H. R. 5660

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

DECEMBER 14, 2000

Mr. Ewing (for himself, Mr. Combest, Mr. Leach, Mr. LaFalce, and Mr. Bliley) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Banking and Financial Services, Commerce, and the Judiciary, 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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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SEC. 2. PURPOSES.

The purposes of this Act are—

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

(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act;

(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;
(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;

(5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;

(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;

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

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

**TITLE I—COMMODITY FUTURES MODERNIZATION**

**SEC. 101. DEFINITIONS.**

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—
(1) by redesignating paragraphs (1) through (7), (8) through (12), (13) through (15), and (16) as paragraphs (2) through (8), (16) through (20), (22) through (24), and (28), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

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

“(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof);

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

“(C) does not—

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

“(ii) discipline subscribers other than by exclusion from trading; and
“(D) is exempt from the definition of the term ‘exchange’ under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.”;

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

“(2) BOARD OF TRADE.—The term ‘board of trade’ means any organized exchange or other trading facility.”;

(4) by inserting after paragraph (8) (as redesignated by paragraph (1)) the following:

“(9) DERIVATIVES CLEARING ORGANIZATION.—

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

“(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;
“(ii) arranges or provides, on a multi-
lateral basis, for the settlement or netting
of obligations resulting from such agree-
ments, contracts, or transactions executed
by participants in the derivatives clearing
organization; or

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

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

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

“(ii) settlement or netting of cash
payments through an interbank payment
system; or
“(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

“(10) ELECTRONIC TRADING FACILITY.—The term ‘electronic trading facility’ means a trading facility that—

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

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

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

“(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (12)(A) that, in connection with its business—

“(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;
“(ii) incurs risks, in addition to price risk, related to the commodity; or

“(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

“(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

“(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

“(ii) either—

“(I) in the case of a collective investment vehicle whose participants include persons other than—

“(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 CFR 4.7(a));
“(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 (17 CFR 230.501(a)), with total assets of $2,000,000; or

“(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940; in each case as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, $1,000,000,000 in total assets; or

“(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, $100,000,000 in total assets; or
“(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

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

“(A) acting for its own account—

“(i) a financial institution;

“(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

“(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

“(iv) a commodity pool that—
“(I) has total assets exceeding $5,000,000; and

“(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

“(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

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

“(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

“(III) that—
“(aa) has a net worth exceeding $1,000,000; and

“(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business;

“(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

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

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

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

“(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

“(cc) a financial institution;

or

“(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

“(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

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

“(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or depart-
ment referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of section 1a(11)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis $25,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii);

“(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);
“(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

“(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));

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

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

“(xi) an individual who has total assets in an amount in excess of—

“(I) $10,000,000; or

“(II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

“(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

“(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as
such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

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

“(13) EXCLUDED COMMODITY.—The term ‘excluded commodity’ means—

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

“(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

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

“(II) based solely on one or more commodities that have no cash market;

“(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

“(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

“(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

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

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

“(15) FINANCIAL INSTITUTION.—The term ‘financial institution’ means—
“(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as ‘an agreement corporation’;

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

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

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

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

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

“(G) any financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

“(H) a trust company; or
“(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).”;

(5) by inserting after paragraph (20) (as redesignated by paragraph (1)) the following:

“(21) HYBRID INSTRUMENT.—The term ‘hybrid instrument’ means a security having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities.”;

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

“(24) MEMBER OF A CONTRACT MARKET; MEMBER OF A DERIVATIVES TRANSACTION EXECUTION FACILITY.—The term ‘member’ means, with respect to a contract market or derivatives transaction execution facility, an individual, association, partnership, corporation, or trust—

“(A) owning or holding membership in, or admitted to membership representation on, the contract market or derivatives transaction execution facility; or

“(B) having trading privileges on the contract market or derivatives transaction execution facility.
“(25) NARROW-BASED SECURITY INDEX.—

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

“(i) that has 9 or fewer component securities;

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

“(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index’s weighting; or

“(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting, such se-
securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

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

“(i)(I) it has at least 9 component securities;

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

“(III) each component security is—

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

“(bb) one of 750 securities with the largest market capitalization; and

“(cc) one of 675 securities with the largest dollar value of average daily trading volume;

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

“(iii)(I) a contract of sale for future
delivery on the index traded on a des-
ignated contract market or registered de-
rivatives transaction execution facility for
at least 30 days as a contract of sale for
future delivery on an index that was not a
narrow-based security index; and

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

“(iv) a contract of sale for future de-
ivery on the index is traded on or subject
to the rules of a foreign board of trade and
meets such requirements as are jointly es-
ablished by rule or regulation by the Com-
mission and the Securities and Exchange
Commission;

“(v) no more than 18 months have
passed since the date of the enactment of
the Commodity Futures Modernization Act
of 2000 and—
“(I) it is traded on or subject to
the rules of a foreign board of trade;
“(II) the offer and sale in the
United States of a contract of sale for
future delivery on the index was au-
thorized before the date of the enact-
ment of the Commodity Futures Mod-
erization Act of 2000; and
“(III) the conditions of such au-
thorization continue to be met; or
“(vi) a contract of sale for future de-
livery on the index is traded on or subject
to the rules of a board of trade and meets
such requirements as are jointly estab-
lished by rule, regulation, or order by the
Commission and the Securities and Ex-
change Commission.
“(C) Within 1 year after the date of the
enactment of the Commodity Futures Mod-
erization Act of 2000, the Commission and the
Securities and Exchange Commission jointly
shall adopt rules or regulations that set forth
the requirements under subparagraph (B)(iv).
“(D) An index that is a narrow-based se-
curity index solely because it was a narrow-
based security index for more than 45 business
days over 3 consecutive calendar months pursu-
ant to clause (iii) of subparagraph (B) shall not
be a narrow-based security index for the 3 fol-
lowing calendar months.

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

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

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

“(26) Option.—The term ‘option’ means an
agreement, contract, or transaction that is of the
character of, or is commonly known to the trade as,
‘put’, ‘call’, ‘advance guaranty’, or ‘decline guar-
anty’.

“(27) Organized exchange.—The term ‘or-
organized exchange’ means a trading facility that—
“(A) permits trading—

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

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

“(B) has adopted (directly or through another nongovernmental entity) rules that—

“(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

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

(7) by adding at the end the following:

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

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

“(B) a derivatives transaction execution facility registered under section 5a;

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

“(D) a board of trade designated as a contract market under section 5f.

“(31) SECURITY FUTURE.—The term ‘security future’ means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982). The term ‘security future’ does not include any agreement, contract, or transaction excluded from this Act under section 2(c), 2(d), 2(f), or 2(g) of this Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

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

“(33) TRADING FACILITY.—

“(A) IN GENERAL.—The term ‘trading facility’ means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

“(B) EXCLUSIONS.—The term ‘trading facility’ does not include—

“(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;
“(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms ‘government securities dealer’, ‘government securities broker’, and ‘government securities’ are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78e(a))); or

“(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

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

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

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

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

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

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

“(A) foreign currency;
“(B) government securities;
“(C) security warrants;
“(D) security rights;
“(E) resales of installment loan contracts;
“(F) repurchase transactions in an excluded commodity; or

“(G) mortgages or mortgage purchase commitments.

“(2) COMMISSION JURISDICTION.—

“(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

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

“(ii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.

“(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CUR-
This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

“(i) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934); and

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

“(I) a financial institution;

“(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) or a futures commission merchant registered under this Act;

“(III) an associated person of a broker or dealer registered under sec-
tion 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h)) or section 4f(e)(2)(B) of this Act;

“(IV) an insurance company described in section 1a(12)(A)(ii) of this Act, or a regulated subsidiary or affiliate of such an insurance company;

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

“(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).

“(C) Notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, con-
tracts, or transactions described in subpara-
graph (B) shall be subject to sections 4b, 4c(b),
6(c) and 6(d) (to the extent that sections 6(c)
and 6(d) prohibit manipulation of the market
price of any commodity, in interstate commerce,
or for future delivery on or subject to the rules
of any market), 6c, 6d, and 8(a) if they are en-
tered into by a futures commission merchant or
an affiliate of a futures commission merchant
that is not also an entity described in subpara-
graph (B)(ii) of this paragraph.”.

SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE
TRANSACTIONS.

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

“(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

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

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

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

“(2) ELECTRONIC TRADING FACILITY EXCLUSION.—Nothing in this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

“(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii);

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

“(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.”.
SEC. 104. EXCLUDED ELECTRONIC TRADING FACILITIES.

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

“(e) EXCLUDED ELECTRONIC TRADING FACILITIES.—

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

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

“(3) EFFECT ON TRANSACTIONS.—No failure by an electronic trading facility to limit transactions as required by paragraph (1) of this subsection or to comply with section 2(h)(5) shall in itself affect the legality, validity, or enforceability of an agreement, contract, or transaction entered into or traded
on the electronic trading facility or cause a participant on the system to be in violation of this Act.

“(4) Special rule.—A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.”.

SEC. 105. HYBRID INSTRUMENTS; SWAP TRANSACTIONS.

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

“(f) Exclusion for Qualifying Hybrid Instruments.—

“(1) In general.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security.

“(2) Predominance.—A hybrid instrument shall be considered to be predominantly a security if—

“(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contem-
poraneously with delivery of the hybrid instrument;

“(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

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

“(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this Act.

“(3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.”
(b) **Swap Transactions.**—Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

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“(g) **Excluded Swap Transactions.**—No provision of this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

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

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

“(3) not executed or traded on a trading facility.”.
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(c) **Study Regarding Retail Swaps.**—

(1) **In General.**—The Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a study of issues involving the offering of swap agreements to persons other than eligible contract participants (as defined in section 1a of the Commodity Exchange Act).
(2) MATTERS TO BE ADDRESSED.—The study shall address—

(A) the potential uses of swap agreements by persons other than eligible contract participants;

(B) the extent to which financial institutions are willing to offer swap agreements to persons other than eligible contract participants;

(C) the appropriate regulatory structure to address customer protection issues that may arise in connection with the offer of swap agreements to persons other than eligible contract participants; and

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

(3) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, a report on the findings and conclusions of the study required by paragraph (1) shall be submitted to Congress, together with such recommendations for legislative action as are deemed necessary and appropriate.
SEC. 106. TRANSACTIONS IN EXEMPT COMMODITIES.

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

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

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

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

“(B) is not entered into on a trading facility.

“(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

“(A) sections 5b and 12(e)(2)(B);

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

“(C) sections 6(c), 6(d), 6c, 6d, 8a, and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and the agreement, contract, or transaction would otherwise be subject to such sections.

“(3) Except as provided in paragraph (4), nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity which is—

“(A) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; and

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

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

“(A) sections 5a (to the extent provided in section 5a(g)), 5b, 5d, and 12(e)(2)(B);
“(B) sections 4b and 4o and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions to the extent the agreement, contract, or transaction would otherwise be subject to such sections and regulations;

“(C) sections 6(c) and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and to the extent the agreement, contract, or transaction would otherwise be subject to such sections; and

“(D) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.
“(5) An electronic trading facility relying on the exemption provided in paragraph (3) shall—

“(A) notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in paragraph (3), which notice shall include—

“(i) the name and address of the facility and a person designated to receive communications from the Commission;

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

“(iii) certifications that—

“(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of section 8a(2);

“(II) the facility will comply with the conditions for exemption under this paragraph; and
“(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and

“(iv) the identity of any derivatives clearing organization to which the facility transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the facility in reliance on the exemption set forth in paragraph (3);

“(B)(i)(I) provide the Commission with access to the facility’s trading protocols and electronic access to the facility with respect to transactions conducted in reliance on the exemption set forth in paragraph (3); or

“(II) provide such reports to the Commission regarding transactions executed on the facility in reliance on the exemption set forth in paragraph (3) as the Commission may from time to time request to enable the Commission to satisfy its obligations under this Act;
“(ii) maintain for 5 years, and make available for inspection by the Commission upon request, records of activities related to its business as an electronic trading facility exempt under paragraph (3), including—

“(I) information relating to data entry and transaction details sufficient to enable the Commission to reconstruct trading activity on the facility conducted in reliance on the exemption set forth in paragraph (3); and

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

“(iii) upon special call by the Commission, provide to the Commission, in a form and manner and within the period specified in the special call, such information related to its business as an electronic trading facility exempt under paragraph (3), including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption set forth in paragraph (3), as the Commission may determine appropriate—
“(I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4);

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

“(III) to obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities;

“(C)(i) upon receipt of any subpoena issued by or on behalf of the Commission to any foreign person who the Commission believes is conducting or has conducted transactions in reliance on the exemption set forth in paragraph (3) on or through the electronic trading facility relating to the transactions, promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner reasonable under the circumstances, or as specified by the Commission; and

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

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

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

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

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

SEC. 107. APPLICATION OF COMMODITY FUTURES LAWS.
Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

“(i) APPLICATION OF COMMODITY FUTURES LAWS.—

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

“(A) any agreement, contract, or trans-
action that is excluded from this Act under sec-
tion 2(e), 2(d), 2(e), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modern-
ization Act of 2000, or exempted under sec-
tion 2(h) or 4(c) of this Act; or

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

is or would otherwise be subject to this Act.

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

SEC. 108. PROTECTION OF THE PUBLIC INTEREST.

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

“SEC. 3. FINDINGS AND PURPOSE.

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

“(b) PURPOSE.—It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants...
from fraudulent or other abusive sales practices and mis-
uses of customer assets; and to promote responsible inno-
vation and fair competition among boards of trade, other
markets and market participants.”

SEC. 109. PROHIBITED TRANSACTIONS.

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

“SEC. 4c. PROHIBITED TRANSACTIONS.

“(a) IN GENERAL.—

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

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

“(B) determine the price basis of any such transaction in interstate commerce in the com-
modity; or
“(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

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

“(A)(i) is, of the character of, or is commonly known to the trade as, a ‘wash sale’ or ‘accommodation trade’; or

“(ii) is a fictitious sale; or

“(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.”.

SEC. 110. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

The Commodity Exchange Act is amended—

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

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

“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

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

“(b) CRITERIA FOR DESIGNATION.—

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

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

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

“(A) transfer trades or office trades;

“(B) an exchange of—

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

“(ii) futures for cash commodities; or
“(iii) futures for swaps; or

“(C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

“(4) Trade Execution Facility.—The board of trade shall—

“(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and

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

“(5) Financial Integrity of Transactions.—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, includ-
ing the clearance and settlement of the transactions
with a derivatives clearing organization.

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

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

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

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

“(d) Core Principles for Contract Markets.—

“(1) In General.—To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

“(2) Compliance with Rules.—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

“(3) Contracts Not Readily Subject to Manipulation.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

“(4) Monitoring of Trading.—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

“(5) Position Limitations or Accountability.—To reduce the potential threat of market manipulation or congestion, especially during trading
in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

“(6) **Emergency Authority.**—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

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

“(B) suspend or curtail trading in any contract; and

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

“(7) **Availability of General Information.**—The board of trade shall make available to market authorities, market participants, and the public information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B) the mechanisms for executing transactions on or through the facilities of the contract market.

“(8) **Daily Publication of Trading Information.**—The board of trade shall make public
daily information on settlement prices, volume, open
interest, and opening and closing ranges for actively
traded contracts on the contract market.

“(9) **Execution of Transactions.**—The
board of trade shall provide a competitive, open, and
efficient market and mechanism for executing trans-
actions.

“(10) **Trade Information.**—The board of
trade shall maintain rules and procedures to provide
for the recording and safe storage of all identifying
trade information in a manner that enables the con-
tract market to use the information for purposes of
assisting in the prevention of customer and market
abuses and providing evidence of any violations of
the rules of the contract market.

“(11) **Financial Integrity of Contracts.**—
The board of trade shall establish and enforce rules
providing for the financial integrity of any contracts
traded on the contract market (including the clear-
ance and settlement of the transactions with a de-
rivatives clearing organization), and rules to ensure
the financial integrity of any futures commission
merchants and introducing brokers and the protec-
tion of customer funds.
“(12) Protection of market participants.—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

“(13) Dispute resolution.—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

“(14) Governance fitness standards.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

“(15) Conflicts of interest.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

“(16) Composition of boards of mutually owned contract markets.—In the case of a mutually owned contract market, the board of trade
shall ensure that the composition of the governing board reflects market participants.

“(17) Recordkeeping.—The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.

“(18) Antitrust Considerations.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the contract market.

“(e) Current Agricultural Commodities.—

“(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(4) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.
“(2) In order to promote responsible economic
or financial innovation and fair competition, the
Commission, on application by any person, after no-
tice and public comment and opportunity for hear-
ing, may prescribe rules and regulations to provide
for the offer and sale of contracts for future delivery
or options on such contracts to be conducted on a
derivatives transaction execution facility.”.

SEC. 111. DERIVATIVES TRANSACTION EXECUTION FACILI-
ties.

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

“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-
ties.

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

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

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

“(b) REQUIREMENTS FOR TRADING.—
“(1) IN GENERAL.—A registered derivatives transaction execution facility under subsection (a) may trade any contract of sale of a commodity for future delivery (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

“(2) REQUIREMENTS FOR UNDERLYING COMMODITIES.—A registered derivatives transaction execution facility may trade any contract of sale of a commodity for future delivery (or option on such a contract) only if—

“(A) the underlying commodity has a nearly inexhaustible deliverable supply;

“(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;

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

“(D)(i) the contract is a security futures product, and (ii) the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934;
“(E) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the contract (or option) is highly unlikely to be susceptible to the threat of manipulation; or

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

“(3) ELIGIBLE TRADERS.—To trade on a registered derivatives transaction execution facility, a person shall—

“(A) be an eligible contract participant; or

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

“(i) is registered with the Commission;

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

“(iii) is a clearing member of a derivatives clearing organization; and

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

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

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

“(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

“(c) CRITERIA FOR REGISTRATION.—
“(1) **In general.—**To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in subsection (b) and this subsection.

“(2) **Deterrence of abuses.—**The board of trade shall establish and enforce trading and participation rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use technological means to—

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

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

“(3) **Trading procedures.—**The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing
orders traded on the facilities of the board of trade. The rules may authorize—

“(A) transfer trades or office trades;

“(B) an exchange of—

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

“(ii) futures for cash commodities; or

“(iii) futures for swaps; or

“(C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.

“(4) Financial integrity of transactions.—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, and rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.
“(d) Core Principles for Registered Derivatives Transaction Execution Facilities.—

“(1) In general.—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles.

“(2) Compliance with rules.—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

“(3) Monitoring of trading.—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

“(4) Disclosure of general information.—The board of trade shall disclose publicly and to the Commission information concerning—

“(A) contract terms and conditions;
“(B) trading conventions, mechanisms, and
practices;
“(C) financial integrity protections; and
“(D) other information relevant to partici-
pation in trading on the facility.
“(5) DAILY PUBLICATION OF TRADING INFOR-
MATION.—The board of trade shall make public
daily information on settlement prices, volume, open
interest, and opening and closing ranges for con-
tracts traded on the facility if the Commission deter-
mines that the contracts perform a significant price
discovery function for transactions in the cash mar-
ket for the commodity underlying the contracts.
“(6) FITNESS STANDARDS.—The board of trade
shall establish and enforce appropriate fitness stand-
ards for directors, members of any disciplinary com-
mittee, members, and any other persons with direct
access to the facility, including any parties affiliated
with any of the persons described in this paragraph.
“(7) CONFLICTS OF INTEREST.—The board of
trade shall establish and enforce rules to minimize
conflicts of interest in the decision making process
of the derivatives transaction execution facility and
establish a process for resolving such conflicts of in-
terest.
“(8) Recordkeeping.—The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.

“(9) Antitrust Considerations.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

“(B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

“(e) Use of Broker-Dealers, Depository Institutions, and Farm Credit System Institutions as Intermediaries.—

“(1) In general.—With respect to transactions other than transactions in security futures products, a registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—
“(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and

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

“(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are that—

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

“(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.
“(3) IMPLEMENTATION.—The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to facilitate the implementation of this subsection.

“(f) SEGREGATION OF CUSTOMER FUNDS.—Not later than 180 days after the date of the enactment of the Commodity Futures Modernization Act of 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the customer that are carried with the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

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

“(1) IN GENERAL.—Notwithstanding subsection (b)(2) of this section, a board of trade that is or elects to become a registered derivatives transaction execution facility may trade on the facility any
agreements, contracts, or transactions involving excluded or exempt commodities other than securities, except contracts of sale for future delivery of exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982, that are otherwise excluded from this Act under section 2(c), 2(d), or 2(g) of this Act, or exempt under section 2(h) of this Act.

“(2) EXCLUSIVE JURISDICTION OF THE COMMISSION.—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.”.

SEC. 112. DERIVATIVES CLEARING.

(a) IN GENERAL.—Subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 is amended—

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

“CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING”;

(2) in section 402, by striking “this subtitle” and inserting “this chapter”; and
(3) by inserting after section 407, the following new chapter:

“CHAPTER 2—MULTILATERAL CLEARING ORGANIZATIONS

“SEC. 408. DEFINITIONS.

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

“(1) MULTILATERAL CLEARING ORGANIZATION.—The term ‘multilateral clearing organization’ means a system utilized by more than two participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.

“(2) OVER-THE-COUNTER DERIVATIVE INSTRUMENT.—The term ‘over-the-counter derivative instrument’ includes—

“(A) any agreement, contract, or transaction, including the terms and conditions incorporated by reference in any such agreement, contract, or transaction, which is an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, and forward rate agreement; a same day-tomorrow, tomor-
row-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; an equity index or equity swap, option, or forward agreement; a debt index or debt swap, option, or forward agreement; a credit spread or credit swap, option, or forward agreement; a commodity index or commodity swap, option, or forward agreement; and a weather swap, weather derivative, or weather option;

“(B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value;

“(C) any agreement, contract, or transaction excluded from the Commodity Exchange
Act under section 2(c), 2(d), 2(f), or 2(g) of
such Act, or exempted under section 2(h) or
4(c) of such Act; and
“(D) any option to enter into any, or any
combination of, agreements, contracts or trans-
actions referred to in this subparagraph.
“(3) OTHER DEFINITIONS.—The terms ‘insured
State nonmember bank’, ‘State member bank’, and
‘affiliate’ have the same meanings as in section 3 of
the Federal Deposit Insurance Act.

“SEC. 409. MULTILATERAL CLEARING ORGANIZATIONS.
“(a) IN GENERAL.—Except with respect to clearing
organizations described in subsection (b), no person may
operate a multilateral clearing organization for over-the-
counter derivative instruments, or otherwise engage in ac-
tivities that constitute such a multilateral clearing organi-
ization unless the person is a national bank, a State mem-
ber bank, an insured State nonmember bank, an affiliate
of a national bank, a State member bank, or an insured
State nonmember bank, or a corporation chartered under
“(b) CLEARING ORGANIZATIONS.—Subsection (a)
shall not apply to any clearing organization that—
“(1) is registered as a clearing agency under
the Securities Exchange Act of 1934;
“(2) is registered as a derivatives clearing organization under the Commodity Exchange Act; or

“(3) is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as applicable, has determined satisfies appropriate standards.”.

(b) Resolution of Clearing Banks.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

"SEC. 9B. RESOLUTION OF CLEARING BANKS.

“(a) Conservatorship or Receivership.—

“(1) Appointment.—The Board may appoint a conservator or receiver to take possession and control of any uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.

“(2) Powers.—The conservator or receiver for an uninsured State member bank referred to in
paragraph (1) shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

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

“(c) BANKRUPTCY PROCEEDINGS.—The Board (in the case of an uninsured State member bank which operates, or operates as, such a multilateral clearing organization) may direct a conservator or receiver appointed for the bank to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the bank in lieu of otherwise applicable Federal or State insolvency law.”.

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

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking “; or” and inserting the following: “, except that an uninsured State member bank, or a
corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or’’.

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

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

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

“(22) the term ‘financial institution’—

“(A) means—
“(i) a Federal reserve bank or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator, or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, the customer; or

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

“(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991;”.

(4) Definition of uninsured state member bank.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (54) the following new paragraph—
“(54A) the term ‘uninsured State member bank’ means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation; and”.

(5) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

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

(B) CLEARING BANK LIQUIDATION.—

Chapter 7 of title 11, United States Code, is amended by adding at the end the following new subchapter:
“SUBCHAPTER V—CLEARING BANK LIQUIDATION

§ 781. Definitions

“For purposes of this subchapter, the following definitions shall apply:

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

“(2) DEPOSITORY INSTITUTION.—The term ‘depository institution’ has the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(3) CLEARING BANK.—The term ‘clearing bank’ means an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

§ 782. Selection of trustee

“(a) IN GENERAL.—

“(1) APPOINTMENT.—Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.
“(2) Successor.—The Board may designate a successor trustee if required.

“(b) Authority of Trustee.—Whenever the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Board in the same way and to the same extent that they apply to a United States trustee.

§ 783. Additional powers of trustee

“(a) Distribution of Property Not of the Estate.—The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

“(b) Disposition of Institution.—The trustee under this subchapter may, after notice and a hearing—

“(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

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

“(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;
“(4) transfer assets or liabilities to a depository institution; and

“(5) transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that—

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

“(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

“(c) Certain Transfers Included.—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

“§ 784. Right to be heard

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

(6) Definitions of clearing organization, contract market, and related definitions.—

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

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

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

“(7) ‘contract market’ means a registered entity;”.

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


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

“SUBCHAPTER V—CLEARING BANK LIQUIDATION

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Sec.
781. Definitions.
(e) Resolution of Edge Act Corporations.—

The 16th undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 624) is amended to read as follows:

“(16) Appointment of receiver or conservator.—

“(A) In general.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

“(B) Equivalent authority.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank
for which a conservator or receiver has been ap-
pointed.

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

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

“SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

“(a) REGISTRATION REQUIREMENT.—It shall be un-
lawful for a derivatives clearing organization, unless reg-
istered with the Commission, directly or indirectly to make
use of the mails or any means or instrumentality of inter-
state commerce to perform the functions of a derivatives
 clearing organization described in section 1a(9) of this Act
with respect to a contract of sale of a commodity for fu-
ture delivery (or option on such a contract) or option on
a commodity, in each case unless the contract or option—
“(1) is excluded from this Act by section 2(a)(1)(C)(i), 2(e), 2(d), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act; or

“(2) is a security futures product cleared by a clearing agency registered under the Securities Exchange Act of 1934.

“(b) VOLUNTARY REGISTRATION.—A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this Act by section 2(e), 2(d), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization.

“(c) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

“(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the deter-
minations required for approval under paragraph
(2).

“(2) CORE PRINCIPLES.—

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

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

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

“(i) appropriate admission and con-
tinuing eligibility standards (including ap-
propriate minimum financial requirements)
for members of and participants in the or-
ganization; and
“(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

“(D) Risk Management.—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

“(E) Settlement Procedures.—The applicant shall have the ability to—

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

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

“(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

“(F) Treatment of Funds.—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

“(G) Default Rules and Procedures.—The applicant shall have rules and
procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

“(H) RULE ENFORCEMENT.—The applicant shall—

“(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

“(ii) have the authority and ability to discipline, limit, suspend, or terminate a member’s or participant’s activities for violations of rules of the applicant.

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

“(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

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

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

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

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

“(M) INFORMATION-SHARING.—The appli-
cant shall—
“(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

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

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

“(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

“(ii) imposing any material anti-competitive burden on trading on the contract market.

“(3) ORDERS CONCERNING COMPETITION.—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anti-competitive means of achieving the objectives, purposes, and policies of this Act.
“(d) Existing Derivatives Clearing Organizations.—A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of the enactment of this section.

“(e) Appointment of Trustee.—

“(1) In general.—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

“(2) Assumption of Jurisdiction.—If the Commission applies for appointment of a trustee under paragraph (1)—

“(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and
“(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

“(f) LINKING OF REGULATED CLEARING FACILITIES.—

“(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions.

“(2) COORDINATION.—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.”.

SEC. 113. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 112(f)) the following:
“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

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

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

“(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

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

“(1) IN GENERAL.—A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.

“(2) RESPONSIBILITY.—A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.
“(3) **NONCOMPLIANCE.**—If a contract market or derivatives transaction execution facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this Act, the contract market or derivatives transaction execution facility shall promptly take steps to address the noncompliance.

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

“(1) **IN GENERAL.**—Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

“(2) **PRIOR APPROVAL.**—
“(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

“(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

“(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.
“(3) APPROVAL.—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.

“(d) VIOLATION OF CORE PRINCIPLES.—

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

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

“(B) afford the registered entity an opportunity to make appropriate changes to bring the registered entity into compliance with the core principles.

“(2) FAILURE TO MAKE CHANGES.—If, not later than 30 days after receiving a notification under paragraph (1), a registered entity fails to make changes that, in the opinion of the Commission, are necessary to comply with the core principles, the Commission may take further action in accordance with this Act.
“(e) Reservation of Emergency Authority.—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9).”.

SEC. 114. EXEMPT BOARDS OF TRADE.

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

“SEC. 5d. EXEMPT BOARDS OF TRADE.

“(a) Election To Register With the Commission.—A board of trade that meets the requirements of subsection (b) of this section may operate as an exempt board of trade on receipt from the board of trade of a notice, provided in such manner as the Commission may by rule or regulation prescribe, that the board of trade elects to operate as an exempt board of trade. Except as otherwise provided in this section, no provision of this Act (other than subparagraphs (C) and (D) of sections 2(a)(1) and 12(e)(2)(B)) shall apply with respect to a contract of sale of a commodity for future delivery (or option on such a contract) traded on or through the facilities of an exempt board of trade.

“(b) Criteria For Exemption.—To qualify for an exemption under subsection (a), a board of trade shall limit trading on or through the facilities of the board of
trade to contracts of sale of a commodity for future delivery (or options on such contracts or on a commodity)—

“(1) for which the underlying commodity has—

“(A) a nearly inexhaustible deliverable supply;

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

“(C) no cash market;

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

“(3) that are not contracts of sale (or options on such a contract or on a commodity) for future delivery of any security, including any group or index of securities or any interest in, or based on the value of, any security or any group or index of securities.

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

“(d) Price Discovery.—If the Commission finds that an exempt board of trade is a significant source of price discovery for transactions in the cash market for the commodity underlying any contract, agreement, or transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

“(e) Jurisdiction.—The Commission shall have exclusive jurisdiction over any account, agreement, contract, or transaction involving a contract of sale of a commodity for future delivery, or option on such a contract or on a commodity, to the extent that the account, agreement, contract, or transaction is traded on an exempt board of trade.

“(f) Subsidiaries.—A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.
“(g) An exempt board of trade that meets the re-
quirements of subsection (b) shall not represent to any
person that the board of trade is registered with, or des-
ignated, recognized, licensed, or approved by the Commis-
sion.”.

SEC. 115. SUSPENSION OR REVOCATION OF DESIGNATION
AS CONTRACT MARKET.

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

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

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

SEC. 116. AUTHORIZATION OF APPROPRIATIONS.

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

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SEC. 117. PREEMPTION.

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

“(e) Relation to Other Law, Departments, or Agencies.—

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

“(A) criminal prosecution under any Federal criminal statute;

“(B) the application of any Federal or State statute (except as provided in paragraph (2)), including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest—

“(i) that is not conducted on or subject to the rules of a registered entity or exempt board of trade;

“(ii) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions; or
“(iii) that is not subject to regulation
by the Commission under section 4e or 19;

or

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

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

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

“(B) an agreement, contract, or trans-
action that is excluded from this Act under sec-
tion 2(e), 2(d), 2(f), or 2(g) of this Act or title
IV of the Commodity Futures Modernization
Act of 2000, or exempted under section 2(h) or
4(c) of this Act (regardless of whether any such
agreement, contract, or transaction is otherwise
subject to this Act).”.
SEC. 118. PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.

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

“(g) PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.—Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant’s conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.”.

SEC. 119. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

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

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

“(a) COSTS AND BENEFITS.—

“(1) IN GENERAL.—Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.
“(2) CONSIDERATIONS.—The costs and benefits of the proposed Commission action shall be evaluated in light of—

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

“(B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;

“(C) considerations of price discovery;

“(D) considerations of sound risk management practices; and

“(E) other public interest considerations.

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

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

“(B) An emergency action.

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

“(b) ANTITRUST LAWS.—The Commission”.

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SEC. 120. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants, and no hybrid instrument sold to any investor, shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, transaction, or instrument under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, transaction, or instrument to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.”.

SEC. 121. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

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

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“SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

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

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

“(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable the producers to hedge price risk associated with their production;

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

“(4) encourage contract markets to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.
“(b) REPORT.—Within 1 year after the date of the enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.”.

SEC. 122. RULE OF CONSTRUCTION.

Except as expressly provided in this Act or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission.

SEC. 123. TECHNICAL AND CONFORMING AMENDMENTS.

(a) COMMODITY EXCHANGE ACT.—

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

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

(B) in paragraph (24)—
(i) in the paragraph heading, by striking “CONTRACT MARKET” and inserting “REGISTERED ENTITY”; 
(ii) by striking “contract market” each place it appears and inserting “registered entity”; and 
(iii) by adding at the end the following:

“A participant in an alternative trading system that is designated as a contract market pursuant to section 5f is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.”.

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

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

“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

“(a) Jurisdiction of Commission; Commodity Futures Trading Commission.—

“(1) Jurisdiction of Commission.—

“(A) In general.—The”; and
(B) in subsection (a)(1)—

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

(I) by striking “subparagraph (B) of this subparagraph” and inserting “subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section”;

(II) by striking “contract market designated pursuant to section 5 of this Act” and inserting “contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a”; and

(III) by striking clause (ii); and

(IV) in clause (iii), by striking “(iii) The” and inserting the following:

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

(ii) in subparagraph (B)—

(I) by striking “(B)” and inserting “(C)”;

(II) in clause (v)—
(aa) by striking “section 3 of the Securities Act of 1933”; and

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

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

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

(D) in subsection (a)(8)(B)(ii)—

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

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

(iii) in the fourth sentence, by striking
“designating, or refusing, suspending, or
revoking the designation of, a board of
trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act and inserting “designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9))”, and by striking “designation, suspension, revocation, or emergency action” and inserting “designation, registration, suspension, revocation, or action”; and

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

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

(A) in subsection (a)—

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

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

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

(B) in subsection (c)—

(i) in paragraph (1)—

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

(II) by striking “section 2(a)(1)(B)” and inserting “subparagraphs (C)(ii) and (D) of section 2(a)(1), except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)”; and
(ii) in paragraph (2)(B)(ii), by inserting “or derivatives transaction execution facility” after “contract market”.

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

(A) in subsection (a)—

(i) in the first sentence, by inserting “or derivatives transaction execution facilities” after “contract markets”; and

(ii) in the second sentence, by inserting “or derivatives transaction execution facility” after “contract market”; and

(B) in subsection (b)—

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

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

(C) in subsection (e)—

(i) by striking “contract market or” each place it appears and inserting “contract market, derivatives transaction execution facility, or”;
(ii) by striking “licensed or designated” each place it appears and inserting “licensed, designated, or registered”; and

(iii) by striking “contract market, or” and inserting “contract market or derivatives transaction execution facility, or”.

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

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

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

(A) in subsection (b), by striking “clearinghouse and contract market” and inserting “registered entity”; and

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

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

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

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

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

(A) in the third sentence of subsection (a), by striking “Act or contract markets” and inserting “Act, contract markets, or derivatives transaction execution facilities”; and

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

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

(A) in subsection (a)—

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

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

(III) by striking “above requirements” and inserting “the requirements of this Act”;

(ii) in the second sentence, by striking “designation as a contract market within one year” and inserting “designation or registration as a contract market or derivatives transaction execution facility within 180 days”;

(iii) in the third sentence—

(I) by striking “board of trade” and inserting “person”; and
(II) by striking “one-year period” and inserting “180-day period”; and

(iv) in the last sentence, by striking “designate as a ‘contract market’ any board of trade that has made application therefor, such board of trade” and inserting “designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person”;

(B) in subsection (b)—

(i) in the first sentence—

(I) by striking “designation of any board of trade as a ‘contract market’ upon” and inserting “designation or registration of any contract market or derivatives transaction execution facility on”; 

(II) by striking “board of trade” each place it appears and inserting “contract market or derivatives transaction execution facility”; and

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

(ii) in the second sentence—

(I) by striking “board of trade” the first place it appears and inserting “contract market or derivatives transaction execution facility”; and

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

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

(C) in subsection (c)—

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

(ii) by striking “contract markets” each place it appears and inserting “registered entities”; and

(iii) by striking “trading privileges” each place it appears and inserting “privileges”;

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

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

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

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

(B) in subsection (b), by striking “designated as a contract market” and inserting “designated or registered as a contract market or a derivatives transaction execution facility”.

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

(A) by striking “contract market” each place it appears and inserting “registered entity”;,

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

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

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

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

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

(A) in the first sentence—

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

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

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

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

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(B) in the second sentence—

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

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

(C) in the last sentence—

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

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

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

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

(A) by striking “contract market” each place it appears and inserting “registered entity”; and

(B) in paragraph (2)(F), by striking “trading privileges” and inserting “privileges”.
(20) Sections 8b and 8c(e) of the Commodity Exchange Act (7 U.S.C. 12b, 12c(e)) are amended by striking “contract market” each place it appears and inserting “registered entity”.

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

(22) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by striking “contract market” each place it appears and inserting “registered entity”.

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

(A) in subsection (a)(1)(B), by striking “contract market” and inserting “registered entity”; and

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

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

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

(A) in subsection (a)—

(i) in paragraph (1)—
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(I) by striking “contract market, clearing organization of a contract market, licensed board of trade,” and inserting “registered entity”; and

(II) in subparagraph (C)(i), by striking “contract market” and inserting “registered entity”; (ii) in paragraph (2), by striking “sections 5a(11),” and inserting “sections 5(d)(13), 5b(b)(1)(E),”; and (iii) in paragraph (3), by striking “contract market” and inserting “registered entity”; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) by striking “contract market or clearing organization of a contract market” and inserting “registered entity”; (II) by striking “section 5a(8) and section 5a(9) of this Act” and inserting “sections 5 through 5c”; (III) by striking “contract market, clearing organization of a contract market, or licensed board of
trade” and inserting “registered entity”; and

(IV) by striking “contract market or licensed board of trade” and inserting “registered entity”; 

(ii) in paragraph (3)—

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

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

(iii) in paragraph (4), by striking “contract market, licensed board of trade, clearing organization,” and inserting “registered entity”; and

(iv) in paragraph (5), by striking “contract market, licensed board of trade, clearing organization,” and inserting “registered entity”.

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

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

SEC. 124. PRIVACY.
The Commodity Exchange Act (7 U.S.C. 1 et seq.)
is amended by inserting after section 5f (as added by sec-
tion 252) the following:

“SEC. 5g. PRIVACY.

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

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

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SEC. 125. REPORT TO CONGRESS.

(a) The Commodity Futures Trading Commission (in this section referred to as the “Commission”) shall undertake and complete a study of the Commodity Exchange Act (in this section referred to as “the Act”) and the Commission’s rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act. The study shall identify—

(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission’s rules and regulations thereunder;

(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;

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

(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Com-
mission has determined must be retained and the
reasons therefor.

(b) In conducting the study, the Commission shall solic-
it the views of the public as well as Commission reg-
istrants, registered entities, and registered futures asso-
ciations (all within the meaning of the Act).

c) The Commission shall transmit to the Committee
on Agriculture of the House of Representatives and the
Committee on Agriculture, Nutrition, and Forestry of the
Senate a report of the results of its study, which shall
include an analysis of comments received.

SEC. 126. INTERNATIONAL ACTIVITIES OF THE COMMODITY
FUTURES TRADING COMMISSION.

(a) FINDINGS.—The Congress finds that—

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

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

(3) financial services regulatory policy must be
flexible to account for rapidly changing derivatives
industry business practices;
(4) regulatory impediments to the operation of
global business interests can compromise the com-
petitiveness of United States businesses;

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

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

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

(b) Sense of the Congress.—It is the sense of
the Congress that, consistent with its responsibilities
under the Commodity Exchange Act, the Commodity Fu-
tures Trading Commission should, as part of its inter-
national activities, continue to coordinate with foreign reg-
ulatory authorities, to participate in international regu-
latory organizations and forums, and to provide technical
assistance to foreign government authorities, in order to encourage—

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

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

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

(4) the strengthening of international cooperation for customer and market protection; and

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

TITLE II—COORDINATED REGULATION OF SECURITY FUTURES PRODUCTS

Subtitle A—Securities Law Amendments

SEC. 201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

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

(1) in paragraph (10), by inserting “security future,” after “treasury stock,”;
(2) by striking paragraph (11) and inserting the following:

“(11) The term ‘equity security’ means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.”;

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

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

(5) by adding at the end the following:

“(55)(A) The term ‘security future’ means a contract of sale for future delivery of a single security or of a narrow-based security index, including
any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of the enactment of the Futures Trading Act of 1982). The term ‘security future’ does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

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

“(i) that has 9 or fewer component securities;

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

“(iii) in which the five highest weighted component securities in the aggregate comprise
more than 60 percent of the index’s weighting; or

“(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

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

“(i)(I) it has at least nine component securities;

“(II) no component security comprises more than 30 percent of the index’s weighting; and
“(III) each component security is—

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

“(bb) one of 750 securities with the largest market capitalization; and

“(cc) one of 675 securities with the largest dollar value of average daily trading volume;

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

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

“(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;
“(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

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

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

“(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

“(III) the conditions of such authorization continue to be met; or

“(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regula-
tion, or order by the Commission and the Com-
modity Futures Trading Commission.

“(D) Within 1 year after the enactment of the
Commodity Futures Modernization Act of 2000, the
Commission and the Commodity Futures Trading
Commission jointly shall adopt rules or regulations
that set forth the requirements under clause (iv) of
subsection (C).

“(E) An index that is a narrow-based security
index solely because it was a narrow-based security
index for more than 45 business days over 3 con-
secutive calendar months pursuant to clause (iii) of
subsection (C) shall not be a narrow-based secu-
rity index for the 3 following calendar months.

“(F) For purposes of subparagraphs (B) and
(C) of this paragraph—

“(i) the dollar value of average daily trad-
ing volume and the market capitalization shall
be calculated as of the preceding 6 full calendar
months; and

“(ii) the Commission and the Commodity
Futures Trading Commission shall, by rule or
regulation, jointly specify the method to be used
to determine market capitalization and dollar
value of average daily trading volume.
“(56) The term ‘security futures product’ means a security future or any put, call, straddle, option, or privilege on any security future.

“(57)(A) The term ‘margin’, when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

“(B) The terms ‘margin level’ and ‘level of margin’, when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

“(C) The terms ‘higher margin level’ and ‘higher level of margin’, when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established and in effect pursuant to section 7(c)(2)(B).’’.

SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING
SECURITY FUTURES PRODUCTS.

(a) Expedited Registration and Exemption.—
Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(g) Notice Registration of Security Futures Product Exchanges.—

“(1) Registration required.—An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

“(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that—

“(i) has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; or

“(ii) is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act and such registration is not suspended by the
Commodity Futures Trading Commission;

and

“(B) such exchange does not serve as a market place for transactions in securities other than—

“(i) security futures products; or

“(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act.

“(2) Registration by notice filing.—

“(A) Form and content.—An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under section 6(a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the pro-
tection of investors. If such exchange has filed
documents with the Commodity Futures Trading Commission, to the extent that such docu-
ments contain information satisfying the Com-
mission’s informational requirements, copies of
such documents may be filed with the Commis-
sion in lieu of the required written notice.

“(B) IMMEDIATE EFFECTIVENESS.—Such
registration shall be effective contemporari-
neously with the submission of notice, in writ-
ten or electronic form, to the Commission, ex-
cept that such registration shall not be effective
if such registration would be subject to suspen-
sion or revocation.

“(C) TERMINATION.—Such registration
shall be terminated immediately if any of the
conditions for registration set forth in this sub-
section are no longer satisfied.

“(3) PUBLIC AVAILABILITY.—The Commission
shall promptly publish in the Federal Register an ac-
knowledgment of receipt of all notices the Commiss-
ion receives under this subsection and shall make
all such notices available to the public.

“(4) EXEMPTION OF EXCHANGES FROM SPECI-
FIED PROVISIONS.—
“(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this title and the rules thereunder:

“(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

“(ii) Section 8.

“(iii) Section 11.

“(iv) Subsections (d), (f), and (k) of section 17.

“(v) Subsections (a), (f), and (h) of section 19.

“(B) RULE CHANGE EXEMPTIONS.—An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

“(i) such exchange shall file proposed rule changes related to higher margin lev-
els, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange’s obligation to enforce the securities laws pursuant to section 19(b)(7);

“(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

“(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

“(5) Trading in Security Futures Products.—

“(A) In general.—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—
“(i) 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

“(ii) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

“(B) Principal-to-Principal Transactions.—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

“(i) the transaction is entered into—

“(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of the Commodity Exchange Act; and

“(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(12)) at the time at which the persons enter into the agreement, contract, or transaction; and
“(ii) the transaction is entered into on
or after the later of—
“(I) 8 months after the date of
the enactment of the Commodity Fu-
tures Modernization Act of 2000; or
“(II) such date that a futures as-
association registered under section 17
of the Commodity Exchange Act has
met the requirements set forth in sec-
tion 15A(k)(2) of this title.”.

(b) Commission Review of Proposed Rule
Changes.—

(1) Expedited review.—Section 19(b) of the
is amended by adding at the end the following:
“(7) Security futures product rule
changes.—
“(A) Filing required.—A self-regulatory
organization that is an exchange registered with
the Commission pursuant to section 6(g) of this
title or that is a national securities association
registered pursuant to section 15A(k) of this
title shall file with the Commission, in accord-
ance with such rules as the Commission may
prescribe, copies of any proposed rule change or
any proposed change in, addition to, or deletion
from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a ‘proposed rule change’) that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such self-regulatory organization’s obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, promptly publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit data, views, and arguments concerning such proposed rule change.

“(B) FILING WITH CFTC.—A proposed rule change filed with the Commission pursuant to
subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary, or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

“(C) ABROGATION OF RULE CHANGES.—Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act, the date the Commodity Futures Trading Commission determines that review of such proposed rule change is not nec-
necessary, or the date the Commodity Futures Trading Commission approves such proposed rule change, the Commission, after consultation with the Commodity Futures Trading Commission, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1), if it appears to the Commission that such proposed rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 of this title nor deemed to be a final agency action for purposes of section 704 of title 5, United States Code.

“(D) Review of resubmitted abrogated rules.—

“(i) Proceedings.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph
(C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

“(I) by order approve such proposed rule change; or

“(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved. Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change.
The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

“(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.”.
(2) Decimal Pricing Provisions.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (7), as added by paragraph (1), the following:

“(8) Decimal Pricing.—Not later than 9 months after the date on which trading in any security futures product commences under this title, all self-regulatory organizations listing or trading security futures products shall file proposed rule changes necessary to implement decimal pricing of security futures products. The Commission may not require such rules to contain equal minimum increments in such decimal pricing.”.

(3) Consultation Provisions.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (8), as added by paragraph (2), the following:

“(9) Consultation with CFTC.—

“(A) Consultation Required.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving or disapproving a proposed rule change filed by a national securities association registered pursuant to section 15A(a) or a national securities exchange subject
to the provisions of subsection (a) that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

“(B) RESPONSES TO CFTC COMMENTS AND FINDINGS.—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving or disapproving the proposed rule. If the Commodity Futures Trading Commission determines, and notifies the Commission, that such rule, if implemented or as applied, would—

“(i) adversely affect the liquidity or efficiency of the market for security futures products; or

“(ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section,

the Commission shall, prior to approving or disapproving the proposed rule, find that such rule
is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Commodity Futures Trading Commission’s determination.”.

(c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Section 19(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(d)) is amended by adding at the end the following:

“(3) The provisions of this subsection shall apply to an exchange registered pursuant to section 6(g) of this title or a national securities association registered pursuant to section 15A(k) of this title only to the extent that such exchange or association imposes any final disciplinary sanction for—

“(A) a violation of the Federal securities laws or the rules and regulations thereunder; or

“(B) a violation of a rule of such exchange or association, as to which a proposed change would be required to be filed under section 19 of this title, except that, to the extent that the exchange or association rule violation relates to any account, agreement, contract, or transaction, this subsection shall apply only to the extent such violation involves a security futures product.”.
SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES

TRADING SECURITY FUTURES PRODUCTS.

(a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

(1) AMENDMENT.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

“(11) BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—

“(A) NOTICE REGISTRATION.—

“(i) CONTENTS OF NOTICE.—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer
is a member of a national securities association registered under section 15A(k).

“(ii) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

“(iii) SUSPENSION.—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

“(iv) TERMINATION.—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

“(B) EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the fol-
ollowing provisions of this title and the rules
thereunder with respect to transactions in secu-

“(i) Section 8.
“(ii) Section 11.
“(iii) Subsections (c)(3) and (c)(5) of
this section.
“(iv) Section 15B.
“(v) Section 15C.
“(vi) Subsections (d), (e), (f), (g),
(h), and (i) of section 17.”.

(2) CONFORMING AMENDMENT.—Section 28(e)
78bb(e)) is amended by adding at the end the fol-
lowing:
“(4) The provisions of this subsection shall not apply
with regard to securities that are security futures prod-
ucts.”.

(b) FLOOR BROKERS AND FLOOR TRADERS.—Sec-
tion 15(b) of the Securities Exchange Act of 1934 (15
U.S.C. 78o(b)) is amended by inserting after paragraph
(11), as added by subsection (a), the following:
“(12) EXEMPTION FOR SECURITY FUTURES
PRODUCT EXCHANGE MEMBERS.—
“(A) Registration exemption.—A natural person shall be exempt from the registration requirements of this section if such person—

“(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g); 

“(ii) effects transactions only in securities on the exchange of which such person is a member; and 

“(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

“(B) Other exemptions.—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

“(i) Section 8.

“(ii) Section 11.

“(iii) Subsections (c)(3), (c)(5), and (e) of this section.
“(iv) Section 15B.

“(v) Section 15C.

“(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.”.

(c) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by adding at the end the following:

“(k) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—

“(1) REGULATION OF MEMBERS WITH RESPECT TO SECURITY FUTURES PRODUCTS.—A futures association registered under section 17 of the Commodity Exchange Act shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to section 15(b)(11).

“(2) REQUIREMENTS FOR REGISTRATION.—Such a securities association shall—

“(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security futures products and to comply, and (subject to any rule or order of the Commission pursuant to section 19(g)(2)) to
enforce compliance by its members and persons
associated with its members, with the provisions
of the securities laws applicable to security fu-
tures products, the rules and regulations there-
under, and its rules;

“(B) have rules that—

“(i) are designed to prevent fraudu-
lent and manipulative acts and practices,
to promote just and equitable principles of
trade, and, in general, to protect investors
and the public interest, including rules
governing sales practices and the adver-
tising of security futures products reason-
ably comparable to those of other national
securities associations registered pursuant
to subsection (a) that are applicable to se-
curity futures products; and

“(ii) are not designed to regulate by
virtue of any authority conferred by this
title matters not related to the purposes of
this title or the administration of the asso-
ciation;

“(C) have rules that provide that (subject
to any rule or order of the Commission pursu-
ant to section 19(g)(2)) its members and per-
sons associated with its members shall be appropri- 
propriately disciplined for violation of any provi- 
sion of the securities laws applicable to security 
futures products, the rules or regulations there- 
under, or the rules of the association, by expul- 
sion, suspension, limitation of activities, func- 
tions, and operations, fine, censure, being sus- 
pended or barred from being associated with a 
member, or any other fitting sanction; and 

“(D) have rules that ensure that members 
and natural persons associated with members 
meet such standards of training, experience, 
and competence necessary to effect transactions 
in security futures products and are tested for 
their knowledge of securities and security fu- 
tures products.

“(3) EXEMPTION FROM RULE CHANGE SUBMIS- 
sion.—Such a securities association shall be exempt 
from submitting proposed rule changes pursuant to 
section 19(b) of this title, except that—

“(A) the association shall file proposed 
rule changes related to higher margin levels, 
 fraud or manipulation, recordkeeping, report- 
ing, listing standards, or decimal pricing for se- 
curity futures products, sales practices for, ad-
vertising of, or standards of training, experience, competence, or other qualifications for security futures products for persons who effect transactions in security futures products, or rules effectuating the association’s obligation to enforce the securities laws pursuant to section 19(b)(7);

“(B) the association shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

“(C) the association shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

“(4) OTHER EXEMPTIONS.—Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security futures products, be required to comply, with the following provisions of this title and the rules thereunder:

“(A) Section 8.
“(B) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

“(C) Subsections (d), (f), and (k) of section 17.

“(D) Subsections (a), (f), and (h) of section 19.”.

(d) EXEMPTION UNDER THE SECURITIES INVESTOR PROTECTION ACT OF 1970.—


(A) in clause (i), by striking “and” after the semicolon;

(B) in clause (ii), by striking the period and inserting “; and”;

(C) by adding at the end the following:

“(iii) persons who are registered as a broker or dealer pursuant to section
SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-
OPERATION.

Section 17(b) of the Securities Exchange Act of 1934
(15 U.S.C. 78q(b)) is amended—

(1) by striking “(b) All” and inserting the fol-
lowing:
“(b) RECORDS SUBJECT TO EXAMINATION.—
“(1) PROCEDURES FOR COOPERATION WITH
OTHER AGENCIES.—All’’;

(2) by striking “prior to conducting any such
examination of a registered clearing” and inserting
the following: “prior to conducting any such exam-
ination of a—
“(A) registered clearing’’;

(3) by redesignating the last sentence as para-
graph (4)(C);

(4) by striking the period at the end of the first
sentence and inserting the following: “; or
“(B) broker or dealer registered pursuant
to section 15(b)(11), exchange registered pursu-
ant to section 6(g), or national securities asso-
ciation registered pursuant to section 15A(k)
gives notice to the Commodity Futures Trading
Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.”;

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

“(2) Furnishing data and reports to CFTC.—The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

“(3) Use of CFTC reports.—Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if
the information available therein is sufficient for the purposes of the examination, of—

“(A) any broker or dealer registered pursuant to section 15(b)(11);

“(B) exchange registered pursuant to section 6(g); or

“(C) national securities association registered pursuant to section 15A(k);

that is made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 15A(k), or an exchange registered pursuant to section 6(g).

“(4) RULES OF CONSTRUCTION.—

“(A) Notwithstanding any other provision of this subsection, the records of a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a national securities association registered pursuant to section 15A(k) described in this subparagraph shall not be subject to routine periodic examinations by the Commission.

“(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a
national securities association registered pursuant to section 15A(k) shall be limited to records with respect to persons, accounts, agreements, contracts, and transactions involving security futures products.”; and

(6) in paragraph (4)(C) (as redesignated by paragraph (3) of this section), by striking “Nothing in the proviso to the preceding sentence” and inserting “Nothing in the proviso in paragraph (1)”.

SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SECURITY FUTURES PRODUCTS.

(a) Addition of Security Futures Products to Option-Specific Enforcement Provisions.—

(1) Prohibition Against Manipulation.—

Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended—

(A) in paragraph (1)—

(i) by inserting “(A)” after “acquires”; and

(ii) by striking “; or” and inserting “; or (B) any security futures product on the security; or”;

(B) in paragraph (2)—

(i) by inserting “(A)” after “interest in any”; and
(ii) by striking “; or” and inserting “;
or (B) such security futures product; or”;
and
(C) in paragraph (3)—
(i) by inserting “(A)” after “interest
in any”; and
(ii) by inserting “; or (B) such secu-

rity futures product” after “privilege”.

(2) MANIPULATION IN OPTIONS AND OTHER
DERIVATIVE PRODUCTS.—Section 9(g) of the Securi-
ties Exchange Act of 1934 (15 U.S.C. 78i(g)) is
amended—
(A) by inserting “(1)” after “(g)”;
(B) by inserting “other than a security fu-
tures product” after “future delivery”; and
(C) by adding at the end the following:
“(2) Notwithstanding the Commodity Exchange Act,
the Commission shall have the authority to regulate the
trading of any security futures product to the extent pro-
vided in the securities laws.”.

(3) LIABILITY OF CONTROLLING PERSONS AND
PERSONS WHO AID AND ABET VIOLATIONS.—Section
20(d) of the Securities Exchange Act of 1934 (15
U.S.C. 78t(d)) is amended by striking “or privilege”
and inserting “, privilege, or security futures product”.

(4) LIABILITY TO CONTEMPORANEOUS TRADERS FOR INSIDER TRADING.—Section 21A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1(a)(1)) is amended by striking “standardized options, the Commission—” and inserting “standardized options or security futures products, the Commission—”.

(5) ENFORCEMENT CONSULTATION.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following:

“(i) INFORMATION TO CFTC.—The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 15(b)(11), any exchange registered pursuant to section 6(g), or any national securities association registered pursuant to section 15A(k).”.

SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SECURITY FUTURES PRODUCTS.

(a) LISTING STANDARDS AND CONDITIONS FOR TRADING.—Section 6 of the Securities Exchange Act of
1934 (15 U.S.C. 78f) is amended by inserting after subsection (g), as added by section 202, the following:

“(h) TRADING IN SECURITY FUTURES PRODUCTS.—

“(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

“(2) LISTING STANDARDS REQUIRED.—Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 19(b) and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

“(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards shall—

“(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each compo-
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ent security of a narrow-based security index,
be registered pursuant to section 12 of this
title;

“(B) require that if the security futures
product is not cash settled, the market on
which the security futures product is traded
have arrangements in place with a registered
clearing agency for the payment and delivery of
the securities underlying the security futures
product;

“(C) be no less restrictive than comparable
listing standards for options traded on a na-
tional securities exchange or national securities
association registered pursuant to section
15A(a) of this title;

“(D) except as otherwise provided in a
rule, regulation, or order issued pursuant to
paragraph (4), require that the security future
be based upon common stock and such other
equity securities as the Commission and the
Commodity Futures Trading Commission joint-
ly determine appropriate;

“(E) require that the security futures
product is cleared by a clearing agency that has
in place provisions for linked and coordinated
clearing with other clearing agencies that clear
security futures products, which permits the se-
curity futures product to be purchased on one
market and offset on another market that
trades such product;

“(F) require that only a broker or dealer
subject to suitability rules comparable to those
of a national securities association registered
pursuant to section 15A(a) effect transactions
in the security futures product;

“(G) require that the security futures
product be subject to the prohibition against
dual trading in section 4j of the Commodity Ex-
change Act (7 U.S.C. 6j) and the rules and reg-
ulations thereunder or the provisions of section
11(a) of this title and the rules and regulations
thereunder, except to the extent otherwise per-
mitted under this title and the rules and regula-
tions thereunder;

“(H) require that trading in the security
futures product not be readily susceptible to
manipulation of the price of such security fu-
tures product, nor to causing or being used in
the manipulation of the price of any underlying
security, option on such security, or option on a group or index including such securities;

“(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

“(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

“(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

“(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section
7(c)(2)(B), except that nothing in this subpara-
graph shall be construed to prevent a national
securities exchange or national securities asso-
ciation from requiring higher margin levels for
a security futures product when it deems such
action to be necessary or appropriate.

“(4) AUTHORITY TO MODIFY CERTAIN LISTING
STANDARD REQUIREMENTS.—

“(A) AUTHORITY TO MODIFY.—The Com-
mission and the Commodity Futures Trading
Commission, by rule, regulation, or order, may
jointly modify the listing standard requirements
specified in subparagraph (A) or (D) of para-
graph (3) to the extent such modification fos-
ters the development of fair and orderly mar-
kets in security futures products, is necessary
or appropriate in the public interest, and is con-
sistent with the protection of investors.

“(B) AUTHORITY TO GRANT EXEMP-
TIONS.—The Commission and the Commodity
Futures Trading Commission, by order, may
jointly exempt any person from compliance with
the listing standard requirement specified in
subparagraph (E) of paragraph (3) to the ex-
tent such exemption fosters the development of
fair and orderly markets in security futures
products, is necessary or appropriate in the
public interest, and is consistent with the pro-
tection of investors.

“(5) REQUIREMENTS FOR OTHER PERSONS
TRADING SECURITY FUTURE PRODUCTS.—It shall be
unlawful for any person (other than a national secu-
rities exchange or a national securities association
registered pursuant to section 15A(a)) to constitute,
maintain, or provide a marketplace or facilities for
bringing together purchasers and sellers of security
future products or to otherwise perform with respect
to security future products the functions commonly
performed by a stock exchange as that term is gen-
erally understood, unless a national securities assos-
ciation registered pursuant to section 15A(a) or a
national securities exchange of which such person is
a member—

“(A) has in place procedures for coordi-
nated surveillance among such person, the mar-
et trading the securities underlying the secu-
rity future products, and other markets trading
related securities to detect manipulation and in-
sider trading;
“(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

“(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

“(6) Deferral of options on security futures trading.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of the enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act.

“(7) Deferral of linked and coordinated clearing.—

“(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association reg-
istered pursuant to section 15A(a) may trade a
security futures product that does not—

“(i) conform with any listing standard
promulgated to meet the requirement spec-
ified in subparagraph (E) of paragraph
(3); or

“(ii) meet the criterion specified in
section 2(a)(1)(D)(i)(IV) of the Com-
modity Exchange Act.

“(B) The Commission and the Commodity
Futures Trading Commission shall jointly pub-
lish in the Federal Register a notice of the com-
pliance date no later than 165 days before the
compliance date.

“(C) For purposes of this paragraph, the
term ‘compliance date’ means the later of—

“(i) 180 days after the end of the
first full calendar month period in which
the average aggregate comparable share
volume for all security futures products
based on single equity securities traded on
all national securities exchanges, any na-
tional securities associations registered
pursuant to section 15A(a), and all other
persons equals or exceeds 10 percent of the
average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

“(ii) 2 years after the date on which trading in any security futures product commences under this title.”.

(b) MARGIN.—Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended—

(1) in subsection (a), by inserting “or a security futures product” after “exempted security”;  
(2) in subsection (c)(1)(A), by inserting “except as provided in paragraph (2),” after “security),”;

(3) by redesignating paragraph (2) of subsection (c) as paragraph (3) of such subsection; and  
(4) by inserting after paragraph (1) of such subsection the following:

“(2) MARGIN REGULATIONS.—

“(A) COMPLIANCE WITH MARGIN RULES REQUIRED.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures
product unless such activities comply with the regulations—

“(i) which the Board shall prescribe pursuant to subparagraph (B); or

“(ii) if the Board determines to delegate the authority to prescribe such regulations, which the Commission and the Commodity Futures Trading Commission shall jointly prescribe pursuant to subparagraph (B).

If the Board delegates the authority to prescribe such regulations under clause (ii) and the Commission and the Commodity Futures Trading Commission have not jointly prescribed such regulations within a reasonable period of time after the date of such delegation, the Board shall prescribe such regulations pursuant to subparagraph (B).

“(B) CRITERIA FOR ISSUANCE OF RULES.—The Board shall prescribe, or, if the authority is delegated pursuant to subparagraph (A)(ii), the Commission and the Commodity Futures Trading Commission shall jointly prescribe, such regulations to establish margin requirements, including the establish-
ment of levels of margin (initial and mainte-
ance) for security futures products under such
terms, and at such levels, as the Board deems
appropriate, or as the Commission and the
Commodity Futures Trading Commission joint-
ly deem appropriate—

“(i) to preserve the financial integrity
of markets trading security futures prod-
ucts;

“(ii) to prevent systemic risk;

“(iii) to require that—

“(I) the margin requirements for
a security future product be con-
sistent with the margin requirements
for comparable option contracts traded
on any exchange registered pursuant to section 6(a) of this title; and

“(II) initial and maintenance
margin levels for a security future
product not be lower than the lowest
level of margin, exclusive of premium,
required for any comparable option
contract traded on any exchange reg-
istered pursuant to section 6(a) of
this title, other than an option on a
security future;
except that nothing in this subparagraph
shall be construed to prevent a national se-
curities exchange or national securities as-
sociation from requiring higher margin lev-
els for a security future product when it
deems such action to be necessary or ap-
propriate; and
“(iv) to ensure that the margin re-
quirements (other than levels of margin),
including the type, form, and use of collat-
eral for security futures products, are and
remain consistent with the requirements
established by the Board, pursuant to sub-
paragraphs (A) and (B) of paragraph
(1).”.

(c) Incorporation of Security Futures Prod-
ucts Into the National Market System.—Section
78k–1) is amended by adding at the end the following:
“(e) National Markets System for Security
Futures Products.—
“(1) Consultation and cooperation re-
quired.—With respect to security futures products,
the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

“(2) Application of rules by order of CFTC.—No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security futures products on an exchange that is registered under section 6(g) unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.”.
(d) Incorporation of Security Futures Products Into the National System for Clearance and Settlement.—Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(b)) is amended by adding at the end the following:

“(7)(A) A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security futures products that is a national securities exchange registered pursuant to section 6(g), and that would be required to register pursuant to paragraph (1) of this subsection only because it performs the functions of a clearing agency with respect to security futures products effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that if such a clearing agency performs the functions of a clearing agency with respect to a security futures product that is not cash settled, it must have arrangements in place with a registered clearing agency to effect the payment and delivery of the securities underlying the security futures product.

“(B) Any clearing agency that performs the functions of a clearing agency with respect to security futures products must coordinate with and develop fair and reasonable
links with any and all other clearing agencies that perform
the functions of a clearing agency with respect to security
futures products, in order to permit, as of the compliance
date (as defined in section 6(h)(6)(C)), security futures
products to be purchased on one market and offset on an-
other market that trades such products.”.

(e) Market Emergency Powers and Circuit
Breakers.—Section 12(k) of the Securities Exchange
Act of 1934 (15 U.S.C. 78l(k)) is amended—

(1) in paragraph (1), by adding at the end the
following: “If the actions described in subparagraph
(A) or (B) involve a security futures product, the
Commission shall consult with and consider the
views of the Commodity Futures Trading Com-
mission.”; and

(2) in paragraph (2)(B), by inserting after the
first sentence the following: “If the actions described
in subparagraph (A) involve a security futures prod-
uct, the Commission shall consult with and consider
the views of the Commodity FuturesTrading Com-
mission.”.

(f) Transaction Fees.—Section 31 of the Securi-

(1) in subsection (a), by inserting “and assess-
ments” after “fees”;
(2) in subsections (b), (c), and (d)(1), by striking “and other evidences of indebtedness” and inserting “other evidences of indebtedness, and security futures products”;

(3) in subsection (f), by inserting “or assessment” after “fee”;

(4) in subsection (g), by inserting “and assessment” after “fee”;

(5) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(6) by inserting after subsection (d) the following new subsection:

“(e) Assessments on Security Futures Transactions.—Each national securities exchange and national securities association shall pay to the Commission an assessment equal to $0.02 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to $0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.”.
(g) Exemption From Short Sale Provisions.—Section 10(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(a)) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(2) Paragraph (1) of this subsection shall not apply to security futures products.”.

(h) Rulemaking Authority To Address Duplicative Regulation of Dual Registrants.—Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) is amended—

(1) by inserting “(A)” after “(3)”; and

(2) by adding at the end the following:

“(B) Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 8, section 15(c)(3), and section 17 of this title and the rules and regulations thereunder related
to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act and rules and regulations thereunder involving security futures products.”.

(i) Obligation To Address Duplilcative Regulation Of Dual Registrants.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after subsection (h), as added by subsection (a) of this section, the following:

“(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(e)(3)(B) involving security futures products; and
(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.”.

(j) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (k), as added by section 203, the following:

“(l) Consistent with this title, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

“(1) rules of such national securities association of the type specified in section 15(c)(3)(B) involving security futures products; and

“(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered
pursuant to section 6(g) involving security futures products.”.

(k) Obligation To Put in Place Procedures and Adopt Rules.—

(1) National Securities Associations.—

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (l), as added by subsection (j) of this section, the following new subsection:

“(m) Procedures and Rules for Security Future Products.—A national securities association registered pursuant to subsection (a) shall, not later than 8 months after the date of the enactment of the Commodity Futures Modernization Act of 2000, implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title.”.

(2) National Securities Exchanges.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after subsection (i), as added by subsection (i) of this section, the following new subsection:

“(j) Procedures and Rules for Security Future Products.—A national securities exchange registered pursuant to subsection (a) shall implement the pro-
cedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.”.

(l) OBLIGATION TO ADDRESS SECURITY FUTURES PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding after subsection (j), as added by subsection (k) of this section, the following:

“(k)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

“(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.”.
SEC. 207. CLEARANCE AND SETTLEMENT.

Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(b)) is amended—

(1) in paragraph (3)(A), by inserting “and derivative agreements, contracts, and transactions” after “prompt and accurate clearance and settlement of securities transactions”;

(2) in paragraph (3)(F), by inserting “and, to the extent applicable, derivative agreements, contracts, and transactions” after “designed to promote the prompt and accurate clearance and settlement of securities transactions”; and

(3) by inserting after paragraph (7), as added by section 206(d), the following:

“(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”.
SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND DISCLOSURE ISSUES UNDER THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934.

(a) Amendments to the Securities Act of 1933.—

(1) Treatment of security futures products.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

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

(B) in paragraph (3), by adding at the end the following: “Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.”; and

(C) by adding at the end the following:

“(16) The terms ‘security future’, ‘narrow-based security index’, and ‘security futures product’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(2) Exemption from registration.—Section 3(a) of the Securities Act of 1933 (15 U.S.C.
77c(a)) is amended by adding at the end the fol-
lowing:

“(14) Any security futures product that is—

“(A) cleared by a clearing agency reg-
istered under section 17A of the Securities Ex-
change Act of 1934 or exempt from registration
under subsection (b)(7) of such section 17A;
and

“(B) traded on a national securities ex-
change or a national securities association reg-
istered pursuant to section 15A(a) of the Secu-
rities Exchange Act of 1934.”.

(3) Conforming Amendment.—Section
12(a)(2) of the Securities Act of 1933 (15 U.S.C.
77l(a)(2)) is amended by striking “paragraph (2)”
and inserting “paragraphs (2) and (14)”.

(b) Amendments to the Securities Exchange
Act of 1934.—

(1) Exemption from Registration.—Section
12(a) of the Securities Exchange Act of 1934 (15
U.S.C. 78l(a)) is amended by adding at the end the
following: “The provisions of this subsection shall
not apply in respect of a security futures product
traded on a national securities exchange.”.
(2) Exemptions from reporting requirement.—Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: “For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product.”.

(3) Transactions by corporate insiders.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following:

“(f) Treatment of Transactions in Security Futures Products.—The provisions of this section shall apply to ownership of and transactions in security futures products.”.

SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.

(a) Definitions Under the Investment Company Act of 1940 and the Investment Advisers Act of 1940.—

(1) Section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(36)) is
amended by inserting “security future,” after “treasury stock,”.


(3) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

“(52) The terms ‘security future’ and ‘narrow-based security index’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(4) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

“(27) The terms ‘security future’ and ‘narrow-based security index’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(b) OTHER PROVISION.—Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) by striking “or” at the end of paragraph (4);
(2) by striking the period at the end of paragraph (5) and inserting “; or”; and

(3) by adding at the end the following:

“(6) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to—

“(A) an investment company registered under title I of this Act; or

“(B) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election.”.

SEC. 210. PREEMPTION OF STATE LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended—

(1) in the last sentence—

(A) by inserting “subject to this title” after “privilege, or other security”; and

(B) by striking “any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to
section 19(b) of this Act” and inserting “any such security”; and

(2) by adding at the end the following new sentence: “No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.”.

Subtitle B—Amendments to the Commodity Exchange Act

SEC. 251. JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION; OTHER PROVISIONS.

(a) Jurisdiction of Securities and Exchange Commission.—

(1) Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2a) (as redesignated by section 34(a)(2)(C)) is amended—

(A) in clause (ii)—

(i) by inserting “or register a derivatives transaction execution facility that trades or executes,” after “contract market in,”;

(ii) by inserting after “contracts) for future delivery” the following: “, and no derivatives transaction execution facility
shall trade or execute such contracts of
sale (or options on such contracts) for fu-
ture delivery,”;

(iii) by striking “making such applica-
tion demonstrates and the Commission ex-
pressly finds that the specific contract (or
option on such contract) with respect to
which the application has been made
meets” and inserting “or the derivatives
transaction execution facility, and the ap-
plicable contract, meet”; and

(iv) by striking subclause (III) of
clause (ii) and inserting the following:
“(III) Such group or index of securities
shall not constitute a narrow-based security
index.”;

(B) by striking clause (iii);

(C) by striking clause (iv) and inserting
the following:
“(iii) If, in its discretion, the Commission deter-
mines that a stock index futures contract, notwith-
standing its conformance with the require-
ment in clause (ii) of this subparagraph, can reasonably be
used as a surrogate for trading a security (including
a security futures product), it may, by order, require
such contract and any option thereon be traded and
regulated as security futures products as defined in
section 3(a)(56) of the Securities Exchange Act of
1934 and section 1a of this Act subject to all rules
and regulations applicable to security futures prod-
ucts under this Act and the securities laws as de-
fined in section 3(a)(47) of the Securities Exchange
Act of 1934.”; and

(D) by redesignating clause (v) as clause
(iv).

(2) Section 2(a)(1) of the Commodity Exchange
Act (7 U.S.C. 2, 2a, 4) is amended by adding at the
end the following:
“(D)(i) Notwithstanding any other provision of this
Act, the Securities and Exchange Commission shall have
jurisdiction and authority over security futures as defined
in section 3(a)(55) of the Securities Exchange Act of
1934, section 2(a)(16) of the Securities Act of 1933, sec-
tion 2(a)(52) of the Investment Company Act of 1940,
and section 202(a)(27) of the Investment Advisers Act of
1940, options on security futures, and persons effecting
transactions in security futures and options thereon, and
this Act shall apply to and the Commission shall have ju-
risdiction with respect to accounts, agreements (including
any transaction which is of the character of, or is com-
monly known to the trade as, an ‘option’, ‘privilege’, ‘in-
‘decline guaranty’), contracts, and transactions involving,
and may designate a board of trade as a contract market
in, or register a derivatives transaction execution facility
that trades or executes, a security futures product as de-
fined in section 1a of this Act: Provided, however, That,
except as provided in clause (vi) of this subparagraph, no
board of trade shall be designated as a contract market
with respect to, or registered as a derivatives transaction
execution facility for, any such contracts of sale for future
delivery unless the board of trade and the applicable con-
tact meet the following criteria:

“(I) Except as otherwise provided in a rule,
regulation, or order issued pursuant to clause (v) of
this subparagraph, any security underlying the secu-
ity future, including each component security of a
narrow-based security index, is registered pursuant
to section 12 of the Securities Exchange Act of
1934.

“(II) If the security futures product is not cash
settled, the board of trade on which the security fu-
tures product is traded has arrangements in place
with a clearing agency registered pursuant to section
17A of the Securities Exchange Act of 1934 for the
payment and delivery of the securities underlying the
security futures product.

“(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

“(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to
section 15A(a) of the Securities Exchange Act of 1934.

“(V) Only futures commission merchants, introduc- ing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 so- licit, accept any order for, or otherwise deal in any transaction in or in connection with the security fu-

“(VI) The security futures product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Ex-


“(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to caus-

ing or being used in the manipulation of the price of any underlying security, option on such security,
or option on a group or index including such securi-

ties;

“(VIII) The board of trade on which the secu-

rity futures product is traded has procedures in

place for coordinated surveillance among such board

of trade, any market on which any security under-

lying the security futures product is traded, and

other markets on which any related security is trad-
ed to detect manipulation and insider trading, except

that, if the board of trade is an alternative trading

system, a national securities association registered

pursuant to section 15A(a) of the Securities Ex-

change Act of 1934 or national securities exchange

registered pursuant to section 6(a) of the Securities

Exchange Act of 1934 of which such alternative

trading system is a member has in place such proce-
dures.

“(IX) The board of trade on which the security

futures product is traded has in place audit trails

necessary or appropriate to facilitate the coordinated

surveillance required in subclause (VIII), except

that, if the board of trade is an alternative trading

system, a national securities association registered

pursuant to section 15A(a) of the Securities Ex-

change Act of 1934 or national securities exchange
registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.

“(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.

“(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a
security futures product when it deems such action
to be necessary or appropriate.

“(ii) It shall be unlawful for any person to offer, to
enter into, to execute, to confirm the execution of, or to
conduct any office or business anywhere in the United
States, its territories or possessions, for the purpose of
soliciting, or accepting any order for, or otherwise dealing
in, any transaction in, or in connection with, a security
futures product unless—

“(I) the transaction is conducted on or subject
to the rules of a board of trade that—

“(aa) has been designated by the Commis-
sion as a contract market in such security fu-
tures product; or

“(bb) is a registered derivatives trans-
action execution facility for the security futures
product that has provided a certification with
respect to the security futures product pursuant
to clause (vii);

“(II) the contract is executed or consummated
by, through, or with a member of the contract mar-
et or registered derivatives transaction execution
facility; and

“(III) the security futures product is evidenced
by a record in writing which shows the date, the
parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

“(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

“(II) After 3 years after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934.

“(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6),
or board of trade designated as a contract market in a
security futures product pursuant to section 5f shall be
subject to such reasonable periodic or special examinations
by representatives of the Commission as the Commission
deems necessary or appropriate in the public interest, for
the protection of investors, or otherwise in furtherance of
the purposes of this Act, and the Commission, before con-
ducting any such examination, shall give notice to the Se-
curities and Exchange Commission of the proposed exam-
ination and consult with the Securities and Exchange
Commission concerning the feasibility and desirability of
coordinating the examination with examinations conducted
by the Securities and Exchange Commission in order to
avoid unnecessary regulatory duplication or undue regu-
latory burdens for the registrant or board of trade.

“(II) The Commission shall notify the Securities and
Exchange Commission of any examination conducted of
any futures commission merchant or introducing broker
registered pursuant to section 4f(a)(2), floor broker or
floor trader exempt from registration pursuant to section
4f(a)(3), associated person exempt from registration pur-
suant to section 4k(6), or board of trade designated as
a contract market in a security futures product pursuant
to section 5f, and, upon request, furnish to the Securities
and Exchange Commission any examination report and
data supplied to or prepared by the Commission in connection with the examination.

“(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

“(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant
to section 5f, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

“(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

“(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

“(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

“(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal
Register a notice of the compliance date no later than 165 days before the compliance date.

“(III) For purposes of this clause, the term ‘compliance date’ means the later of—

“(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and any national securities associations registered pursuant to section 15A(a) of such Act; or

“(bb) 2 years after the date on which trading in any security futures product commences under this Act.

“(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified
in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).”.

(b) MARGIN ON SECURITY FUTURES.—Section 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C. 2a(vi)) (as redesignated by section 34) is amended—

(1) by redesignating subclause (V) as subclause (VI); and

(2) by striking “(vi)(I)” and all that follows through subclause (IV) and inserting the following:

“(v)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

“(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to pre-
serve the financial integrity of the contract market
or derivatives transaction execution facility, or its
clearing system, or to prevent systemic risk. If the
contract market or derivatives transaction execution
facility fails to do so within the time specified by the
Board in its request, the Board may direct the con-
tract market or derivatives transaction execution fa-
cility to alter or supplement the rules of the contract
market or derivatives transaction execution facility
as specified in the request.

“(III) Subject to such conditions as the Board
may determine, the Board may delegate any or all
of its authority, relating to margin for any stock
index futures contract (or option thereon), other
than security futures products, under this clause to
the Commission.

“(IV) It shall be unlawful for any futures com-
mission merchant to, directly or indirectly, extend or
maintain credit to or for, or collect margin from any
customer on any security futures product unless
such activities comply with the regulations pre-
scribed pursuant to section 7(c)(2)(B) of the Securi-
ties Exchange Act of 1934.

“(V) Nothing in this clause shall supersede or
limit the authority granted to the Commission in
section 8a(9) to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.”.

(e) DUAL TRADING.—Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is amended to read as follows:

“SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY FUTURES PRODUCTS ON DESIGNATED CONTRACT MARKETS AND REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.

“(a) The Commission shall issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility. The regulations issued by the Commission under this section—

“(1) shall provide that the prohibition of dual trading thereunder shall take effect upon issuance of the regulations; and

“(2) shall provide exceptions, as the Commission determines appropriate, to ensure fairness and orderly trading in security futures product markets, including—
“(A) exceptions for spread transactions and the correction of trading errors;

“(B) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this section; and

“(C) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and with the purposes of this section.

“(b) As used in this section, the term ‘dual trading’ means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for—

“(1) the account of such floor broker;

“(2) an account for which such floor broker has trading discretion; or
“(3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association.

“(c) As used in this section, the term ‘broker association’ shall include two or more contract market members or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker, who—

“(1) engage in floor brokerage activity on behalf of the same employer,

“(2) have an employer and employee relationship which relates to floor brokerage activity,

“(3) share profits and losses associated with their brokerage or trading activity, or

“(4) regularly share a deck of orders.”.

(d) Exemption From Registration for Investment Advisers.—Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended by adding at the end the following:

“(3) Subsection (1) of this section shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a(6), and that does not act as a commodity trading advi-
sor to any investment trust, syndicate, or similar form of
enterprise that is engaged primarily in trading in any com-
modity for future delivery on or subject to the rules of
any contract market or registered derivatives transaction
execution facility.”.

(e) Exemption From Investigations of Markets
in Underlying Securities.—Section 16 of the Com-
modity Exchange Act (7 U.S.C. 20) is amended by adding
at the end the following:

“(e) This section shall not apply to investigations in-
volving any security underlying a security futures prod-
uct.”.

(f) Rulemaking Authority To Address Dupli-
cative Regulation of Dual Registrants.—Section
4d of the Commodity Exchange Act (7 U.S.C. 6d) is
amended—

(1) by inserting “(a)” before the first undesig-
nated paragraph;

(2) by inserting “(b)” before the second undes-
ignated paragraph; and

(3) by adding at the end the following:

“(c) Consistent with this Act, the Commission, in
consultation with the Securities and Exchange Commis-
sion, shall issue such rules, regulations, or orders as are
necessary to avoid duplicative or conflicting regulations
applicable to any futures commission merchant registered
with the Commission pursuant to section 4f(a) (except
paragraph (2) thereof), that is also registered with the
Securities and Exchange Commission pursuant to section
15(b) of the Securities Exchange Act (except paragraph
(11) thereof), involving the application of—

“(1) section 8, section 15(c)(3), and section 17
of the Securities Exchange Act of 1934 and the
rules and regulations thereunder related to the treat-
ment of customer funds, securities, or property,
maintenance of books and records, financial report-
ing or other financial responsibility rules (as defined
in section 3(a)(40) of the Securities Exchange Act
of 1934), involving security futures products; and

“(2) similar provisions of this Act and the rules
and regulations thereunder involving security futures
products.”.

(g) Obligation To Address Duplicative Regu-
lation Of Dual Registrants.—Section 17 of the Com-
modity Exchange Act (7 U.S.C. 21) is amended by adding
at the end the following:

“(r) Consistent with this Act, each futures associa-
tion registered under this section shall issue such rules
as are necessary to avoid duplicative or conflicting rules
applicable to any futures commission merchant registered
with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities and Exchange Act of 1934 (except paragraph (11) thereof), with respect to the application of—

“(1) rules of such futures association of the type specified in section 4d(3) of this Act involving security futures products; and

“(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities and Exchange Act of 1934 involving security futures products.”.

(h) Obligation To Address Duplicative Regulation Of Dual Registrants.—Section 5c of the Commodity Exchange Act (as added by section 114) is amended by adding at the end the following:

“(f) Consistent with this Act, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the
Securities Exchange Act of 1934 (except paragraph (11) thereof) with respect to the application of—

“(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 4d(3) of this Act involving security futures products; and

“(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and national securities exchanges registered pursuant to section 6(g) of such Act involving security futures products.”.

(i) Obligation To Address Security Futures Products Traded on Foreign Exchanges.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended by adding at the end the following:

“(E)(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject
to the rules of a foreign board of trade to United States persons.

“(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.”

(j) Security Futures Products Traded on Foreign Boards of Trade.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended by adding at the end the following:

“(F)(i) Nothing in this Act is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

“(ii) Nothing in this Act is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.”
SEC. 252. APPLICATION OF THE COMMODITY EXCHANGE ACT TO NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS THAT TRADE SECURITY FUTURES.

(a) Notice Designation of National Securities Exchanges and National Securities Associations.—The Commodity Exchange Act is amended by inserting after section 5e (7 U.S.C. 7b), as redesignated by section 21(1), the following:

“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.

“(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934, or is an alternative trading system shall be a designated contract market in security futures products if—

“(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures products;

“(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe con-
taining such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

“(3) the registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

Such designation shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

“(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to section 5f shall be exempt from the following provisions of this Act and the rules thereunder:

“(A) Subsections (c), (e), and (g) of section 4c.
“(B) Section 4j.
“(C) Section 5.
“(D) Section 5c.
“(E) Section 6a.
“(F) Section 8(d).
“(G) Section 9(f).
“(H) Section 16.
“(2) An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 17 and shall be exempt from any provision of this Act that would require such alternative trading system to—

“(A) set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such alternative trading system; or

“(B) discipline subscribers other than by exclusion from trading.

“(3) To the extent that an alternative trading system is exempt from any provision of this Act pursuant to paragraph (2) of this subsection, the futures association registered under section 17 of which the alternative trading system is a member shall set rules governing the conduct of subscribers to the alternative trading system and discipline the subscribers.

“(4)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this Act or of any rule or regulation thereunder, to the extent such exemp-
tion is necessary or appropriate in the public interest and is consistent with the protection of investors.

“(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

“(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.”.

(b) NOTICE REGISTRATION OF CERTAIN SECURITIES BROKER-DEALERS; EXEMPTION FROM REGISTRATION FOR CERTAIN SECURITIES BROKER-DEALERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by adding at the end the following:

“(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

“(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of or-
ders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

“(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

“(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

“(D) the broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

The registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

“(3) A floor broker or floor trader shall be exempt from the registration requirements of section 4e and paragraph (1) of this subsection if—
“(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

“(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products; and

“(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.”.

(c) Exemption for Securities Broker-Dealers From Certain Provisions of the Commodity Exchange Act.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended by inserting after paragraph (3), as added by subsection (b) of this section, the following:

“(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this Act and the rules thereunder:
“(i) Subsections (b), (d), (e), and (g) of section 4c.

“(ii) Sections 4d, 4e, and 4h.

“(iii) Subsections (b) and (e) of this section.

“(iv) Section 4j.

“(v) Section 4k(1).

“(vi) Section 4p.

“(vii) Section 6d.

“(viii) Subsections (d) and (g) of section 8.

“(ix) Section 16.

“(B)(i) Except as provided in clause (ii) of this sub-
paragraph, but notwithstanding any other provision of this
Act, the Commission, by rule, regulation, or order, may
conditionally or unconditionally exempt any broker or
dealer subject to the registration requirement of para-
graph (2), or any broker or dealer exempt from registra-
tion pursuant to paragraph (3), from any provision of this
Act or of any rule or regulation thereunder, to the extent
the exemption is necessary or appropriate in the public
interest and is consistent with the protection of investors.

“(ii) The Commission shall, by rule or regulation, de-
terminate the procedures under which an exemptive order
under this section shall be granted and may, in its sole
discretion, decline to entertain any application for an
order of exemption under this section.
“(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 17.

“(ii) No futures association registered under section 17 shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3)”.

(d) Exemptions for Associated Persons of Securities Broker-Dealers.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k), is amended by inserting after paragraph (4), as added by subsection (c) of this section, the following:

“(5) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any com-
modity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this Act and the rules thereunder:

“(A) Subsections (b), (d), (e), and (g) of section 4c.

“(B) Sections 4d, 4e, and 4h.

“(C) Subsections (b) and (e) of section 4f.

“(D) Section 4j.

“(E) Paragraph (1) of this section.

“(F) Section 4p.

“(G) Section 6d.

“(H) Subsections (d) and (g) of section 8.

“(I) Section 16.”.

SEC. 253. NOTIFICATION OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

(a) Section 8(a) of the Commodity Exchange Act (7 U.S.C. 12(a)) is amended by adding at the end the following:

“(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2),
any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.”.

(b) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at the end the following:

“(g) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.”.

(c) Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) is amended by adding at the end the following:

“(h) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the
Commission against any futures commission merchant or
introducing broker registered pursuant to section 4f(a)(2),
any floor broker or floor trader exempt from registration
pursuant to section 4f(a)(3), any associated person exempt
from registration pursuant to section 4k(6), or any board
of trade designated as a contract market pursuant to sec-
tion 5f.”.

TITLE III—LEGAL CERTAINTY
FOR SWAP AGREEMENTS

SEC. 301. SWAP AGREEMENT.

(a) AMENDMENT.—Title II of the Gramm-Leach-Blie-
ley Act (Public Law 106–102) is amended by inserting
after section 206 the following new sections:

“SEC. 206A. SWAP AGREEMENT.

“(a) IN GENERAL.—Except as provided in subsection
(b), as used in this section, the term ‘swap agreement’
means any agreement, contract, or transaction between el-
igible contract participants (as defined in section 1a(12)
of the Commodity Exchange Act as in effect on the date
of the enactment of this section), other than a person that
is an eligible contract participant under section 1a(12)(C)
of the Commodity Exchange Act, the material terms of
which (other than price and quantity) are subject to indi-
vidual negotiation, and that—
“(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including
any enterprise or investment pool) or liability that includes any such agreement, contract, or transaction
commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate
swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit
spread, credit default swap, credit swap, weather swap, or commodity swap;

“(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

“(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

“(b) EXCLUSIONS.—The term ‘swap agreement’ does not include—

“(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

“(2) any put, call, straddle, option, or privilege entered into on a national securities exchange reg-
istered pursuant to section 6(a) of the Securities Exchange Act of 1934 relating to foreign currency;

“(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

“(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934; or

“(6) any agreement, contract, or transaction that is—

“(A) based on a security; and

“(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933) by the issuer of such security for the purposes of raising capital, unless
such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

“(c) Rule of Construction Regarding Master Agreements.—As used in this section, the term ‘swap agreement’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement, contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b).

“Sec. 206b. Security-Based Swap Agreement.

“As used in this section, the term ‘security-based swap agreement’ means a swap agreement (as defined in section 206A) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.
“SEC. 206C. NON-SECURITY-BASED SWAP AGREEMENT.

“As used in this section, the term ‘non-security-based swap agreement’ means any swap agreement (as defined in section 206A) that is not a security-based swap agreement (as defined in section 206B).”.

(b) SECURITY DEFINITION.—As used in the amendment made by subsection (a), the term “security” has the same meaning as in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934.

SEC. 302. AMENDMENTS TO THE SECURITIES ACT OF 1933.

(a) ENFORCEMENT FOCUS.—The Securities Act of 1933 is amended by inserting after section 2 (15 U.S.C. 77b) the following new section:

“SEC. 2A. SWAP AGREEMENTS.

“(a) NON-SECURITY-BASED SWAP AGREEMENTS.—The definition of ‘security’ in section 2(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

“(b) SECURITY-BASED SWAP AGREEMENTS.—

“(1) The definition of ‘security’ in section 2(a)(1) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).
“(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

“(3) The Commission is prohibited from—

“(A) promulgating, interpreting, or enforcing rules; or

“(B) issuing orders of general applicability; under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

“(4) References in this title to the ‘purchase’ or ‘sale’ of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange,
or similar transfer or conveyance of, or extinguishing
of rights or obligations under, a security-based swap
agreement (as defined in section 206B of the
Gramm-Leach-Bliley Act), as the context may re-
quire.”.

(b) Anti-Fraud and Anti-Manipulation En-
forcement Authority.—Section 17(a) of the Securities
Act of 1933 (15 U.S.C. 77q(a)) is amended to read as
follows:

“(a) It shall be unlawful for any person in the offer
or sale of any securities or any security-based swap agree-
ment (as defined in section 206B of the Gramm-Leach-
Bliley Act) by the use of any means or instruments of
transportation or communication in interstate commerce
or by use of the mails, directly or indirectly—

“(1) to employ any device, scheme, or artifice to
defraud, or

“(2) to obtain money or property by means of
any untrue statement of a material fact or any omis-
sion to state a material fact necessary in order to
make the statements made, in light of the cir-
cumstances under which they were made, not mis-
leading; or
“(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”.

(c) LIMITATION.—Section 17 of the Securities Act of 1933 is amended by adding at the end the following new subsection:

“(d) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 2A(b) of this title.”.

SEC. 303. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) ENFORCEMENT FOCUS.—The Securities Exchange Act of 1934 is amended by inserting after section 3 (15 U.S.C. 78e) the following new section:

“SEC. 3A. SWAP AGREEMENTS.

“(a) NON-SECURITY-BASED SWAP AGREEMENTS.—The definition of ‘security’ in section 3(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

“(b) SECURITY-BASED SWAP AGREEMENTS.—

“(1) The definition of ‘security’ in section 3(a)(10) of this title does not include any security-
based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

“(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such a swap agreement shall be void and of no force or effect.

“(3) Except as provided in section 16(a) with respect to reporting requirements, the Commission is prohibited from—

“(A) promulgating, interpreting, or enforcing rules; or

“(B) issuing orders of general applicability; under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).
“(4) References in this title to the ‘purchase’ or ‘sale’ of a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.”.

(b) Anti-Fraud, Anti-Manipulation Enforcement Authority.—Paragraphs (2) through (5) of section 9(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(a)(2)–(5)) are amended to read as follows:

“(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined
in section 206B of the Gramm-Leach-Bliley Act) with re-
pect to such security, to induce the purchase or sale of
any security registered on a national securities exchange
or any security-based swap agreement (as defined in sec-
tion 206B of the Gramm-Leach-Bliley Act) with respect
to such security by the circulation or dissemination in the
ordinary course of business of information to the effect
that the price of any such security will or is likely to rise
or fall because of market operations of any one or more
persons conducted for the purpose of raising or depressing
the price of such security.

“(4) If a dealer or broker, or the person selling or
offering for sale or purchasing or offering to purchase the
security or a security-based swap agreement (as defined
in section 206B of the Gramm-Leach-Bliley Act) with re-
spect to such security, to make, regarding any security
registered on a national securities exchange or any secu-
rity-based swap agreement (as defined in section 206B of
the Gramm-Leach-Bliley Act) with respect to such secu-
rity, for the purpose of inducing the purchase or sale of
such security or such security-based swap agreement, any
statement which was at the time and in the light of the
circumstances under which it was made, false or mis-
leading with respect to any material fact, and which he
knew or had reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.”

(c) LIMITATION.—Section 9 of the Securities Exchange Act of 1934 is amended by adding at the end the following new subsection:

“(i) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.”

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(d) Regulations on the Use of Manipulative and Deceptive Devices.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended—

(1) in subsection (b), by inserting “or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),” before “any manipulative or deceptive device”; and

(2) by adding at the end the following:

“Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities.”.
(e) Broker, Dealer Anti-Fraud, Anti-Manipulation Enforcement Authority.—Section 15(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(e)(1)) is amended to read as follows:

“(e)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers’ acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), by means of any manipulative, deceptive, or other fraudulent device or contrivance.

“(B) No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

“(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any
transaction in, or to induce or to attempt to induce the
purchase or sale of, any government security or any secu-
rity-based swap agreement (as defined in section 206B of
the Gramm-Leach-Bliley Act) involving a government se-
curity by means of any manipulative, deceptive, or other
fraudulent device or contrivance.”.

(f) LIMITATION.—Section 15 of the Securities Ex-
change Act of 1934 (15 U.S.C. 78o) is amended by adding
at the end the following new subsection:

“(i) The authority of the Commission under this sec-
tion with respect to security-based swap agreements (as
defined in section 206B of the Gramm-Leach-Bliley Act)
shall be subject to the restrictions and limitations of sec-
tion 3A(b) of this title.”.

(g) ANTI-INSIDER TRADING ENFORCEMENT AU-
THORITY.—Subsections (a) and (b) of section 16 (15
U.S.C. 78p(a), (b)) of the Securities Exchange of 1934
are amended to read as follows:

“(a) Every person who is directly or indirectly the
beneficial owner of more than 10 per centum of any class
of any equity security (other than an exempted security)
which is registered pursuant to section 12 of this title,
or who is a director or an officer of the issuer of such
security, shall file, at the time of the registration of such
security on a national securities exchange or by the effec-
tive date of a registration statement filed pursuant to sec-

tion 12(g) of this title, or within ten days after he becomes

such beneficial owner, director, or officer, a statement

with the Commission (and, if such security is registered

on a national securities exchange, also with the exchange)

of the amount of all equity securities of such issuer of

which he is the beneficial owner, and within ten days after

the close of each calendar month thereafter, if there has

been a change in such ownership or if such person shall

have purchased or sold a security-based swap agreement

(as defined in section 206B of the Gramm-Leach-Bliley

Act) involving such equity security during such month,

shall file with the Commission (and if such security is reg-

istered on a national securities exchange, shall also file

with the exchange), a statement indicating his ownership

at the close of the calendar month and such changes in

his ownership and such purchases and sales of such secu-

rity-based swap agreements as have occurred during such

calendar month.

“(b) For the purpose of preventing the unfair use of

information which may have been obtained by such bene-

ficial owner, director, or officer by reason of his relation-

ship to the issuer, any profit realized by him from any

purchase and sale, or any sale and purchase, of any equity

security of such issuer (other than an exempted security)
or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving any such equity security within any period of less than six months, unless such security or security-based swap agreement was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security or security-based swap agreement purchased or of not repurchasing the security or security-based swap agreement sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by
rules and regulations may exempt as not comprehended
within the purpose of this subsection.”.

(h) LIMITATION.—Section 16 of the Securities Ex-
change Act of 1934 (15 U.S.C. 78p) is amended by adding
at the end the following new subsection:

“(g) The authority of the Commission under this sec-
tion with respect to security-based swap agreements (as
defined in section 206B of the Gramm-Leach-Bliley Act)
shall be subject to the restrictions and limitations of sec-
tion 3A(b) of this title.”.

(i) MATERIAL NONPUBLIC INFORMATION.—Section
78t(d)) is amended to read as follows:

“(d) Wherever communicating, or purchasing or sell-
ing a security while in possession of, material nonpublic
information would violate, or result in liability to any pur-
chaser or seller of the security under any provisions of
this title, or any rule or regulation thereunder, such con-
duct in connection with a purchase or sale of a put, call,
straddle, option, privilege or security-based swap agree-
ment (as defined in section 206B of the Gramm-Leach-
Bliley Act) with respect to such security or with respect
to a group or index of securities including such security,
shall also violate and result in comparable liability to any
purchaser or seller of that security under such provision, rule, or regulation.”.

(j) LIMITATION.—Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended by adding at the end the following new subsection:

“(f) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.”.

(k) CIVIL PENALTIES.—Section 21A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(1)) is amended by inserting after “purchasing or selling a security” the following: “or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)”.

(l) LIMITATION.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1) is amended by adding at the end the following new subsection:

“(g) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.”.
Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a security for any purpose under the securities laws. Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a futures contract or commodity option for any purpose under the Commodity Exchange Act.

TITLE IV—REGULATORY RESPONSIBILITY FOR BANK PRODUCTS

SEC. 401. SHORT TITLE.

This title may be cited as the “Legal Certainty for Bank Products Act of 2000”.

SEC. 402. DEFINITIONS.

(a) BANK.—In this title, the term “bank” means—

(1) any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(2) any foreign bank or branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978);

(3) any Federal or State credit union (as defined in section 101 of the Federal Credit Union Act);
(4) any corporation organized under section 25A of the Federal Reserve Act;

(5) any corporation operating under section 25 of the Federal Reserve Act;

(6) any trust company; or

(7) any subsidiary of any entity described in paragraph (1) through (6) of this subsection, if the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 3 of the Securities Exchange Act of 1934) or a futures commission merchant (as defined in section 1a(20) of the Commodity Exchange Act).

(b) IDENTIFIED BANKING PRODUCT.—In this title, the term “identified banking product” shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of this title—

(1) the term “bank” shall have the meaning given in subsection (a) of this section; and

(2) the term “qualified investor” means eligible contract participant (as defined in section 1a(12) of the Commodity Exchange Act, as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000).
(c) Hybrid Instrument.—In this title, the term “hybrid instrument” means an identified banking product not excluded by section 403 of this Act, offered by a bank, having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities (as defined in section 1a(4) of the Commodity Exchange Act).

(d) Covered Swap Agreement.—In this title, the term “covered swap agreement” means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of the Commodity Exchange Act if—

(1) the swap agreement—

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act, as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) at the time the persons enter into the swap agreement; and

(B) is not entered into or executed on a trading facility (as defined in section 1a(33) of the Commodity Exchange Act); or

(2) the swap agreement—
(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of the Commodity Exchange Act);

(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of the Commodity Exchange Act;

(C) is entered into only between persons that are eligible contract participants as described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of the Commodity Exchange Act, as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000, at the time the persons enter into the swap agreement; and

(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) of the Commodity Exchange Act).

SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCTS COMMONLY OFFERED ON OR BEFORE DECEMBER 5, 2000.

No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commis-
sion shall not exercise regulatory authority with respect to, an identified banking product if—

(1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

(2) the product was not prohibited by the Commodity Exchange Act and not regulated by the Commodity Futures Trading Commission as a contract of sale of a commodity for future delivery (or an option on such a contract) or an option on a commodity, on or before December 5, 2000.

SEC. 404. EXCLUSION OF CERTAIN IDENTIFIED BANKING PRODUCTS OFFERED BY BANKS AFTER DECEMBER 5, 2000.

No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product which had not been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law if—

(1) the product has no payment indexed to the value, level, or rate of, and does not provide for the
delivery of, any commodity (as defined in section 1a(4) of the Commodity Exchange Act); or

(2) the product or commodity is otherwise excluded from the Commodity Exchange Act.

SEC. 405. EXCLUSION OF CERTAIN OTHER IDENTIFIED BANKING PRODUCTS.

(a) IN GENERAL.—No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a banking product if the product is a hybrid instrument that is predominantly a banking product under the predominance test set forth in subsection (b).

(b) PREDOMINANCE TEST.—A hybrid instrument shall be considered to be predominantly a banking product for purposes of this section if—

(1) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument substantially contemporaneously with delivery of the hybrid instrument;

(2) the purchaser or holder of the hybrid instrument is not required to make under the terms of the instrument, or any arrangement referred to in the instrument, any payment to the issuer in addition to the purchase price referred to in paragraph
(1), whether as margin, settlement payment, or otherwise during the life of the hybrid instrument or at maturity;

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

(4) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the Commodity Exchange Act.

(c) Mark-to-Market Margining Requirement.—

For purposes of subsection (b)(3), mark-to-market margining requirements shall not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

SEC. 406. ADMINISTRATION OF THE PREDOMINANCE TEST.

(a) In General.—No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not regulate, a hybrid instrument, unless the Commission determines, by or under a rule issued in accordance with this section, that—
(1) the action is necessary and appropriate in the public interest;

(2) the action is consistent with the Commodity Exchange Act and the purposes of the Commodity Exchange Act; and

(3) the hybrid instrument is not predominantly a banking product under the predominance test set forth in section 405(b) of this Act.

(b) Consultation.—Before commencing a rule-making or making a determination pursuant to a rule issued under this title, the Commodity Futures Trading Commission shall consult with and seek the concurrence of the Board of Governors of the Federal Reserve System concerning—

(1) the nature of the hybrid instrument; and

(2) the history, purpose, extent, and appropriateness of the regulation of the hybrid instrument under the Commodity Exchange Act and under appropriate banking laws.

(c) Objection to Commission Regulation.—

(1) Filing of petition for review.—The Board of Governors of the Federal Reserve System may obtain review of any rule or determination referred to in subsection (a) in the United States Court of Appeals for the District of Columbia Cir-
cuit by filing in the court, not later than 60 days
after the date of publication of the rule or deter-
mination, a written petition requesting that the rule
or determination be set aside. Any proceeding to
challenge any such rule or determination shall be ex-
pedited by the court.

(2) TRANSMITTAL OF PETITION AND
RECORD.—A copy of a petition described in para-
graph (1) shall be transmitted as soon as possible by
the Clerk of the court to an officer or employee of
the Commodity Futures Trading Commission des-
ignated for that purpose. Upon receipt of the peti-
tion, the Commission shall file with the court the
rule or determination under review and any docu-
ments referred to therein, and any other relevant
materials prescribed by the court.

(3) EXCLUSIVE JURISDICTION.—On the date of
the filing of a petition under paragraph (1), the
court shall have jurisdiction, which shall become ex-
clusive on the filing of the materials set forth in
paragraph (2), to affirm and enforce or to set aside
the rule or determination at issue.

(4) STANDARD OF REVIEW.—The court shall
determine to affirm and enforce or set aside a rule
or determination of the Commodity Futures Trading
Commission under this section, based on the determination of the court as to whether—

(A) the subject product is predominantly a banking product; and

(B) making the provision or provisions of the Commodity Exchange Act at issue applicable to the subject instrument is appropriate in light of the history, purpose, and extent of regulation under such Act, this title, and under the appropriate banking laws, giving deference neither to the views of the Commodity Futures Trading Commission nor the Board of Governors of the Federal Reserve System.

(5) JUDICIAL STAY.—The filing of a petition by the Board pursuant to paragraph (1) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of the determination).

(6) OTHER AUTHORITY TO CHALLENGE.—Any aggrieved party may seek judicial review pursuant to section 6(c) of the Commodity Exchange Act of a determination or rulemaking by the Commodity Futures Trading Commission under this section.
SEC. 407. EXCLUSION OF COVERED SWAP AGREEMENTS.

No provision of the Commodity Exchange Act (other than section 5b of such Act with respect to the clearing of covered swap agreements) shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a covered swap agreement offered, entered into, or provided by a bank.

SEC. 408. CONTRACT ENFORCEMENT.

(a) Hybrid Instruments.—No hybrid instrument shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, a hybrid instrument under any provision of Federal or State law, based solely on the failure of the hybrid instrument to satisfy the predominance test set forth in section 405(b) of this Act or to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission.

(b) Covered Swap Agreements.—No covered swap agreement shall be void, voidable, or unenforceable, and no party to a covered swap agreement shall be entitled to rescind, or recover any payment made with respect to, a covered swap agreement under any provision of Federal or State law, based solely on the failure of the covered swap agreement to comply with the terms or conditions

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of an exemption or exclusion from any provision of the
Commodity Exchange Act or any regulation of the Com-
modity Futures Trading Commission.

(c) PREEMPTION.—This title shall supersede and pre-
empt the application of any State or local law that pro-
hibits or regulates gaming or the operation of bucket
shops (other than antifraud provisions of general applica-

(1) a hybrid instrument that is predominantly

a banking product; or

(2) a covered swap agreement.