*

19 “(A) *REGISTRATION EXEMPTION.—A*
20 *natural person shall be exempt from*
21 *the registration requirements of this*
22 *section if such person—*

23 “(i) *is a member of a des-*
24 *ignated contract market reg-*

1 *istered with the Commission as an*
2 *exchange pursuant to section 6(g);*

3 *“(ii) effects transactions only*
4 *in securities on the exchange of*
5 *which such person is a member;*
6 *and*

7 *“(iii) has no direct contact*
8 *with public customers.*

9 *“(B) OTHER EXEMPTIONS.—A nat-*
10 *ural person exempt from registration*
11 *pursuant to subparagraph (A) shall*
12 *also be exempt from the following pro-*
13 *visions of this title and the rules*
14 *thereunder:*

15 *“(i) Section 8.*

16 *“(ii) Subsection (a) of section*
17 *10.*

18 *“(iii) Section 11.*

19 *“(iv) Subsections (c)(3), (c)(5),*
20 *and (e) of this section.*

21 *“(v) Section 15B.*

22 *“(vi) Section 15C.*

23 *“(vii) Subsections (d), (e), (f),*
24 *(g), (h), and (i) of section 17.”.*

1 ***(c) LIMITED PURPOSE NATIONAL SECURITIES***
2 ***ASSOCIATION.—Section 15A of the Securities***
3 ***Exchange Act of 1934 (15 U.S.C. 78o–3) is***
4 ***amended by adding at the end the following:***

5 ***“(k) LIMITED PURPOSE NATIONAL SECURI-***
6 ***TIES ASSOCIATION.—***

7 ***“(1) REGULATION OF MEMBERS WITH RE-***
8 ***SPECT TO SECURITY FUTURE PRODUCTS.—A***
9 ***futures association registered under sec-***
10 ***tion 17 of the Commodity Exchange Act***
11 ***shall be a registered national securities***
12 ***association for the limited purpose of reg-***
13 ***ulating the activities of members who are***
14 ***registered as brokers or dealers in secu-***
15 ***rity future products pursuant to section***
16 ***15(b)(11).***

17 ***“(2) REQUIREMENTS FOR REGISTRA-***
18 ***TION.—Such a securities association***
19 ***shall—***

20 ***“(A) be so organized and have the***
21 ***capacity to carry out the purposes of***
22 ***the securities laws applicable to secu-***
23 ***rity future products and to comply,***
24 ***and (subject to any rule or order of***
25 ***the Commission pursuant to section***

1 ***19(g)(2)) to enforce compliance by its***
2 ***members and persons associated with***
3 ***its members, with the provisions of the***
4 ***securities laws applicable to security***
5 ***future products, the rules and regula-***
6 ***tions thereunder, and its rules;***

7 ***“(B) have rules that—***

8 ***“(i) are designed to prevent***
9 ***fraudulent and manipulative acts***
10 ***and practices, to promote just and***
11 ***equitable principles of trade, and,***
12 ***in general, to protect investors***
13 ***and the public interest, including***
14 ***rules governing sales practices***
15 ***and the advertising of security fu-***
16 ***ture products comparable to those***
17 ***of other national securities asso-***
18 ***ciations registered pursuant to***
19 ***subsection (a); and***

20 ***“(ii) are not designed to regu-***
21 ***late by virtue of any authority con-***
22 ***ferred by this title matters not re-***
23 ***lated to the purposes of this title***
24 ***or the administration of the asso-***
25 ***ciation;***

1 “(C) *have rules that provide that*
2 *(subject to any rule or order of the*
3 *Commission pursuant to section*
4 *19(g)(2)) its members and persons as-*
5 *sociated with its members shall be ap-*
6 *propriately disciplined for violation of*
7 *any provision of the securities laws*
8 *applicable to security future products,*
9 *the rules or regulations thereunder, or*
10 *the rules of the association, by expul-*
11 *sion, suspension, limitation of activi-*
12 *ties, functions, and operations, fine,*
13 *censure, being suspended or barred*
14 *from being associated with a member,*
15 *or any other fitting sanction; and*

16 “(D) *have rules that ensure that*
17 *members and natural persons associ-*
18 *ated with members meet such stand-*
19 *ards of training, experience, and com-*
20 *petence necessary to effect trans-*
21 *actions in security future products*
22 *and are tested for their knowledge of*
23 *securities and security future prod-*
24 *ucts.*

1 **“(3) EXEMPTION FROM RULE CHANGE**
2 **SUBMISSION.—Such a securities associa-**
3 **tion shall be exempt from submitting pro-**
4 **posed rule changes pursuant to section**
5 **19(b) of this title, except that—**

6 **“(A) the association shall file pro-**
7 **posed rule changes related to higher**
8 **margin levels, fraud or manipulation,**
9 **recordkeeping, reporting, listing**
10 **standards, or decimal pricing for se-**
11 **curity future products, sales practices,**
12 **advertising of security future prod-**
13 **ucts, or standards of training, experi-**
14 **ence, competence, or other qualifica-**
15 **tions for security future products for**
16 **persons who effect transactions in se-**
17 **curity future products or rules effec-**
18 **tuating the association’s obligation to**
19 **enforce the securities laws pursuant**
20 **to section 19(b)(7);**

21 **“(B) the association shall file pur-**
22 **suant to sections 19(b)(1) and 19(b)(2)**
23 **proposed rule changes related to mar-**
24 **gin, except for changes resulting in**
25 **higher margin levels; and**

1 “(C) *the association shall file pur-*
2 *suant to section 19(b)(1) proposed rule*
3 *changes that have been abrogated by*
4 *the Commission pursuant to section*
5 *19(b)(7)(C).*

6 “(4) *OTHER EXEMPTIONS.—Such a secu-*
7 *rities association shall be exempt from*
8 *and shall not be required to enforce com-*
9 *pliance by its members, and its members*
10 *shall not, solely with respect to their*
11 *transactions effected in security future*
12 *products, be required to comply, with the*
13 *following provisions of this title and the*
14 *rules thereunder:*

15 “(A) *Subsections (b)(1), (b)(3),*
16 *(b)(4), (b)(5), (b)(8), (b)(10), (b)(11),*
17 *(b)(12), (b)(13), (c), (d), (e), (f), (g), (h),*
18 *and (i) of this section.*

19 “(B) *Subsections (d), (f), and (k) of*
20 *section 17.*

21 “(C) *Subsections (a), (f), and (h) of*
22 *section 19.”.*

23 “(d) *EXEMPTION UNDER THE SECURITIES IN-*
24 *VESTOR PROTECTION ACT OF 1970.—*

1 **(1) Section 16(14) of the Securities In-**
2 **vestor Protection Act of 1970 (15 U.S.C.**
3 **78lll(14)) is amended by inserting “or any**
4 **security future as that term is defined in**
5 **section 3(a)(55)(A) of the Securities Ex-**
6 **change Act of 1934,” after “certificate of**
7 **deposit for a security,”.**

8 **(2) Section 3(a)(2)(A) of the Securities**
9 **Investor Protection Act of 1970 (15 U.S.C.**
10 **78ccc(a)(2)(A)) is amended—**

11 **(A) in clause (i), by striking “and”**
12 **after the semicolon;**

13 **(B) in clause (ii), by striking the**
14 **period and inserting “; and”;**

15 **(C) by adding at the end the fol-**
16 **lowing:**

17 **“(iii) persons who are reg-**
18 **istered as a broker or dealer pur-**
19 **suant to section 15(b)(11)(A) of the**
20 **Securities Exchange Act of 1934.”.**

21 **(e) OTHER PROVISION.—Section 15(i)(6)(A)**
22 **of the Securities Exchange Act of 1934 (15**
23 **U.S.C. 78o(i)(6)(A)) is amended—**

24 **(1) in clause (ii), by striking “and”**
25 **after the semicolon;**

1 **(2) in clause (iii), by striking the pe-**
2 **riod and inserting “; and”; and**

3 **(3) by adding at the end the following:**

4 **“(iv) is not a security future**
5 **product.”.**

6 **SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-**
7 **OPERATION.**

8 **Section 17 of the Securities Exchange Act**
9 **of 1934 (15 U.S.C. 78q) is amended by striking**
10 **subsection (b) and inserting the following:**

11 **“(b) RECORDS SUBJECT TO EXAMINATION.—**

12 **“(1) PROCEDURES FOR COOPERATION**
13 **WITH OTHER AGENCIES.—All records of per-**
14 **sons described in subsection (a) are sub-**
15 **ject at any time, or from time to time, to**
16 **such reasonable periodic, special, or other**
17 **examinations by representatives of the**
18 **Commission and the appropriate regu-**
19 **latory agency for such persons as the**
20 **Commission or the appropriate regulatory**
21 **agency for such persons deems necessary**
22 **or appropriate in the public interest, for**
23 **the protection of investors, or otherwise in**
24 **furtherance of the purposes of this title if**

1 *the Commission, prior to conducting any*
2 *such examination of a—*

3 *“(A) registered clearing agency,*
4 *registered transfer agent, or reg-*
5 *istered municipal securities dealer for*
6 *which it is not the appropriate regu-*
7 *latory agency, gives notice to the ap-*
8 *propriate regulatory agency for such*
9 *clearing agency, transfer agent, or*
10 *municipal securities dealer, of such*
11 *proposed examination and consults*
12 *with the appropriate regulatory agen-*
13 *cy concerning the feasibility and de-*
14 *sirability of coordinating such exami-*
15 *nations conducted by the appropriate*
16 *regulatory agency with a view to*
17 *avoiding unnecessary regulatory du-*
18 *plication or undue regulatory burdens*
19 *for such clearing agency, transfer*
20 *agent, or municipal securities dealer;*
21 *or*

22 *“(B) broker or dealer registered*
23 *pursuant to section 15(b)(11), ex-*
24 *change registered pursuant to section*
25 *6(g), or national securities association*

1 *registered pursuant to section 15A(k)*
2 *gives notice to the Commodity Futures*
3 *Trading Commission of such proposed*
4 *examination and consults with the*
5 *Commodity Futures Trading Commis-*
6 *sion concerning the feasibility and de-*
7 *sirability of coordinating such exam-*
8 *ination with examinations conducted*
9 *by the Commodity Futures Trading*
10 *Commission with a view to avoiding*
11 *unnecessary regulatory duplication or*
12 *undue regulatory burdens for such*
13 *broker or dealer or exchange.*

14 “(2) *FURNISHING DATA AND REPORTS TO*
15 *CFTC.—The Commission shall notify the*
16 *Commodity Futures Trading Commission*
17 *of any examination conducted of any*
18 *broker or dealer registered pursuant to*
19 *section 15(b)(11), exchange registered pur-*
20 *suant to section 6(g), or national securi-*
21 *ties association registered pursuant to*
22 *section 15A(k) and, upon request, furnish*
23 *to the Commodity Futures Trading Com-*
24 *mission any examination report and data*

1 *supplied to the Commission in connection*
2 *with such examination.*

3 **“(3) USE OF CFTC REPORTS.—***The Com-*
4 *mission shall, to the fullest extent pos-*
5 *sible, use the reports of examinations of*
6 *any broker or dealer registered pursuant*
7 *to section 15(b)(11) or exchange registered*
8 *pursuant to section 6(g) made by the Com-*
9 *modity Futures Trading Commission, a*
10 *national securities association registered*
11 *pursuant to section 15A(k), or an ex-*
12 *change registered pursuant to section*
13 *6(g).*

14 **“(4) LARGE TRADER REPORTING.—***The*
15 *Commission and the Commodity Futures*
16 *Trading Commission shall jointly pre-*
17 *scribe rules to require large trader report-*
18 *ing with respect to security future prod-*
19 *ucts. Such rules shall specify a reporting*
20 *level for each security future product, a*
21 *format for reporting, and the procedures*
22 *for filing such reports with the Commis-*
23 *sion and the Commodity Futures Trading*
24 *Commission.*

1 “(5) *RULE OF CONSTRUCTION.—Nothing*
2 *in this subsection shall be construed to*
3 *impair or limit (other than by the require-*
4 *ment of prior consultation) the power of*
5 *the Commission under this subsection to*
6 *examine any clearing agency, transfer*
7 *agent, or municipal securities dealer,*
8 *broker or dealer registered pursuant to*
9 *section 15(b)(11), exchange registered pur-*
10 *suant to section 6(g), or national securi-*
11 *ties association registered pursuant to*
12 *section 15A(k), or to affect in any way the*
13 *power of the Commission under any other*
14 *provision of this title or otherwise to in-*
15 *spect, examine, or investigate any clear-*
16 *ing agency, transfer agent, or municipal*
17 *securities dealer, broker or dealer reg-*
18 *istered pursuant to section 15(b)(11), ex-*
19 *change registered pursuant to section*
20 *6(g), or national securities association*
21 *registered pursuant to section 15A(k).”.*

1 *SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SECUR-*
2 *ITY FUTURE PRODUCTS.*

3 *(a) ADDITION OF SECURITY FUTURE PROD-*
4 *UCTS TO OPTION-SPECIFIC ENFORCEMENT PROVI-*
5 *SIONS.—*

6 *(1) PROHIBITION AGAINST MANIPULA-*
7 *TION.—Section 9(b) of the Securities Ex-*
8 *change Act of 1934 (15 U.S.C. 78i(b)) is*
9 *amended—*

10 *(A) in paragraph (1)—*

11 *(i) by inserting “(A)” after “ac-*
12 *quires”; and*

13 *(ii) by striking “; or” and in-*
14 *serting “, or (B) any security fu-*
15 *ture product on the security; or”;*

16 *(B) in paragraph (2)—*

17 *(i) by inserting “(A)” after “in-*
18 *terest in any”; and*

19 *(ii) by striking “; or” and in-*
20 *serting “, or (B) such security fu-*
21 *ture product delivery; or”; and*

22 *(C) in paragraph (3)—*

23 *(i) by inserting “(A)” after “in-*
24 *terest in any”; and*

1 (ii) by inserting “, or (B) such
2 security future product” after
3 “privilege”.

4 (2) **MANIPULATION IN OPTIONS AND**
5 **OTHER DERIVATIVE PRODUCTS.—Section 9(g)**
6 **of the Securities Exchange Act of 1934 (15**
7 **U.S.C. 78i(g)) is amended—**

8 (A) by inserting “(1)” after “(g)”;

9 (B) by inserting “other than a se-
10 curity future product” after “future
11 delivery”; and

12 (C) by adding at the end fol-
13 lowing:

14 “(2) *Notwithstanding the Commodity Ex-*
15 *change Act, the Commission shall have the au-*
16 *thority to regulate the trading of any security*
17 *future product to the extent provided in the se-*
18 *curities laws.”.*

19 (3) **LIABILITY OF CONTROLLING PERSONS**
20 **AND PERSONS WHO AID AND ABET VIOLA-**
21 **TIONS.—Section 20(d) of the Securities Ex-**
22 **change Act of 1934 (15 U.S.C. 78t(d)) is**
23 **amended by striking “or privilege” and in-**
24 **serting “privilege, or security future prod-**
25 **uct”.**

1 **(4) LIABILITY TO CONTEMPORANEOUS**
2 **TRADERS FOR INSIDER TRADING.—Section**
3 **21A(a)(1) of the Securities Exchange Act**
4 **of 1934 (15 U.S.C. 78u-1(a)(1)) is amended**
5 **by striking “standardized options, the**
6 **Commission—” and inserting “standard-**
7 **ized options or security future products,**
8 **the Commission—”.**

9 **(5) ENFORCEMENT CONSULTATION.—Sec-**
10 **tion 21 of the Securities Exchange Act of**
11 **1934 (15 U.S.C. 78u) is amended by adding**
12 **at the end the following:**

13 **“(i) INFORMATION TO CFTC.—The Commis-**
14 **sion shall provide the Commodity Futures**
15 **Trading Commission with notice of the com-**
16 **mencement of any proceeding and a copy of**
17 **any order entered by the Commission against**
18 **any broker or dealer registered pursuant to**
19 **section 15(b)(11) or any exchange registered**
20 **pursuant to section 6(g).”.**

21 **SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SE-**
22 **CURITY FUTURE PRODUCTS.**

23 **(a) LISTING STANDARDS AND CONDITIONS**
24 **FOR TRADING.—Section 6 of the Securities Ex-**
25 **change Act of 1934 (15 U.S.C. 78f) is amended**

1 *by inserting after subsection (g), as added by*
2 *section 202, the following:*

3 *“(h) TRADING IN SECURITY FUTURE PROD-*
4 *UCTS.—*

5 *“(1) TRADING ON EXCHANGE OR ASSOCIA-*
6 *TION REQUIRED.—It shall be unlawful for*
7 *any person to effect transactions in secu-*
8 *rity future products that are not listed on*
9 *a national securities exchange or a na-*
10 *tional securities association registered*
11 *pursuant to section 15A(a).*

12 *“(2) LISTING STANDARDS AND CONDI-*
13 *TIONS FOR TRADING REQUIRED.—A national*
14 *securities exchange or a national securi-*
15 *ties association registered pursuant to*
16 *section 15A(a) may trade only security fu-*
17 *ture products that (A) conform with list-*
18 *ing standards and conditions for trading*
19 *that such exchange or association files*
20 *with the Commission under section 19(b),*
21 *and (B) meet the criteria specified in sec-*
22 *tion 2(a)(1)(D)(i) of the Commodity Ex-*
23 *change Act.*

24 *“(3) REQUIREMENTS FOR LISTING STAND-*
25 *ARDS AND CONDITIONS FOR TRADING.—Such*

1 *listing standards and conditions for trad-*
2 *ing shall—*

3 *“(A) except as otherwise provided*
4 *in a rule, regulation, or order issued*
5 *pursuant to paragraph (4), require*
6 *that any security underlying the secu-*
7 *rity future, including each component*
8 *security of a narrow-based security*
9 *index, be registered pursuant to sec-*
10 *tion 12 of this title;*

11 *“(B) except as otherwise provided*
12 *in a rule, regulation, or order issued*
13 *pursuant to paragraph (4), require*
14 *that the security future product be*
15 *cash settled;*

16 *“(C) be no less restrictive than*
17 *comparable listing standards for op-*
18 *tions traded on a national securities*
19 *exchange or a national securities as-*
20 *sociation registered pursuant to sec-*
21 *tion 15A(a) of this title;*

22 *“(D) except as otherwise provided*
23 *in a rule, regulation, or order issued*
24 *pursuant to paragraph (4), require*
25 *that the security future be based upon*

1 *common stock and such other equity*
2 *securities as the Commission and the*
3 *Commodity Futures Trading Commis-*
4 *sion jointly determine appropriate;*

5 *“(E) require that the security fu-*
6 *ture product is cleared by a clearing*
7 *agency that has in place provisions*
8 *for linked and coordinated clearing*
9 *with other clearing agencies that*
10 *clear security future products, which*
11 *permits the security future product to*
12 *be purchased on one market and off-*
13 *set on any other market on which the*
14 *security future product is traded;*

15 *“(F) require that only a broker or*
16 *dealer subject to suitability rules com-*
17 *parable to those of a national securi-*
18 *ties association registered pursuant to*
19 *section 15A(a) effect transactions in*
20 *the security future product;*

21 *“(G) require that the security fu-*
22 *ture product be subject to the prohibi-*
23 *tion against dual trading in section 4j*
24 *of the Commodity Exchange Act (7*
25 *U.S.C. 6j) and the rules and regula-*

1 *tions thereunder or the provisions of*
2 *section 11(a) of this title and the rules*
3 *and regulations thereunder, except to*
4 *the extent otherwise permitted under*
5 *this title and the rules and regula-*
6 *tions thereunder;*

7 *“(H) require that trading in the*
8 *security future product not be readily*
9 *susceptible to manipulation of the*
10 *price of such security future product,*
11 *nor to causing or being used in the*
12 *manipulation of the price of any un-*
13 *derlying security, option on such secu-*
14 *rity, or option on a group or index in-*
15 *cluding such securities;*

16 *“(I) require that procedures be in*
17 *place for coordinated surveillance*
18 *among the market on which the secu-*
19 *rity future product is traded, any mar-*
20 *ket on which any security underlying*
21 *the security future product is traded,*
22 *and other markets on which any re-*
23 *lated security is traded to detect ma-*
24 *nipulation and insider trading;*

1 “(J) require that the market on
2 which the security future product is
3 traded has in place audit trails nec-
4 essary or appropriate to facilitate the
5 coordinated surveillance required in
6 subparagraph (I);

7 “(K) require that the market on
8 which the security future product is
9 traded has in place procedures to co-
10 ordinate trading halts between such
11 market and any market on which any
12 security underlying the security future
13 product is traded and other markets
14 on which any related security is trad-
15 ed; and

16 “(L) require that the margin re-
17 quirements for a security future prod-
18 uct be consistent with the margin re-
19 quirements for comparable option
20 contracts traded on an exchange reg-
21 istered pursuant to section 6(a) of this
22 title and that initial and maintenance
23 margin levels for a security future
24 product not be lower than the levels of
25 margin required for comparable op-

1 *tion contracts traded on an exchange*
2 *registered pursuant to section 6(a) of*
3 *this title, except that nothing in this*
4 *subparagraph shall be construed to*
5 *prevent a national securities ex-*
6 *change or national securities associa-*
7 *tion from requiring higher margin*
8 *levels for a security future product*
9 *when it deems such action to be nec-*
10 *essary or appropriate.*

11 **“(4) AUTHORITY TO MODIFY CERTAIN**
12 **LISTING STANDARD REQUIREMENTS.—***The*
13 *Commission and the Commodity Futures*
14 *Trading Commission, by rule, regulation,*
15 *or order, may jointly modify the listing*
16 *standard requirements specified in sub-*
17 *paragraph (A), (B), or (D) of paragraph*
18 *(3) to the extent such modification fosters*
19 *the development of fair and orderly mar-*
20 *kets in security future products, is nec-*
21 *essary or appropriate in the public inter-*
22 *est, and is consistent with the protection*
23 *of investors.*

24 **“(5) REQUIREMENTS FOR OTHER PERSONS**
25 **TRADING SECURITY FUTURE PRODUCTS.—***It*

1 *shall be unlawful for any person (other*
2 *than a national securities exchange or a*
3 *national securities association registered*
4 *pursuant to section 15A(a)) to constitute,*
5 *maintain, or provide a marketplace or fa-*
6 *cilities for bringing together purchasers*
7 *and sellers of security future products or*
8 *to otherwise perform with respect to secu-*
9 *rity future products the functions com-*
10 *monly performed by a stock exchange as*
11 *that term is generally understood, unless*
12 *a national securities association reg-*
13 *istered pursuant to section 15A(a)—*

14 *“(A) has in place procedures for*
15 *coordinated surveillance among such*
16 *person, the market trading the securi-*
17 *ties underlying the security future*
18 *products, and other markets trading*
19 *related securities to detect manipula-*
20 *tion and insider trading;*

21 *“(B) has rules to require audit*
22 *trails necessary or appropriate to fa-*
23 *cilitate the coordinated surveillance*
24 *required in subparagraph (A); and*

1 “(C) *has rules to require such per-*
2 *son to coordinate trading halts with*
3 *markets trading the securities under-*
4 *lying the security future products and*
5 *other markets trading related securi-*
6 *ties.*

7 “(6) *DEFERRAL OF OPTIONS ON SECURITY*
8 *FUTURES TRADING.—No person shall offer*
9 *to enter into, enter into, or confirm the*
10 *execution of any put, call, straddle, op-*
11 *tion, or privilege on a security future, ex-*
12 *cept that, after 3 years after the date of*
13 *enactment of this subsection, the Commis-*
14 *sion and the Commodity Futures Trading*
15 *Commission may by order jointly deter-*
16 *mine to permit trading of puts, calls,*
17 *straddles, options, or privileges on any se-*
18 *curity future authorized to be traded*
19 *under the provisions of this Act and the*
20 *Commodity Exchange Act. Before any such*
21 *determination, the Commission and the*
22 *Commodity Futures Trading Commission*
23 *shall conduct a study of the effect of the*
24 *trading of security futures on the markets*
25 *for futures contracts, securities, and op-*

1 *tions and the adequacy of protections for*
2 *investors and other market participants.”.*

3 **(b) MARGIN.—Section 7 of the Securities Ex-**
4 **change Act of 1934 (15 U.S.C. 78g) is**
5 **amended—**

6 **(1) in subsection (a), by inserting “or a**
7 **security future product” after “exempted**
8 **security”;**

9 **(2) in subsection (c)(1)(A), by inserting**
10 **“except as provided in paragraph (2),”**
11 **after “security),”;**

12 **(3) by redesignating paragraph (2) of**
13 **subsection (c) as paragraph (3) of such**
14 **subsection; and**

15 **(4) by inserting after paragraph (1) of**
16 **such subsection the following:**

17 **“(2) MARGIN REGULATIONS.—**

18 **“(A) COMPLIANCE WITH MARGIN**
19 **RULES REQUIRED.—It shall be unlawful**
20 **for any broker, dealer, or member of a**
21 **national securities exchange to, di-**
22 **rectly or indirectly, extend or main-**
23 **tain credit to or for, or collect margin**
24 **from any customer on, any security fu-**
25 **ture product unless such activities**

1 *comply with the rules and regulations*
2 *which the Commission, after consulta-*
3 *tion with the Commodity Futures*
4 *Trading Commission shall prescribe*
5 *pursuant to subparagraph (B).*

6 “(B) *CRITERIA FOR ISSUANCE OF*
7 *RULES.—The Commission shall issue*
8 *such regulations to establish margin*
9 *requirements, including the establish-*
10 *ment of levels of margin (initial and*
11 *maintenance) and use of collateral for*
12 *security future products under such*
13 *terms, and at such levels, as the Com-*
14 *mission deems appropriate—*

15 “(i) *to preserve the financial*
16 *integrity of markets trading secu-*
17 *rity future products;*

18 “(ii) *to prevent systemic risk;*

19 “(iii) *to make consistent the*
20 *margin levels (initial and mainte-*
21 *nance) and other margin require-*
22 *ments between security future*
23 *products and comparable options*
24 *contracts traded on a national se-*
25 *curities exchange; and*

1 “(iv) to ensure that the margin
2 requirements (other than levels of
3 margin), including the type, form,
4 and use of collateral for security
5 future products, are and remain
6 consistent with the requirements
7 established by the Federal Reserve
8 Board, pursuant to subpara-
9 graphs (A) and (B) of paragraph
10 (1).”.

11 (c) **INCORPORATION OF SECURITY FUTURE**
12 **PRODUCTS INTO THE NATIONAL MARKET SYS-**
13 **TEM.—Section 11A of the Securities Exchange**
14 **Act of 1934 (15 U.S.C. 78k–1) is amended by**
15 **adding at the end the following:**

16 “(e) **NATIONAL MARKETS SYSTEM FOR SECUR-**
17 **RITY FUTURE PRODUCTS.—**

18 “(1) **CONSULTATION AND COOPERATION**
19 **REQUIRED.—With respect to security future**
20 **products, the Commission and the Com-**
21 **modity Futures Trading Commission shall**
22 **consult and cooperate so that, to the max-**
23 **imum extent practicable, their respective**
24 **regulatory responsibilities may be ful-**
25 **filled and the rules and regulations appli-**

1 *cable to security future products may fos-*
2 *ter a national market system for security*
3 *future products if the Commission and the*
4 *Commodity Futures Trading Commission*
5 *jointly determine that such a system*
6 *would be consistent with the congres-*
7 *sional findings in subsection (a)(1). In ac-*
8 *cordance with this objective, the Commis-*
9 *sion shall, at least 15 days prior to the*
10 *issuance for public comment of any pro-*
11 *posed rule or regulation under this sec-*
12 *tion concerning security future products,*
13 *consult and request the views of the Com-*
14 *modity Futures Trading Commission.*

15 *“(2) APPLICATION OF RULES BY ORDER*
16 *OF CFTC.—No rule adopted pursuant to*
17 *this section shall be applied to any person*
18 *with respect to the trading of security fu-*
19 *ture products on an exchange that is reg-*
20 *istered under section 6(g) unless the Com-*
21 *modity Futures Trading Commission has*
22 *issued an order directing that such rule is*
23 *applicable to such persons.”.*

24 *(d) INCORPORATION OF SECURITY FUTURE*
25 *PRODUCTS INTO THE NATIONAL SYSTEM FOR*

1 **CLEARANCE AND SETTLEMENT.—Section 17A(b)**
2 **of the Securities Exchange Act of 1934 (15**
3 **U.S.C. 78q-1(b)) is amended by adding at the**
4 **end the following:**

5 **“(7) A clearing agency that is regulated di-**
6 **rectly or indirectly by the Commodity Futures**
7 **Trading Commission through its association**
8 **with a designated contract market for security**
9 **future products, and that performs the func-**
10 **tions of a clearing agency only with respect to**
11 **security future products and transactions in**
12 **securities effected pursuant to the rules of the**
13 **designated contract market with which such**
14 **agency is associated, is exempted from the pro-**
15 **visions of this section and the rules and regu-**
16 **lations thereunder, except that any clearing**
17 **agency that performs the functions of a clear-**
18 **ing agency with respect to security future**
19 **products must coordinate with and develop**
20 **fair and reasonable links with any and all**
21 **other clearing agencies that perform the func-**
22 **tions of a clearing agency with respect to secu-**
23 **rity future products, in order to permit secu-**
24 **rity future products to be purchased on a na-**
25 **tional securities exchange or national securi-**

1 *ties association registered pursuant to section*
2 *15A(a) and offset on another national securi-*
3 *ties exchange or national securities associa-*
4 *tion registered pursuant to section 15A(a).”.*

5 **(e) MARKET EMERGENCY POWERS AND CIR-**
6 **CUIT BREAKERS.—Section 12(k) of the Securities**
7 **Exchange Act of 1934 (15 U.S.C. 78l(k)) is**
8 **amended—**

9 **(1) in paragraph (1), by adding at the**
10 **end the following: “If the actions de-**
11 **scribed in subparagraph (A) or (B) in-**
12 **volve a security future product, the Com-**
13 **mission shall consult with and consider**
14 **the views of the Commodity Futures Trad-**
15 **ing Commission.”; and**

16 **(2) in paragraph (2)(B), by inserting**
17 **after the first sentence the following: “If**
18 **the actions described in subparagraph (A)**
19 **involve a security future product, the**
20 **Commission shall consult with and con-**
21 **sider the views of the Commodity Futures**
22 **Trading Commission.”.**

23 **(f) OBLIGATION TO PUT IN PLACE PROCE-**
24 **DURES AND ADOPT RULES.—Section 15A of the**
25 **Securities Exchange Act of 1934 (15 U.S.C. 78o-**

1 *3) is amended by inserting after subsection (k),*
2 *as added by section 203, the following new sub-*
3 *section:*

4 ***“(l) PROCEDURES AND RULES FOR SECURITY***
5 ***FUTURE PRODUCTS.—A national securities asso-***
6 ***ciation registered pursuant to subsection (a)***
7 ***shall, not later than one year after the date of***
8 ***enactment of the Commodity Futures Mod-***
9 ***ernization Act of 2000, implement the proce-***
10 ***dures specified in section 6(h)(5)(A) of this***
11 ***title and adopt the rules specified in subpara-***
12 ***graphs (B) and (C) of section 6(h)(5) of this***
13 ***title.”.***

14 ***SEC. 207. CLEARANCE AND SETTLEMENT.***

15 ***Section 17A of the Securities Exchange Act***
16 ***of 1934 (15 U.S.C. 78q–1) is amended—***

17 ***(1) in subsection (a)—***

18 ***(A) in paragraph (1), by inserting***
19 ***after subparagraph (D) the following:***

20 ***“(E) The clearance and settlement of***
21 ***transactions in over-the-counter deriva-***
22 ***tives through clearing agencies registered***
23 ***with the Commission will reduce systemic***
24 ***risk and provide stability to financial***

1 *markets during times of market dis-*
2 *order.”; and*

3 *(B) in paragraph (2)(A)(ii), by*
4 *striking “and commodity options” and*
5 *inserting “commodity options, and*
6 *over-the-counter derivatives”; and*

7 *(2) in subsection (b)—*

8 *(A) in paragraph (3)(A), by insert-*
9 *ing “and derivative agreements, con-*
10 *tracts, and transactions” after*
11 *“prompt and accurate clearance and*
12 *settlement of securities transactions”;*

13 *(B) in paragraph (3)(F), by insert-*
14 *ing “and, to the extent applicable, de-*
15 *rivative agreements, contracts, and*
16 *transactions” after “designed to pro-*
17 *mote the prompt and accurate clear-*
18 *ance and settlement of securities*
19 *transactions”; and*

20 *(C) by inserting after paragraph*
21 *(7), as added by section 206(d), the fol-*
22 *lowing:*

23 *“(8) A registered clearing agency shall be*
24 *permitted to provide facilities for the clear-*
25 *ance and settlement of any derivative agree-*

1 *ments, contracts, or transactions that are ex-*
2 *cluded from the Commodity Exchange Act,*
3 *subject to the requirements of this section and*
4 *to such rules and regulations as the Commis-*
5 *sion may prescribe as necessary or appro-*
6 *priate in the public interest, for the protection*
7 *of investors, or otherwise in furtherance of the*
8 *purposes of this title.”.*

9 **SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND**
10 **DISCLOSURE ISSUES UNDER THE SECURITIES**
11 **ACT OF 1933 AND THE SECURITIES EXCHANGE**
12 **ACT OF 1934.**

13 **(a) AMENDMENTS TO THE SECURITIES ACT OF**
14 **1933.—**

15 **(1) TREATMENT OF SECURITY FUTURE**
16 **PRODUCTS.—Section 2(a) of the Securities**
17 **Act of 1933 (15 U.S.C. 77b(a)) is**
18 **amended—**

19 **(A) in paragraph (1), by inserting**
20 **“security future,” after “treasury**
21 **stock,”;**

22 **(B) in paragraph (3), by adding at**
23 **the end the following: “Any offer or**
24 **sale of a security future product by or**
25 **on behalf of the issuer of the securities**

1 *underlying the security future prod-*
2 *uct, an affiliate of the issuer, or an*
3 *underwriter, shall constitute a con-*
4 *tract for sale of, sale of, offer for sale,*
5 *or offer to sell the underlying securi-*
6 *ties.”; and*

7 (C) *by adding at the end the fol-*
8 *lowing:*

9 “(16) *The terms ‘security future’, ‘nar-*
10 *row-based security index’, and ‘security*
11 *future product’ have the same meanings*
12 *as provided in section 3(a)(55) of the Se-*
13 *curities Exchange Act of 1934.”.*

14 (2) *EXEMPTION FROM REGISTRATION.—*
15 *Section 3(a) of the Securities Act of 1933*
16 *(15 U.S.C. 77c(a)) is amended by adding at*
17 *the end the following:*

18 “(14) *Any security future product that*
19 *is—*

20 “(A) *cleared by a clearing agency*
21 *registered under section 17A of the Se-*
22 *curities Exchange Act of 1934 or ex-*
23 *empt from registration under sub-*
24 *section (b)(7) of such section 17A; and*

1 “(B) *listed on a national securities*
2 *exchange or a national securities as-*
3 *sociation registered pursuant to sec-*
4 *tion 15A(a) of the Securities Exchange*
5 *Act of 1934.”.*

6 (3) *CONFORMING AMENDMENT.—Section*
7 *12(a)(2) of the Securities Act of 1933 (15*
8 *U.S.C. 77l(a)(2)) is amended by striking*
9 *“paragraph (2)” and inserting “para-*
10 *graphs (2) and (14)”.*

11 (b) *AMENDMENTS TO THE SECURITIES EX-*
12 *CHANGE ACT OF 1934.—*

13 (1) *EXEMPTION FROM REGISTRATION.—*
14 *Section 12(a) of the Securities Exchange*
15 *Act of 1934 (15 U.S.C. 78l(a)) is amended*
16 *by adding at the end the following: “The*
17 *provisions of this subsection shall not*
18 *apply in respect of a security future prod-*
19 *uct listed on a national securities ex-*
20 *change.”.*

21 (2) *EXEMPTIONS FROM REPORTING RE-*
22 *QUIREMENT.—Section 12(g)(5) of the Secu-*
23 *rities Exchange Act of 1934 (15 U.S.C.*
24 *78l(g)(5)) is amended by adding at the end*
25 *the following: “For purposes of this sub-*

1 *section, a security future product shall*
2 *not be considered a class of equity secu-*
3 *rity of the issuer of the securities under-*
4 *lying the security future product.”.*

5 **(3) TRANSACTIONS BY CORPORATE INSID-**
6 **ERS.—Section 16 of the Securities Ex-**
7 **change Act of 1934 (15 U.S.C. 78p) is**
8 **amended by adding at the end the fol-**
9 **lowing:**

10 **“(f) TREATMENT OF TRANSACTIONS IN SECUR-**
11 **RITY FUTURE PRODUCTS.—The provisions of this**
12 **section shall apply to ownership of and trans-**
13 **actions in security future products as if they**
14 **were ownership of and transactions in the un-**
15 **derlying equity security. The Commission may**
16 **adopt such rules and regulations as it deems**
17 **necessary or appropriate in the public interest**
18 **to carry out the purposes of this section.”.**

19 **SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY**
20 **ACT OF 1940 AND THE INVESTMENT ADVISERS**
21 **ACT OF 1940.**

22 **(a) DEFINITIONS UNDER THE INVESTMENT**
23 **COMPANY ACT OF 1940 AND THE INVESTMENT AD-**
24 **VISERS ACT OF 1940.—**

1 ***(1) Section 2(a)(36) of the Investment***
2 ***Company Act of 1940 (15 U.S.C. 80a-***
3 ***2(a)(36)) is amended by inserting “security***
4 ***future,” after “treasury stock.”***

5 ***(2) Section 202(a)(18) of the Invest-***
6 ***ment Advisers Act of 1940 (15 U.S.C. 80b-***
7 ***2(a)(18)) is amended by inserting “security***
8 ***future,” after “treasury stock.”***

9 ***(3) Section 2(a) of the Investment***
10 ***Company Act of 1940 (15 U.S.C. 80a-2(a))***
11 ***is amended by adding at the end the fol-***
12 ***lowing:***

13 ***“(52) The terms ‘security future’ and***
14 ***‘narrow-based security index’ have the***
15 ***same meanings as provided in section***
16 ***3(a)(55) of the Securities Exchange Act of***
17 ***1934.”***

18 ***(4) Section 202(a) of the Investment***
19 ***Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is***
20 ***amended by adding at the end the fol-***
21 ***lowing:***

22 ***“(27) The terms ‘security future’ and***
23 ***‘narrow-based security index’ have the***
24 ***same meanings as provided in section***

1 ***3(a)(55) of the Securities Exchange Act of***
2 ***1934.***”.

3 ***(b) OTHER PROVISION.—Section 203(b) of***
4 ***the Investment Advisers Act of 1940 (15 U.S.C.***
5 ***80b–3(b)) is amended—***

6 ***(1) by striking “or” at the end of para-***
7 ***graph (4);***

8 ***(2) by striking the period at the end of***
9 ***paragraph (5) and inserting “; or”; and***

10 ***(3) by adding at the end the following:***

11 ***“(6) any investment adviser that is***
12 ***registered with the Commodity Futures***
13 ***Trading Commission as a commodity***
14 ***trading advisor whose business does not***
15 ***consist primarily of acting as an invest-***
16 ***ment adviser, as defined in section***
17 ***202(a)(11) of this title, and that does not***
18 ***act as an investment adviser to (A) an in-***
19 ***vestment company registered under title I***
20 ***of this Act, or (B) a company which has***
21 ***elected to be a business development com-***
22 ***pany pursuant to section 54 of title I of***
23 ***this Act and has not withdrawn its elec-***
24 ***tion.***”.

1 **SEC. 210. PREEMPTION OF STATE GAMING AND BUCKET**
2 **SHOP LAWS.**

3 *The last sentence of section 28(a) of the Se-*
4 *curities Exchange Act of 1934 (15 U.S.C.*
5 *78bb(a)) is amended—*

6 *(1) by inserting “subject to this title”*
7 *after “privilege, or other security”; and*

8 *(2) by striking “any such instrument,*
9 *if such instrument is traded pursuant to*
10 *rules and regulations of a self-regulatory*
11 *organization that are filed with the Com-*
12 *mission pursuant to section 19(b) of this*
13 *Act” and inserting “any such security”.*

14 **Subtitle B—Conforming Amend-**
15 **ments to the Commodity Ex-**
16 **change Act**

17 **SEC. 221. JURISDICTION OF SECURITIES AND EXCHANGE**
18 **COMMISSION; OTHER PROVISIONS.**

19 **(a) JURISDICTION OF SECURITIES AND EX-**
20 **CHANGE COMMISSION.—Section 2(a)(1) of the**
21 **Commodity Exchange Act (7 U.S.C. 2, 2a, 4) is**
22 **amended by adding at the end the following:**

23 *“(D)(i) Notwithstanding any other*
24 *provision of this Act, the Securities*
25 *and Exchange Commission shall have*
26 *jurisdiction and authority over secu-*

1 *rity futures as defined in section*
2 *3(a)(55) of the Securities Exchange*
3 *Act of 1934, section 2(a)(16) of the Se-*
4 *curities Act of 1933, section 2(a)(52) of*
5 *the Investment Company Act of 1940,*
6 *and section 202(a)(27) of the Invest-*
7 *ment Advisers Act of 1940, options on*
8 *security futures, and persons effecting*
9 *transactions in security futures and*
10 *options thereon, and this Act shall*
11 *apply to and the Commission shall*
12 *have jurisdiction with respect to ac-*
13 *counts, agreements (including any*
14 *transaction which is of the character*
15 *of, or is commonly known to the trade*
16 *as, an ‘option’, ‘privilege’, ‘indemnity’,*
17 *‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance*
18 *guaranty’, or ‘decline guaranty’) and*
19 *transactions involving, and may des-*
20 *ignate a board of trade as a contract*
21 *market in, a security future product*
22 *as defined in section 1a(33) of this*
23 *Act: Provided, however, That, except*
24 *as provided in clause (v) of this sub-*
25 *paragraph, no board of trade shall be*

1 *designated as a contract market with*
2 *respect to any such contracts of sale*
3 *for future delivery unless the board of*
4 *trade making such application dem-*
5 *onstrates and the Commission ex-*
6 *pressly finds that the specific contract*
7 *with respect to which the application*
8 *has been made, or the board of trade,*
9 *meets the following criteria:*

10 “(I) *Except as otherwise pro-*
11 *vided in a rule, regulation, or*
12 *order issued pursuant to clause*
13 *(vi) of this subparagraph, any se-*
14 *curity underlying the security fu-*
15 *ture, including each component*
16 *security of a contract of sale for*
17 *future delivery on a narrow-based*
18 *security index, is registered pursu-*
19 *ant to section 12 of the Securities*
20 *Exchange Act of 1934.*

21 “(II) *Except as otherwise pro-*
22 *vided in a rule, regulation, or*
23 *order issued pursuant to clause*
24 *(vi) of this subparagraph, the se-*

1 *curity future product is cash set-*
2 *tled.*

3 “(III) *The security future prod-*
4 *uct is not traded on an exempt*
5 *board of trade or a designated*
6 *transaction execution facility.*

7 “(IV) *Except as otherwise pro-*
8 *vided in a rule, regulation, or*
9 *order issued pursuant to clause*
10 *(vi) of this subparagraph, the se-*
11 *curity future is based upon com-*
12 *mon stock and such other equity*
13 *securities as the Commission and*
14 *the Securities and Exchange Com-*
15 *mission jointly determine appro-*
16 *priate.*

17 “(V) *The security future prod-*
18 *uct is cleared by a clearing agency*
19 *that has in place provisions for*
20 *linked and coordinated clearing*
21 *with other clearing agencies that*
22 *clear security future products,*
23 *which permits the security future*
24 *product to be purchased on a des-*
25 *ignated contract market, national*

1 *securities exchange registered*
2 *under section 6(a) of the Securi-*
3 *ties Exchange Act of 1934, or na-*
4 *tional securities association reg-*
5 *istered pursuant to section 15A(a)*
6 *of the Securities Exchange Act of*
7 *1934 and offset on any other des-*
8 *ignated contract market, national*
9 *securities exchange registered*
10 *under section 6(a) of the Securi-*
11 *ties Exchange Act of 1934, or na-*
12 *tional securities association reg-*
13 *istered pursuant to section 15A(a)*
14 *of the Securities Exchange Act of*
15 *1934 on which the security future*
16 *product is traded.*

17 *“(VI) Only futures commission*
18 *merchants, introducing brokers,*
19 *commodity trading advisers, com-*
20 *modity pool operators or associ-*
21 *ated persons subject to suitability*
22 *rules comparable to those of a na-*
23 *tional securities association reg-*
24 *istered pursuant to section 15A(a)*
25 *of the Securities Exchange Act of*

1 ***1934 solicit, accept any order for,***
2 ***or otherwise deal in any trans-***
3 ***action in or in connection with a***
4 ***security future product.***

5 ***“(VII) The security future***
6 ***product is subject to a prohibition***
7 ***against dual trading in section 4j***
8 ***of this Act and the rules and regu-***
9 ***lations thereunder or the provi-***
10 ***sions of section 11(a) of the Secu-***
11 ***rities Exchange Act of 1934 and***
12 ***the rules and regulations there-***
13 ***under, except to the extent other-***
14 ***wise permitted under the Securi-***
15 ***ties Exchange Act of 1934 and the***
16 ***rules and regulations thereunder.***

17 ***“(VIII) Trading in the security***
18 ***future product is not readily sus-***
19 ***ceptible to manipulation of the***
20 ***price of such security future prod-***
21 ***uct, nor to causing or being used***
22 ***in the manipulation of the price of***
23 ***any underlying security, option on***
24 ***such security, or option on a***

1 *group or index including such se-*
2 *curities.*

3 *“(IX) The board of trade on*
4 *which the security future product*
5 *is traded has procedures in place*
6 *for coordinated surveillance*
7 *among such board of trade, any*
8 *market on which any security un-*
9 *derlying the security future prod-*
10 *uct is traded, and other markets*
11 *on which any related security is*
12 *traded to detect manipulation and*
13 *insider trading, except that, if the*
14 *board of trade is an alternative*
15 *trading system, a national securi-*
16 *ties association registered pursu-*
17 *ant to section 15A(a) of the Securi-*
18 *ties Exchange Act of 1934 of which*
19 *such alternative trading system is*
20 *a member has in place such proce-*
21 *dures.*

22 *“(X) The board of trade on*
23 *which the security future product*
24 *is traded has in place audit trails*
25 *necessary or appropriate to facili-*

1 *tate the coordinated surveillance*
2 *required in subclause (IX), except*
3 *that, if the board of trade is an al-*
4 *ternative trading system, a na-*
5 *tional securities association reg-*
6 *istered pursuant to section 15A(a)*
7 *of the Securities Exchange Act of*
8 *1934 of which such alternative*
9 *trading system is a member has*
10 *rules to require such audit trails.*

11 *“(XI) The board of trade on*
12 *which the security future product*
13 *is traded has in place procedures*
14 *to coordinate trading halts be-*
15 *tween such board of trade and any*
16 *market on which any security un-*
17 *derlying the security future prod-*
18 *uct is traded and other markets*
19 *on which any related security is*
20 *traded, except that, if the board of*
21 *trade is an alternative trading*
22 *system, a national securities asso-*
23 *ciation registered pursuant to sec-*
24 *tion 15A(a) of the Securities Ex-*
25 *change Act of 1934 of which such*

1 *alternative trading system is a*
2 *member has rules to require such*
3 *coordinated trading halts.*

4 “(XII) *The margin require-*
5 *ments for a security future prod-*
6 *uct are consistent with the margin*
7 *requirements for comparable op-*
8 *tion contracts traded on an ex-*
9 *change registered pursuant to sec-*
10 *tion 6(a) of the Securities Ex-*
11 *change Act of 1934 and initial and*
12 *maintenance margin levels for a*
13 *security future product are not*
14 *lower than the levels of margin re-*
15 *quired for comparable option con-*
16 *tracts traded on an exchange reg-*
17 *istered pursuant to section 6(a) of*
18 *the Securities Exchange Act of*
19 *1934, except that nothing in this*
20 *subclause shall be construed to*
21 *prevent a board of trade from re-*
22 *quiring higher margin levels for a*
23 *security future product when it*
24 *deems such action to be necessary*
25 *or appropriate.*

1 “(ii) *It shall be unlawful for any*
2 *person to offer, to enter into, to exe-*
3 *cute, to confirm the execution of, or to*
4 *conduct any office or business any-*
5 *where in the United States, its terri-*
6 *tories or possessions, for the purpose*
7 *of soliciting, or accepting any order*
8 *for, or otherwise dealing in, any*
9 *transaction in, or in connection with,*
10 *a security future product unless—*

11 “(I) *such transaction is con-*
12 *ducted on or subject to the rules of*
13 *a board of trade which has been*
14 *designated by the Commission as*
15 *a contract market in such security*
16 *future product;*

17 “(II) *such security future prod-*
18 *uct is executed or consummated*
19 *by, through, or with a member of*
20 *such contract market; and*

21 “(III) *such security future*
22 *product is evidenced by a record*
23 *in writing which shows the date,*
24 *the parties to such security future*
25 *product and their addresses, the*

1 *property covered and its price:*
2 *Provided, That each contract mar-*
3 *ket member shall keep such record*
4 *for a period of 3 years from the*
5 *date thereof, or for a longer period*
6 *if the Commission so directs,*
7 *which record shall at all times be*
8 *open to the inspection of any rep-*
9 *resentative of the Commission, the*
10 *Securities and Exchange Commis-*
11 *sion, or the Department of Justice.*

12 *“(iii)(I) Except as provided in sub-*
13 *clause (II) but notwithstanding any*
14 *other provision of this Act, no person*
15 *shall offer to enter into, enter into, or*
16 *confirm the execution of any option on*
17 *a security future.*

18 *“(II) After 3 years after the date of*
19 *enactment of the Commodity Futures*
20 *Modernization Act of 2000, the Com-*
21 *mission and the Securities and Ex-*
22 *change Commission may by order*
23 *jointly determine to permit trading of*
24 *options on any security future author-*
25 *ized to be traded under the provisions*

1 *of this Act and the Securities Ex-*
2 *change Act of 1934. Before any such*
3 *determination, the Commission and*
4 *the Securities and Exchange Commis-*
5 *sion shall conduct a study of the effect*
6 *of the trading of security futures on*
7 *the markets for futures contracts, se-*
8 *curities, and options and the ade-*
9 *quacy of protections for investors and*
10 *other market participants.*

11 “(iv)(I) *All records of a futures*
12 *commission merchant or introducing*
13 *broker registered pursuant to section*
14 *4f(a)(2), a floor broker or floor trader*
15 *exempt from registration pursuant to*
16 *section 4f(a)(3), an associated person*
17 *exempt from registration pursuant to*
18 *section 4k(6), or a board of trade des-*
19 *ignated as a contract market in a se-*
20 *curity future product pursuant to sec-*
21 *tion 5f shall be subject at any time, or*
22 *from time to time, to such reasonable*
23 *periodic, special, or other examina-*
24 *tions by representatives of the Com-*
25 *mission as the Commission deems nec-*

1 *essary or appropriate in the public in-*
2 *terest, for the protection of investors,*
3 *or otherwise in furtherance of the pur-*
4 *poses of this title: Provided, That the*
5 *Commission, prior to conducting any*
6 *such examination, gives notice to the*
7 *Securities and Exchange Commission*
8 *of such proposed examination and*
9 *consults with the Securities and Ex-*
10 *change Commission concerning the*
11 *feasibility and desirability of coordi-*
12 *nating such examination with exami-*
13 *nations conducted by the Securities*
14 *and Exchange Commission with a*
15 *view to avoiding unnecessary regu-*
16 *latory duplication or undue regu-*
17 *latory burdens for such registrant or*
18 *board of trade.*

19 *“(II) The Commission shall notify*
20 *the Securities and Exchange Commis-*
21 *sion of any examination conducted of*
22 *any futures commission merchant or*
23 *introducing broker registered pursu-*
24 *ant to section 4f(a)(2), floor broker or*
25 *floor trader exempt from registration*

1 *pursuant to section 4f(a)(3), associ-*
2 *ated person exempt from registration*
3 *pursuant to section 4k(6), or board of*
4 *trade designated as a contract market*
5 *in a security future product pursuant*
6 *to section 5f, and, upon request, fur-*
7 *nish to the Securities and Exchange*
8 *Commission any examination report*
9 *and data supplied to the Commission*
10 *in connection with such examination.*

11 *“(III) The Commission shall, to the*
12 *fullest extent possible, use the reports*
13 *of examinations of any futures com-*
14 *mission merchant or introducing*
15 *broker registered pursuant to section*
16 *4f(a)(2), floor broker or floor trader*
17 *exempt from registration pursuant to*
18 *section 4f(a)(3), associated person ex-*
19 *empt from registration pursuant to*
20 *section 4k(6), or board of trade des-*
21 *ignated as a contract market in a se-*
22 *curity future product pursuant to sec-*
23 *tion 5f, made by the Securities and Ex-*
24 *change Commission, a national secu-*
25 *rities association registered pursuant*

1 *to section 15A(a) of the Securities Ex-*
2 *change Act of 1934 (15 U.S.C. 78o-3),*
3 *or a national securities exchange reg-*
4 *istered pursuant to section 6(a) of the*
5 *Securities Exchange Act of 1934 (15*
6 *U.S.C. 78f(g)).*

7 *“(IV) Nothing in this subsection*
8 *shall be construed to impair or limit*
9 *(other than by the requirement of*
10 *prior consultation) the power of the*
11 *Commission under this subsection to*
12 *examine any futures commission mer-*
13 *chant or introducing broker reg-*
14 *istered pursuant to section 4f(a)(2),*
15 *floor broker or floor trader exempt*
16 *from registration pursuant to section*
17 *4f(a)(3), associated person exempt*
18 *from registration pursuant to section*
19 *4k(6), or board of trade designated as*
20 *a contract market in a security future*
21 *product pursuant to section 5f, or to*
22 *affect in any way the power of the*
23 *Commission under any other provi-*
24 *sion of this Act.*

1 “(v) A board of trade designated
2 as a contract market pursuant to sec-
3 tion 5f shall be designated as a con-
4 tract market with respect to a security
5 future product by providing to the
6 Commission a written certification
7 that the specific contract with respect
8 to which the application has been
9 made, or the board of trade, meets the
10 criteria specified in subclauses (I)
11 through (XII) of clause (i).

12 “(vi) The Commission and the Se-
13 curities and Exchange Commission, by
14 rule, regulation, or order, may jointly
15 modify the criteria specified in sub-
16 clause (I), (II), or (IV) of clause (i) of
17 this subparagraph to the extent such
18 modification fosters the development
19 of fair and orderly markets in security
20 future products, is necessary or appro-
21 priate in the public interest, and is
22 consistent with the protection of inves-
23 tors.”.

24 **(b) MARGIN ON SECURITY FUTURES.—Section**
25 **2(a)(1)(C)(vi) of the Commodity Exchange Act**

1 *(7 U.S.C. 2a(vi)) (as redesignated by section*
2 *122) is amended—*

3 *(1) by redesignating subclause (V) as*
4 *subclause (VI); and*

5 *(2) by striking “(vi)(I)” and all that*
6 *follows through subclause (IV) and insert-*
7 *ing the following:*

8 *“(vi)(I) Notwithstanding*
9 *any other provision of this Act,*
10 *any contract market in a stock*
11 *index futures contract (or op-*
12 *tion thereon), other than a se-*
13 *curity future product, shall*
14 *file with the Board of Gov-*
15 *ernors of the Federal Reserve*
16 *System any rule establishing*
17 *or changing the levels of mar-*
18 *gin (initial and maintenance)*
19 *for such stock index futures*
20 *contract (or option thereon),*
21 *other than security future*
22 *products.*

23 *“(II) The Board may at*
24 *any time request any contract*
25 *market to set the margin for*

1 *any stock index futures con-*
2 *tract (or option thereon), other*
3 *than for any security future*
4 *product, at such levels as the*
5 *Board in its judgment deter-*
6 *mines are appropriate to pre-*
7 *serve the financial integrity of*
8 *the contract market or its*
9 *clearing system or to prevent*
10 *systemic risk. If the contract*
11 *market fails to do so within*
12 *the time specified by the Board*
13 *in its request, the Board may*
14 *direct the contract market to*
15 *alter or supplement the rules*
16 *of the contract market as spec-*
17 *ified in the request.*

18 *“(III) Subject to such con-*
19 *ditions as the Board may de-*
20 *termine, the Board may dele-*
21 *gate any or all of its authority,*
22 *relating to margin for any*
23 *stock index futures contract*
24 *(or option thereon), other than*
25 *security future products,*

1 *under this clause to the Com-*
2 *mission.*

3 **“(IV) MARGIN REGULA-**
4 **TIONS.—***It shall be unlawful*
5 *for any futures commission*
6 *merchant to, directly or indi-*
7 *rectly, extend or maintain*
8 *credit to or for, or collect mar-*
9 *gin from any customer on any*
10 *security future product unless*
11 *such activities comply with the*
12 *rules and regulations which*
13 *the Securities and Exchange*
14 *Commission, after consulta-*
15 *tion with the Commission,*
16 *shall prescribe pursuant to*
17 *section 7(c)(2)(B) of the Secu-*
18 *rities Exchange Act of 1934.*

19 **“(V) Nothing in this clause**
20 **shall supersede or limit the**
21 **authority granted to the Com-**
22 **mission in section 8a(9) to di-**
23 **rect a contract market, on**
24 **finding an emergency to exist,**
25 **to raise temporary margin lev-**

1 *els on any futures contract, or*
2 *option on the contract covered*
3 *by this clause, or on any secu-*
4 *rity future product.”.*

5 **(c) EXEMPTION FROM REGISTRATION FOR IN-**
6 **VESTMENT ADVISERS.—Section 4m of the Com-**
7 **modity Exchange Act (7 U.S.C. 6m) is amended**
8 **by adding at the end the following:**

9 **“(3) The provisions of subsection (1) of this**
10 **section shall not apply to any commodity trad-**
11 **ing advisor that is registered with the Securi-**
12 **ties and Exchange Commission as an invest-**
13 **ment adviser whose business does not consist**
14 **primarily of acting as a commodity trading**
15 **advisor, as defined in section 1a of this Act,**
16 **and that does not act as a commodity trading**
17 **advisor to any investment trust, syndicate, or**
18 **similar form of enterprise that is engaged pri-**
19 **marily in trading in any commodity for future**
20 **delivery on or subject to the rules of any con-**
21 **tract market.”.**

22 **(d) EXEMPTION FROM INVESTIGATIONS OF**
23 **MARKETS IN UNDERLYING SECURITIES.—Section**
24 **16 of the Commodity Exchange Act (7 U.S.C.**

1 *20) is amended by adding at the end the fol-*
2 *lowing:*

3 *“(e) The provisions of this section shall not*
4 *apply to investigations involving any security*
5 *underlying a security future product.”.*

6 *SEC. 222. APPLICATION OF THE COMMODITY EXCHANGE*
7 *ACT TO NATIONAL SECURITIES EXCHANGES*
8 *AND NATIONAL SECURITIES ASSOCIATIONS*
9 *THAT TRADE SECURITY FUTURES.*

10 *(a) NOTICE DESIGNATION OF NATIONAL SE-*
11 *CURITIES EXCHANGES AND NATIONAL SECURITIES*
12 *ASSOCIATIONS.—The Commodity Exchange Act*
13 *is amended by inserting after section 5e (7*
14 *U.S.C. 7b), as amended by section 115, the fol-*
15 *lowing:*

16 *“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND*
17 *ASSOCIATIONS AS CONTRACT MARKETS.*

18 *“(a) Any board of trade that is registered*
19 *with the Securities and Exchange Commission*
20 *as a national securities exchange, is a na-*
21 *tional securities association registered pursu-*
22 *ant to section 15A(a) of the Securities Ex-*
23 *change Act of 1934, or is an alternative trad-*
24 *ing system shall be a designated contract mar-*
25 *ket in security future products if—*

1 “(1) *such national securities ex-*
2 *change, national securities association, or*
3 *alternative trading system lists or trades*
4 *no other contracts of sale for future deliv-*
5 *ery, except for security future products;*

6 “(2) *such national securities ex-*
7 *change, national securities association, or*
8 *alternative trading system files written*
9 *notice with the Commission in such form*
10 *as the Commission, by rule, may prescribe*
11 *containing such information as the Com-*
12 *mission, by rule, may prescribe as nec-*
13 *essary or appropriate in the public inter-*
14 *est or for the protection of customers; and*

15 “(3) *the registration of such national*
16 *securities exchange, association, or alter-*
17 *native trading system is not suspended*
18 *pursuant to an order by the Securities*
19 *and Exchange Commission.*

20 *Such designation shall be effective imme-*
21 *diately upon filing of the written notice with*
22 *the Commission.*

23 “(b)(1) *A national securities exchange, na-*
24 *tional securities association, or alternative*
25 *trading system that is designated as a con-*

1 *tract market pursuant to section 5f of this Act*
2 *shall be exempt from the following provisions*
3 *of this Act and the rules thereunder:*

4 “(A) *Subsections (c), (e), and (g) of sec-*
5 *tion 4c.*

6 “(B) *Subsections (a) and (d) of section*
7 *4j.*

8 “(C) *Section 5.*

9 “(D) *Section 5c.*

10 “(E) *Section 6a.*

11 “(F) *Section 8(d).*

12 “(G) *Section 8e.*

13 “(H) *Section 9(f).*

14 “(I) *Section 16.*

15 “(J) *Section 22(b).*

16 “(2)(A) *Except as provided in subpara-*
17 *graph (B), but notwithstanding any other pro-*
18 *vision of this Act, the Commission, by rule, reg-*
19 *ulation, or order, may conditionally or uncon-*
20 *ditionally exempt any designated contract*
21 *market in security futures subject to the des-*
22 *ignation requirement of this section from any*
23 *provision of this Act or of any rule or regula-*
24 *tion thereunder, to the extent such exemption*
25 *is necessary or appropriate in the public inter-*

1 *est and is consistent with the protection of in-*
2 *vestors.*

3 *“(B) The Commission shall, by rule or reg-*
4 *ulation, determine the procedures under*
5 *which an exemptive order under this section is*
6 *granted and may, in its sole discretion, decline*
7 *to entertain any application for an order of ex-*
8 *emption under this section.”.*

9 *(b) NOTICE REGISTRATION OF CERTAIN SECUR-*
10 *ITIES BROKER-DEALERS; EXEMPTION FROM REG-*
11 *ISTRATION FOR CERTAIN SECURITIES BROKER-*
12 *DEALERS.—Section 4f(a) of the Commodity Ex-*
13 *change Act (7 U.S.C. 6f(a)) is amended—*

14 *(1) by inserting “(1)” after “(a)”;* and
15 *(2) by adding at the end the following:*

16 *“(2) Notwithstanding paragraph (1), and*
17 *except as provided in paragraph (3), any*
18 *broker or dealer that is registered with the Se-*
19 *curities and Exchange Commission shall be*
20 *registered as a futures commission merchant*
21 *or introducing broker, as applicable, if—*

22 *“(A) such broker or dealer limits its*
23 *solicitation of orders, acceptance of or-*
24 *ders, or execution of orders, or placing of*
25 *orders on behalf of others involving any*

1 *contracts of sale of any commodity for fu-*
2 *ture delivery, on or subject to the rules of*
3 *any contract market to security future*
4 *products;*

5 *“(B) such broker or dealer files writ-*
6 *ten notice with the Commission in such*
7 *form as the Commission, by rule, may pre-*
8 *scribe containing such information as the*
9 *Commission, by rule, may prescribe as*
10 *necessary or appropriate in the public in-*
11 *terest or for the protection of investors;*

12 *“(C) the registration of such broker or*
13 *dealer is not suspended pursuant to an*
14 *order of the Securities and Exchange*
15 *Commission; and*

16 *“(D) such broker or dealer is a mem-*
17 *ber of a national securities association*
18 *registered pursuant to section 15A(a) of*
19 *the Securities Exchange Act of 1934.*

20 *Such registration shall be effective imme-*
21 *diately upon filing of the written notice with*
22 *the Commission.*

23 *“(3) A floor broker or floor trader shall be*
24 *exempt from the registration requirements of*

1 *section 4e and paragraph (1) of this subsection*
2 *if—*

3 “(A) *such floor broker or floor trader*
4 *is a broker or dealer registered with the*
5 *Securities and Exchange Commission;*

6 “(B) *such floor broker or floor trader*
7 *limits its solicitation of orders, accept-*
8 *ance of orders, or execution of orders, or*
9 *placing of orders on behalf of others in-*
10 *volving any contracts of sale of any com-*
11 *modity for future delivery, on or subject to*
12 *the rules of any contract market to secu-*
13 *rity future products; and*

14 “(C) *the registration of such floor*
15 *broker or floor trader is not suspended*
16 *pursuant to an order of the Securities and*
17 *Exchange Commission.”.*

18 (c) **EXEMPTION FOR SECURITIES BROKER-**
19 **DEALERS.**—*Section 4f(a) of the Commodity Ex-*
20 *change Act (7 U.S.C. 6f(a)) is amended by in-*
21 *serting after paragraph (3), as added by sub-*
22 *section (b), the following:*

23 “(4)(A) *A broker or dealer that is reg-*
24 *istered as a futures commission merchant or*
25 *introducing broker pursuant to paragraph (2),*

1 *or that is a floor broker or floor trader exempt*
2 *from registration pursuant to paragraph (3),*
3 *shall be exempt from the following provisions*
4 *of this Act and the rules thereunder:*

5 “(i) Subsections (b), (d), (e), and (g) of
6 *section 4c.*

7 “(ii) Sections 4d, 4e, and 4h.

8 “(iii) Subsections (b) and (c) of this
9 *section.*

10 “(iv) Subsections (b) and (c) of section
11 *4j.*

12 “(v) Section 4k(1).

13 “(vi) Section 4p.

14 “(vii) Section 6d.

15 “(viii) Subsections (d) and (g) of sec-
16 *tion 8.*

17 “(ix) Section 16.

18 “(x) Section 22(a).

19 “(B)(i) *Except as provided in clause (ii),*
20 *but notwithstanding any other provision of*
21 *this Act, the Commission, by rule, regulation,*
22 *or order, may conditionally or unconditionally*
23 *exempt any broker or dealer subject to the reg-*
24 *istration requirement of paragraph (2) of this*
25 *subsection, or exempt from registration pursu-*

1 *ant to paragraph (3) of this subsection, from*
2 *any provision of this Act or of any rule or regu-*
3 *lation thereunder, to the extent such exemp-*
4 *tion is necessary or appropriate in the public*
5 *interest and is consistent with the protection*
6 *of investors.*

7 “(ii) *The Commission shall, by rule or reg-*
8 *ulation, determine the procedures under*
9 *which an exemptive order under this section*
10 *shall be granted and may, in its sole discre-*
11 *tion, decline to entertain any application for*
12 *an order of exemption under this section.*

13 “(C)(i) *A broker or dealer that is registered*
14 *as a futures commission merchant or intro-*
15 *ducing broker pursuant to paragraph (2) or*
16 *an associated person thereof, or that is a floor*
17 *broker or floor trader exempt from registra-*
18 *tion pursuant to paragraph (3), shall not be*
19 *required to become a member of any futures*
20 *association registered under section 17 of this*
21 *Act.*

22 “(ii) *No futures association registered*
23 *under section 17 of this Act shall limit its*
24 *members from carrying an account, accepting*
25 *an order, or transacting business with a*

1 *broker or dealer that is registered as a futures*
2 *commission merchant or introducing broker*
3 *pursuant to paragraph (2) or an associated*
4 *person thereof, or that is a floor broker or floor*
5 *trader exempt from registration pursuant to*
6 *paragraph (3).”.*

7 *(d) EXEMPTIONS FOR ASSOCIATED PERSONS*
8 *OF SECURITIES BROKER-DEALERS.—Section 4k of*
9 *the Commodity Exchange Act (7 U.S.C. 6k) is*
10 *amended by adding at the end the following:*

11 *“(6) Any associated person of a broker or*
12 *dealer that is registered with the Securities*
13 *and Exchange Commission, and who limits its*
14 *solicitation of orders, acceptance of orders, or*
15 *execution of orders, or placing of orders on be-*
16 *half of others involving any contracts of sale*
17 *of any commodity for future delivery, on or*
18 *subject to the rules of any contract market to*
19 *security future products, shall be exempt from*
20 *the following provisions of this Act and the*
21 *rules thereunder:*

22 *“(A) Subsections (b), (d), (e), and (g) of*
23 *section 4c.*

24 *“(B) Sections 4d, 4e, and 4h.*

1 **“(C) Subsections (b) and (c) of section**
2 **4f.**

3 **“(D) Subsections (b) and (c) of section**
4 **4j.**

5 **“(E) Paragraph (1) of this section.**

6 **“(F) Section 4p.**

7 **“(G) Section 6d.**

8 **“(H) Subsections (d) and (g) of section**
9 **8.**

10 **“(I) Section 16.**

11 **“(J) Section 22(a).”.**

12 **SEC. 223. NOTIFICATION OF INVESTIGATIONS AND EN-**
13 **FORCEMENT ACTIONS.**

14 **(a) Section 8(a) of the Commodity Ex-**
15 **change Act (7 U.S.C. 12(a)) is amended by add-**
16 **ing at the end the following:**

17 **“(3) The Commission shall provide the Se-**
18 **curities and Exchange Commission with notice**
19 **of the commencement of any proceeding and a**
20 **copy of any order entered by the Commission**
21 **against any futures commission merchant or**
22 **introducing broker registered pursuant to sec-**
23 **tion 4f(a)(2), any floor broker or floor trader**
24 **exempt from registration pursuant to section**
25 **4f(a)(3), any associated person exempt from**

1 *registration pursuant to section 4k(6), or any*
2 *board of trade designated as a contract mar-*
3 *ket pursuant to section 5f.”.*

4 *(b) Section 6 of the Commodity Exchange*
5 *Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended*
6 *by adding at the end the following:*

7 *“(g) The Commission shall provide the Se-*
8 *curities and Exchange Commission with notice*
9 *of the commencement of any proceeding and a*
10 *copy of any order entered by the Commission*
11 *pursuant to subsections (c) and (d) of this sec-*
12 *tion against any futures commission merchant*
13 *or introducing broker registered pursuant to*
14 *section 4f(a)(2), any floor broker or floor trad-*
15 *er exempt from registration pursuant to sec-*
16 *tion 4f(a)(3), any associated person exempt*
17 *from registration pursuant to section 4k(6), or*
18 *any board of trade designated as a contract*
19 *market pursuant to section 5f.”.*

20 *(c) Section 6c of the Commodity Exchange*
21 *Act (7 U.S.C. 13a-1) is amended by adding at*
22 *the end the following:*

23 *“(h) The Commission shall provide the Se-*
24 *curities and Exchange Commission with notice*
25 *of the commencement of any proceeding and a*

1 *copy of any order entered by the Commission*
2 *against any futures commission merchant or*
3 *introducing broker registered pursuant to sec-*
4 *tion 4f(a)(2), any floor broker or floor trader*
5 *exempt from registration pursuant to section*
6 *4f(a)(3), any associated person exempt from*
7 *registration pursuant to section 4k(6), or any*
8 *board of trade designated as a contract mar-*
9 *ket pursuant to section 5f.”.*

10 ***Subtitle C—Effective Date***

11 ***SEC. 231. EFFECTIVE DATE.***

12 ***This title and the amendments made by***
13 ***this title take effect on the date of enactment***
14 ***of this Act.***

Union Calendar No. 477

106TH CONGRESS
2D SESSION

H. R. 4541

[Report No. 106-711, Parts I, II, and III]

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.

SEPTEMBER 6, 2000

Reported from the Committee on Banking and Financial Services with amendments

SEPTEMBER 6, 2000

Reported from the Committee on Commerce with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed