

106TH CONGRESS
2D SESSION

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.

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

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

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

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

- Sec. 1. Short title; table of contents.
 Sec. 2. Purposes.

TITLE I—COMMODITY FUTURES MODERNIZATION

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

TITLE II—COORDINATED REGULATION OF SECURITY FUTURES PRODUCTS

Subtitle A—Securities Law Amendments

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

Sec. 210. Preemption of State laws.

Subtitle B—Amendments to the Commodity Exchange Act

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

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

Sec. 253. Notification of investigations and enforcement actions.

TITLE III—LEGAL CERTAINTY FOR SWAP AGREEMENTS

Sec. 301. Swap agreement.

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

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

Sec. 304. Savings provision.

TITLE IV—REGULATORY RESPONSIBILITY FOR BANK PRODUCTS

Sec. 401. Short title.

Sec. 402. Definitions.

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

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

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

Sec. 406. Administration of the predominance test.

Sec. 407. Exclusion of covered swap agreements.

Sec. 408. Contract enforcement.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

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

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

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

1 (4) to provide a statutory and regulatory frame-
2 work for allowing the trading of futures on securi-
3 ties;

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

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

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

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

20 **TITLE I—COMMODITY FUTURES**
21 **MODERNIZATION**

22 **SEC. 101. DEFINITIONS.**

23 Section 1a of the Commodity Exchange Act (7 U.S.C.
24 1a) is amended—

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

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

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

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

14 “(B) performs the functions commonly
15 performed by an exchange (as defined in section
16 3(a)(1) of the Securities Exchange Act of
17 1934);

18 “(C) does not—

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

23 “(ii) discipline subscribers other than
24 by exclusion from trading; and

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

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

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

12 (4) by inserting after paragraph (8) (as redesi-
13 gnated by paragraph (1)) the following:

14 “(9) DERIVATIVES CLEARING ORGANIZATION.—

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

21 “(i) enables each party to the agree-
22 ment, contract, or transaction to sub-
23 stitute, through novation or otherwise, the
24 credit of the derivatives clearing organiza-
25 tion for the credit of the parties;

1 “(ii) arranges or provides, on a multi-
2 lateral basis, for the settlement or netting
3 of obligations resulting from such agree-
4 ments, contracts, or transactions executed
5 by participants in the derivatives clearing
6 organization; or

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

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

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

22 “(ii) settlement or netting of cash
23 payments through an interbank payment
24 system; or

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

5 “(10) ELECTRONIC TRADING FACILITY.—The
6 term ‘electronic trading facility’ means a trading fa-
7 cility that—

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

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

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

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

21 “(i) has a demonstrable ability, di-
22 rectly or through separate contractual ar-
23 rangements, to make or take delivery of
24 the underlying commodity;

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

3 “(iii) is a dealer that regularly pro-
4 vides risk management or hedging services
5 to, or engages in market-making activities
6 with, the foregoing entities involving trans-
7 actions to purchase or sell the commodity
8 or derivative agreements, contracts, or
9 transactions in the commodity;

10 “(B) an eligible contract participant, other
11 than a natural person or an instrumentality, de-
12 partment, or agency of a State or local govern-
13 mental entity, that—

14 “(i) regularly enters into transactions
15 to purchase or sell the commodity or deriv-
16 ative agreements, contracts, or trans-
17 actions in the commodity; and

18 “(ii) either—

19 “(I) in the case of a collective in-
20 vestment vehicle whose participants
21 include persons other than—

22 “(aa) qualified eligible per-
23 sons, as defined in Commission
24 rule 4.7(a) (17 CFR 4.7(a));

1 “(bb) accredited investors,
2 as defined in Regulation D of the
3 Securities and Exchange Com-
4 mission under the Securities Act
5 of 1933 (17 CFR 230.501(a)),
6 with total assets of \$2,000,000;
7 or

8 “(cc) qualified purchasers,
9 as defined in section 2(a)(51)(A)
10 of the Investment Company Act
11 of 1940;

12 in each case as in effect on the date
13 of the enactment of the Commodity
14 Futures Modernization Act of 2000,
15 has, or is one of a group of vehicles
16 under common control or management
17 having in the aggregate,
18 \$1,000,000,000 in total assets; or

19 “(II) in the case of other per-
20 sons, has, or is one of a group of per-
21 sons under common control or man-
22 agement having in the aggregate,
23 \$100,000,000 in total assets; or

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

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

6 “(A) acting for its own account—

7 “(i) a financial institution;

8 “(ii) an insurance company that is
9 regulated by a State, or that is regulated
10 by a foreign government and is subject to
11 comparable regulation as determined by
12 the Commission, including a regulated sub-
13 sidiary or affiliate of such an insurance
14 company;

15 “(iii) an investment company subject
16 to regulation under the Investment Com-
17 pany Act of 1940 (15 U.S.C. 80a–1 et
18 seq.) or a foreign person performing a
19 similar role or function subject as such to
20 foreign regulation (regardless of whether
21 each investor in the investment company or
22 the foreign person is itself an eligible con-
23 tract participant);

24 “(iv) a commodity pool that—

1 “(I) has total assets exceeding
2 \$5,000,000; and

3 “(II) is formed and operated by a
4 person subject to regulation under
5 this Act or a foreign person per-
6 forming a similar role or function sub-
7 ject as such to foreign regulation (re-
8 gardless of whether each investor in
9 the commodity pool or the foreign per-
10 son is itself an eligible contract partic-
11 ipant);

12 “(v) a corporation, partnership, pro-
13 prietorship, organization, trust, or other
14 entity—

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

17 “(II) the obligations of which
18 under an agreement, contract, or
19 transaction are guaranteed or other-
20 wise supported by a letter of credit or
21 keepwell, support, or other agreement
22 by an entity described in subclause
23 (I), in clause (i), (ii), (iii), (iv), or
24 (vii), or in subparagraph (C); or

25 “(III) that—

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

3 “(bb) enters into an agree-
4 ment, contract, or transaction in
5 connection with the conduct of
6 the entity’s business or to man-
7 age the risk associated with an
8 asset or liability owned or in-
9 curred or reasonably likely to be
10 owned or incurred by the entity
11 in the conduct of the entity’s
12 business;

13 “(vi) an employee benefit plan subject
14 to the Employee Retirement Income Secu-
15 rity Act of 1974 (29 U.S.C. 1001 et seq.),
16 a governmental employee benefit plan, or a
17 foreign person performing a similar role or
18 function subject as such to foreign
19 regulation—

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

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

24 “(aa) an investment adviser
25 or commodity trading advisor

1 subject to regulation under the
2 Investment Advisers Act of 1940
3 (15 U.S.C. 80b–1 et seq.) or this
4 Act;

5 “(bb) a foreign person per-
6 forming a similar role or function
7 subject as such to foreign regula-
8 tion;

9 “(cc) a financial institution;
10 or

11 “(dd) an insurance company
12 described in clause (ii), or a reg-
13 ulated subsidiary or affiliate of
14 such an insurance company;

15 “(vii)(I) a governmental entity (in-
16 cluding the United States, a State, or a
17 foreign government) or political subdivision
18 of a governmental entity;

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

21 “(III) an instrumentality, agency, or
22 department of an entity described in sub-
23 clause (I) or (II);

24 except that such term does not include an
25 entity, instrumentality, agency, or depart-

1 ment referred to in subclause (I) or (III)
2 of this clause unless (aa) the entity, instru-
3 mentality, agency, or department is a per-
4 son described in clause (i), (ii), or (iii) of
5 section 1a(11)(A); (bb) the entity, instru-
6 mentality, agency, or department owns and
7 invests on a discretionary basis
8 \$25,000,000 or more in investments; or
9 (cc) the agreement, contract, or trans-
10 action is offered by, and entered into with,
11 an entity that is listed in any of subclauses
12 (I) through (VI) of section 2(c)(2)(B)(ii);

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

1 “(II) an associated person of a reg-
2 istered broker or dealer concerning the fi-
3 nancial or securities activities of which the
4 registered person makes and keeps records
5 under section 15C(b) or 17(h) of the Secu-
6 rities Exchange Act of 1934 (15 U.S.C.
7 78o-5(b), 78q(h));

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

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

24 “(x) a floor broker or floor trader sub-
25 ject to regulation under this Act in connec-

1 tion with any transaction that takes place
2 on or through the facilities of a registered
3 entity or an exempt board of trade, or any
4 affiliate thereof, on which such person reg-
5 ularly trades; or

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

8 “(I) \$10,000,000; or

9 “(II) \$5,000,000 and who enters

10 into the agreement, contract, or trans-
11 action in order to manage the risk as-
12 sociated with an asset owned or liabil-
13 ity incurred, or reasonably likely to be
14 owned or incurred, by the individual;

15 “(B)(i) a person described in clause (i),
16 (ii), (iv), (v), (viii), (ix), or (x) of subparagraph
17 (A) or in subparagraph (C), acting as broker or
18 performing an equivalent agency function on
19 behalf of another person described in subpara-
20 graph (A) or (C); or

21 “(ii) an investment adviser subject to regu-
22 lation under the Investment Advisers Act of
23 1940, a commodity trading advisor subject to
24 regulation under this Act, a foreign person per-
25 forming a similar role or function subject as

1 such to foreign regulation, or a person de-
2 scribed in clause (i), (ii), (iv), (v), (viii), (ix), or
3 (x) of subparagraph (A) or in subparagraph
4 (C), in any such case acting as investment man-
5 ager or fiduciary (but excluding a person acting
6 as broker or performing an equivalent agency
7 function) for another person described in sub-
8 paragraph (A) or (C) and who is authorized by
9 such person to commit such person to the
10 transaction; or

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

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

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

21 “(ii) any other rate, differential,
22 index, or measure of economic or commer-
23 cial risk, return, or value that is—

24 “(I) not based in substantial part
25 on the value of a narrow group of

1 commodities not described in clause
2 (i); or

3 “(II) based solely on one or more
4 commodities that have no cash mar-
5 ket;

6 “(iii) any economic or commercial
7 index based on prices, rates, values, or lev-
8 els that are not within the control of any
9 party to the relevant contract, agreement,
10 or transaction; or

11 “(iv) an occurrence, extent of an oc-
12 currence, or contingency (other than a
13 change in the price, rate, value, or level of
14 a commodity not described in clause (i))
15 that is—

16 “(I) beyond the control of the
17 parties to the relevant contract, agree-
18 ment, or transaction; and

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

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

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

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

5 “(B) a corporation organized under section
6 25A of the Federal Reserve Act (12 U.S.C. 611
7 et seq.), commonly known as an ‘Edge Act cor-
8 poration’;

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

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

14 “(E) a depository institution (as defined in
15 section 3 of the Federal Deposit Insurance Act
16 (12 U.S.C. 1813));

17 “(F) a foreign bank or a branch or agency
18 of a foreign bank (each as defined in section
19 1(b) of the International Banking Act of 1978
20 (12 U.S.C. 3101(b)));

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

24 “(H) a trust company; or

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

4 (5) by inserting after paragraph (20) (as redese-
5 ignated by paragraph (1)) the following:

6 “(21) HYBRID INSTRUMENT.—The term ‘hybrid
7 instrument’ means a security having one or more
8 payments indexed to the value, level, or rate of, or
9 providing for the delivery of, one or more commod-
10 ities.”;

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

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

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

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

1 “(25) NARROW-BASED SECURITY INDEX.—

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

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

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

9 “(iii) in which the five highest weight-
10 ed component securities in the aggregate
11 comprise more than 60 percent of the
12 index’s weighting; or

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

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

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

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

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

14 “(III) each component security is—

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

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

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

23 “(ii) a board of trade was designated
24 as a contract market by the Commodity
25 Futures Trading Commission with respect

1 to a contract of sale for future delivery on
2 the index, before the date of the enactment
3 of the Commodity Futures Modernization
4 Act of 2000;

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

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

15 “(iv) a contract of sale for future de-
16 livery on the index is traded on or subject
17 to the rules of a foreign board of trade and
18 meets such requirements as are jointly es-
19 tablished by rule or regulation by the Com-
20 mission and the Securities and Exchange
21 Commission;

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

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

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

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

11 “(vi) a contract of sale for future de-
12 livery on the index is traded on or subject
13 to the rules of a board of trade and meets
14 such requirements as are jointly estab-
15 lished by rule, regulation, or order by the
16 Commission and the Securities and Ex-
17 change Commission.

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

24 “(D) An index that is a narrow-based se-
25 curity index solely because it was a narrow-

1 based security index for more than 45 business
2 days over 3 consecutive calendar months pursu-
3 ant to clause (iii) of subparagraph (B) shall not
4 be a narrow-based security index for the 3 fol-
5 lowing calendar months.

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

8 “(i) the dollar value of average daily
9 trading volume and the market capitaliza-
10 tion shall be calculated as of the preceding
11 6 full calendar months; and

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

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

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

1 “(A) permits trading—

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

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

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

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

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

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

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

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

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

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

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

1 “(30) SECURITY.—The term ‘security’ means a
2 security as defined in section 2(a)(1) of the Securi-
3 ties Act of 1933 (15 U.S.C. 77b(a)(1)) or section
4 3(a)(10) of the Securities Exchange Act of 1934 (15
5 U.S.C. 78c(a)(10)).

6 “(31) SECURITY FUTURE.—The term ‘security
7 future’ means a contract of sale for future delivery
8 of a single security or of a narrow-based security
9 index, including any interest therein or based on the
10 value thereof, except an exempted security under
11 section 3(a)(12) of the Securities Exchange Act of
12 1934 as in effect on the date of the enactment of
13 the Futures Trading Act of 1982 (other than any
14 municipal security as defined in section 3(a)(29) of
15 the Securities Exchange Act of 1934 as in effect on
16 the date of the enactment of the Futures Trading
17 Act of 1982). The term ‘security future’ does not in-
18 clude any agreement, contract, or transaction ex-
19 cluded from this Act under section 2(e), 2(d), 2(f),
20 or 2(g) of this Act (as in effect on the date of the
21 enactment of the Commodity Futures Modernization
22 Act of 2000) or title IV of the Commodity Futures
23 Modernization Act of 2000.

24 “(32) SECURITY FUTURES PRODUCT.—The
25 term ‘security futures product’ means a security fu-

1 ture or any put, call, straddle, option, or privilege on
2 any security future.

3 “(33) TRADING FACILITY.—

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

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

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

1 “(ii) a government securities dealer or
2 government securities broker, to the extent
3 that the dealer or broker executes or
4 trades agreements, contracts, or trans-
5 actions in government securities, or assists
6 persons in communicating about, negoti-
7 ating, entering into, executing, or trading
8 an agreement, contract, or transaction in
9 government securities (as the terms ‘gov-
10 ernment securities dealer’, ‘government se-
11 curities broker’, and ‘government securi-
12 ties’ are defined in section 3(a) of the Se-
13 curities Exchange Act of 1934 (15 U.S.C.
14 78c(a))); or

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

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

24 “(C) SPECIAL RULE.—A person or group
25 of persons that would not otherwise constitute

1 a trading facility shall not be considered to be
2 a trading facility solely as a result of the sub-
3 mission to a derivatives clearing organization of
4 transactions executed on or through the person
5 or group of persons.”.

6 **SEC. 102. AGREEMENTS, CONTRACTS, AND TRANSACTIONS**
7 **IN FOREIGN CURRENCY, GOVERNMENT SECU-**
8 **RITIES, AND CERTAIN OTHER COMMODITIES.**

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

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

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), nothing in this Act (other than section 5a
17 (to the extent provided in section 5a(g)), 5b, 5d, or
18 12(e)(2)(B)) governs or applies to an agreement,
19 contract, or transaction in—

20 “(A) foreign currency;

21 “(B) government securities;

22 “(C) security warrants;

23 “(D) security rights;

24 “(E) resales of installment loan contracts;

1 “(F) repurchase transactions in an ex-
2 cluded commodity; or

3 “(G) mortgages or mortgage purchase
4 commitments.

5 “(2) COMMISSION JURISDICTION.—

6 “(A) AGREEMENTS, CONTRACTS, AND
7 TRANSACTIONS TRADED ON AN ORGANIZED EX-
8 CHANGE.—This Act applies to, and the Com-
9 mission shall have jurisdiction over, an agree-
10 ment, contract, or transaction described in
11 paragraph (1) that is—

12 “(i) a contract of sale of a commodity
13 for future delivery (or an option on such a
14 contract), or an option on a commodity
15 (other than foreign currency or a security
16 or a group or index of securities), that is
17 executed or traded on an organized ex-
18 change; or

19 “(ii) an option on foreign currency ex-
20 ecuted or traded on an organized exchange
21 that is not a national securities exchange
22 registered pursuant to section 6(a) of the
23 Securities Exchange Act of 1934.

24 “(B) AGREEMENTS, CONTRACTS, AND
25 TRANSACTIONS IN RETAIL FOREIGN CUR-

1 RENCY.—This Act applies to, and the Commis-
2 sion shall have jurisdiction over, an agreement,
3 contract, or transaction in foreign currency
4 that—

5 “(i) is a contract of sale of a com-
6 modity for future delivery (or an option on
7 such a contract) or an option (other than
8 an option executed or traded on a national
9 securities exchange registered pursuant to
10 section 6(a) of the Securities Exchange Act
11 of 1934); and

12 “(ii) is offered to, or entered into
13 with, a person that is not an eligible con-
14 tract participant, unless the counterparty,
15 or the person offering to be the
16 counterparty, of the person is—

17 “(I) a financial institution;

18 “(II) a broker or dealer reg-
19 istered under section 15(b) or 15C of
20 the Securities Exchange Act of 1934
21 (15 U.S.C. 78o(b), 78o–5) or a fu-
22 tures commission merchant registered
23 under this Act;

24 “(III) an associated person of a
25 broker or dealer registered under sec-

1 tion 15(b) or 15C of the Securities
2 Exchange Act of 1934 (15 U.S.C.
3 78o(b), 78o-5), or an affiliated person
4 of a futures commission merchant
5 registered under this Act, concerning
6 the financial or securities activities of
7 which the registered person makes
8 and keeps records under section
9 15C(b) or 17(h) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78o-
11 5(b), 78q(h)) or section 4f(e)(2)(B) of
12 this Act;

13 “(IV) an insurance company de-
14 scribed in section 1a(12)(A)(ii) of this
15 Act, or a regulated subsidiary or affil-
16 iate of such an insurance company;

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

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

24 “(C) Notwithstanding subclauses (II) and
25 (III) of subparagraph (B)(ii), agreements, con-

1 tracts, or transactions described in subpara-
2 graph (B) shall be subject to sections 4b, 4c(b),
3 6(c) and 6(d) (to the extent that sections 6(c)
4 and 6(d) prohibit manipulation of the market
5 price of any commodity, in interstate commerce,
6 or for future delivery on or subject to the rules
7 of any market), 6e, 6d, and 8(a) if they are en-
8 tered into by a futures commission merchant or
9 an affiliate of a futures commission merchant
10 that is not also an entity described in subpara-
11 graph (B)(ii) of this paragraph.”.

12 **SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**
13 **TRANSACTIONS.**

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

17 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

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

22 “(A) the agreement, contract, or trans-
23 action is entered into only between persons that
24 are eligible contract participants at the time at

1 which the persons enter into the agreement,
2 contract, or transaction; and

3 “(B) the agreement, contract, or trans-
4 action is not executed or traded on a trading fa-
5 cility.

6 “(2) ELECTRONIC TRADING FACILITY EXCLU-
7 SION.—Nothing in this Act (other than section 5a
8 (to the extent provided in section 5a(g)), 5b, 5d, or
9 12(e)(2)(B)) governs or applies to an agreement,
10 contract, or transaction in an excluded commodity
11 if—

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

16 “(B) the agreement, contract, or trans-
17 action is entered into only between persons that
18 are eligible contract participants described in
19 subparagraph (A), (B)(ii), or (C) of section
20 1a(12)) at the time at which the persons enter
21 into the agreement, contract, or transaction;
22 and

23 “(C) the agreement, contract, or trans-
24 action is executed or traded on an electronic
25 trading facility.”.

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

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

5 “(e) EXCLUDED ELECTRONIC TRADING FACILI-
6 TIES.—

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

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

21 “(3) EFFECT ON TRANSACTIONS.—No failure
22 by an electronic trading facility to limit transactions
23 as required by paragraph (1) of this subsection or
24 to comply with section 2(h)(5) shall in itself affect
25 the legality, validity, or enforceability of an agree-
26 ment, contract, or transaction entered into or traded

1 on the electronic trading facility or cause a partici-
2 pant on the system to be in violation of this Act.

3 “(4) SPECIAL RULE.—A person or group of
4 persons that would not otherwise constitute a trad-
5 ing facility shall not be considered to be a trading
6 facility solely as a result of the submission to a de-
7 rivatives clearing organization of transactions exe-
8 cuted on or through the person or group of per-
9 sons.”.

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

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

14 “(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-
15 MENTS.—

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

20 “(2) PREDOMINANCE.—A hybrid instrument
21 shall be considered to be predominantly a security
22 if—

23 “(A) the issuer of the hybrid instrument
24 receives payment in full of the purchase price of
25 the hybrid instrument, substantially contem-

1 poraneously with delivery of the hybrid instru-
2 ment;

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

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

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

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

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

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

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

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

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

17 (c) STUDY REGARDING RETAIL SWAPS.—

18 (1) IN GENERAL.—The Board of Governors of
19 the Federal Reserve System, the Secretary of the
20 Treasury, the Commodity Futures Trading Commis-
21 sion, and the Securities and Exchange Commission
22 shall conduct a study of issues involving the offering
23 of swap agreements to persons other than eligible
24 contract participants (as defined in section 1a of the
25 Commodity Exchange Act).

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

3 (A) the potential uses of swap agreements
4 by persons other than eligible contract partici-
5 pants;

6 (B) the extent to which financial institu-
7 tions are willing to offer swap agreements to
8 persons other than eligible contract partici-
9 pants;

10 (C) the appropriate regulatory structure to
11 address customer protection issues that may
12 arise in connection with the offer of swap agree-
13 ments to persons other than eligible contract
14 participants; and

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

17 (3) REPORT.—Before the end of the 1-year pe-
18 riod beginning on the date of the enactment of this
19 Act, a report on the findings and conclusions of the
20 study required by paragraph (1) shall be submitted
21 to Congress, together with such recommendations
22 for legislative action as are deemed necessary and
23 appropriate.

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

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

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

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

10 “(A) is entered into solely between persons
11 that are eligible contract participants at the
12 time the persons enter into the agreement, con-
13 tract, or transaction; and

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

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

19 “(A) sections 5b and 12(e)(2)(B);

20 “(B) sections 4b, 4o, 6(c), 6(d), 6e, 6d,
21 and 8a, and the regulations of the Commission
22 pursuant to section 4c(b) proscribing fraud in
23 connection with commodity option transactions,
24 to the extent the agreement, contract, or trans-
25 action is not between eligible commercial enti-
26 ties (unless one of the entities is an instrumen-

1 tality, department, or agency of a State or local
2 governmental entity) and would otherwise be
3 subject to such sections and regulations; and

4 “(C) sections 6(c), 6(d), 6e, 6d, 8a, and
5 9(a)(2), to the extent such sections prohibit ma-
6 nipulation of the market price of any com-
7 modity in interstate commerce and the agree-
8 ment, contract, or transaction would otherwise
9 be subject to such sections.

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

13 “(A) entered into on a principal-to-prin-
14 cipal basis solely between persons that are eligi-
15 ble commercial entities at the time the persons
16 enter into the agreement, contract, or trans-
17 action; and

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

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

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

1 “(B) sections 4b and 4o and the regula-
2 tions of the Commission pursuant to section
3 4e(b) proscribing fraud in connection with com-
4 modity option transactions to the extent the
5 agreement, contract, or transaction would oth-
6 erwise be subject to such sections and regula-
7 tions;

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

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

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

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

7 “(i) the name and address of the facil-
8 ity and a person designated to receive com-
9 munications from the Commission;

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

15 “(iii) certifications that—

16 “(I) no executive officer or mem-
17 ber of the governing board of, or any
18 holder of a 10 percent or greater eq-
19 uity interest in, the facility is a person
20 described in any of subparagraphs (A)
21 through (H) of section 8a(2);

22 “(II) the facility will comply with
23 the conditions for exemption under
24 this paragraph; and

1 “(III) the facility will notify the
2 Commission of any material change in
3 the information previously provided by
4 the facility to the Commission pursu-
5 ant to this paragraph; and

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

14 “(B)(i)(I) provide the Commission with ac-
15 cess to the facility’s trading protocols and elec-
16 tronic access to the facility with respect to
17 transactions conducted in reliance on the ex-
18 emption set forth in paragraph (3); or

19 “(II) provide such reports to the Commis-
20 sion regarding transactions executed on the fa-
21 cility in reliance on the exemption set forth in
22 paragraph (3) as the Commission may from
23 time to time request to enable the Commission
24 to satisfy its obligations under this Act;

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

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

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

16 “(iii) upon special call by the Commission,
17 provide to the Commission, in a form and man-
18 ner and within the period specified in the spe-
19 cial call, such information related to its busi-
20 ness as an electronic trading facility exempt
21 under paragraph (3), including information re-
22 lating to data entry and transaction details in
23 respect of transactions entered into in reliance
24 on the exemption set forth in paragraph (3), as
25 the Commission may determine appropriate—

1 “(I) to enforce the provisions specified
2 in subparagraphs (B) and (C) of para-
3 graph (4);

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

6 “(III) to obtain information requested
7 by a Federal financial regulatory authority
8 in order to enable the regulator to fulfill
9 its regulatory or supervisory responsibil-
10 ities;

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

22 “(ii) if the Commission has reason to be-
23 lieve that a person has not timely complied with
24 a subpoena issued by or on behalf of the Com-
25 mission pursuant to clause (i), and the Commis-

1 sion in writing has directed that a facility rely-
2 ing on the exemption set forth in paragraph (3)
3 deny or limit further transactions by the per-
4 son, the facility shall deny that person further
5 trading access to the facility or, as applicable,
6 limit that person’s access to the facility for liq-
7 uidation trading only;

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

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

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

22 “(6) A person named in a subpoena referred to
23 in paragraph (5)(C) that believes the person is or
24 may be adversely affected or aggrieved by action
25 taken by the Commission under this section, shall

1 have the opportunity for a prompt hearing after the
2 Commission acts under procedures that the Commis-
3 sion shall establish by rule, regulation, or order.”.

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

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

8 “(i) APPLICATION OF COMMODITY FUTURES
9 LAWS.—

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

12 “(A) any agreement, contract, or trans-
13 action that is excluded from this Act under sec-
14 tion 2(e), 2(d), 2(e), 2(f), or 2(g) of this Act
15 or title IV of the Commodity Futures Mod-
16 ernization Act of 2000, or exempted under sec-
17 tion 2(h) or 4(c) of this Act; or

18 “(B) any agreement, contract, or trans-
19 action, not otherwise subject to this Act, that is
20 not so excluded or exempted,
21 is or would otherwise be subject to this Act.

22 “(2) No provision of, or amendment made by,
23 the Commodity Futures Modernization Act of 2000
24 shall be construed as conferring jurisdiction on the
25 Commission with respect to any such agreement,

1 contract, or transaction, except as expressly provided
2 in section 5a of this Act (to the extent provided in
3 section 5a(g) of this Act), 5b of this Act, or 5d of
4 this Act.”.

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

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

8 **“SEC. 3. FINDINGS AND PURPOSE.**

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

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

1 from fraudulent or other abusive sales practices and mis-
2 uses of customer assets; and to promote responsible inno-
3 vation and fair competition among boards of trade, other
4 markets and market participants.”.

5 **SEC. 109. PROHIBITED TRANSACTIONS.**

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

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

10 “(a) IN GENERAL.—

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

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

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

1 “(C) deliver any such commodity sold,
2 shipped, or received in interstate commerce for
3 the execution of the transaction.

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

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

9 “(ii) is a fictitious sale; or

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

13 **SEC. 110. DESIGNATION OF BOARDS OF TRADE AS CON-**
14 **TRACT MARKETS.**

15 The Commodity Exchange Act is amended—

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

18 (2) by striking sections 5 and 5a (7 U.S.C. 7,
19 7a) and inserting the following:

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

22 “(a) APPLICATIONS.—A board of trade applying to
23 the Commission for designation as a contract market shall
24 submit an application to the Commission that includes any

1 relevant materials and records the Commission may re-
2 quire consistent with this Act.

3 “(b) CRITERIA FOR DESIGNATION.—

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

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

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

21 “(A) transfer trades or office trades;

22 “(B) an exchange of—

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

25 “(ii) futures for cash commodities; or

1 “(iii) futures for swaps; or

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

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

11 “(A) establish and enforce rules defining,
12 or specifications detailing, the manner of oper-
13 ation of the trade execution facility maintained
14 by the board of trade, including rules or speci-
15 fications describing the operation of any elec-
16 tronic matching platform; and

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

20 “(5) FINANCIAL INTEGRITY OF TRANS-
21 ACTIONS.—The board of trade shall establish and
22 enforce rules and procedures for ensuring the finan-
23 cial integrity of transactions entered into by or
24 through the facilities of the contract market, includ-

1 ing the clearance and settlement of the transactions
2 with a derivatives clearing organization.

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

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

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

22 “(c) EXISTING CONTRACT MARKETS.—A board of
23 trade that is designated as a contract market on the date
24 of the enactment of the Commodity Futures Moderniza-

1 tion Act of 2000 shall be considered to be a designated
2 contract market under this section.

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

4 “(1) IN GENERAL.—To maintain the designa-
5 tion of a board of trade as a contract market, the
6 board of trade shall comply with the core principles
7 specified in this subsection. The board of trade shall
8 have reasonable discretion in establishing the man-
9 ner in which it complies with the core principles.

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

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

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

23 “(5) POSITION LIMITATIONS OR ACCOUNT-
24 ABILITY.—To reduce the potential threat of market
25 manipulation or congestion, especially during trading

1 in the delivery month, the board of trade shall adopt
2 position limitations or position accountability for
3 speculators, where necessary and appropriate.

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

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

11 “(B) suspend or curtail trading in any con-
12 tract; and

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

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

19 “(A) the terms and conditions of the con-
20 tracts of the contract market; and

21 “(B) the mechanisms for executing trans-
22 actions on or through the facilities of the con-
23 tract market.

24 “(8) DAILY PUBLICATION OF TRADING INFOR-
25 MATION.—The board of trade shall make public

1 daily information on settlement prices, volume, open
2 interest, and opening and closing ranges for actively
3 traded contracts on the contract market.

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

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

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

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

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

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

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

23 “(16) COMPOSITION OF BOARDS OF MUTUALLY
24 OWNED CONTRACT MARKETS.—In the case of a mu-
25 tually owned contract market, the board of trade

1 shall ensure that the composition of the governing
2 board reflects market participants.

3 “(17) RECORDKEEPING.—The board of trade
4 shall maintain records of all activities related to the
5 business of the contract market in a form and man-
6 ner acceptable to the Commission for a period of 5
7 years.

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

12 “(A) adopting any rules or taking any ac-
13 tions that result in any unreasonable restraints
14 of trade; or

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

17 “(e) CURRENT AGRICULTURAL COMMODITIES.—

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

1 “(2) In order to promote responsible economic
2 or financial innovation and fair competition, the
3 Commission, on application by any person, after no-
4 tice and public comment and opportunity for hear-
5 ing, may prescribe rules and regulations to provide
6 for the offer and sale of contracts for future delivery
7 or options on such contracts to be conducted on a
8 derivatives transaction execution facility.”.

9 **SEC. 111. DERIVATIVES TRANSACTION EXECUTION FACILI-**
10 **TIES.**

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

14 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**
15 **TIES.**

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

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

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

25 “(b) REQUIREMENTS FOR TRADING.—

1 “(1) IN GENERAL.—A registered derivatives
2 transaction execution facility under subsection (a)
3 may trade any contract of sale of a commodity for
4 future delivery (or option on such a contract) on or
5 through the facility only by satisfying the require-
6 ments of this section.

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

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

14 “(B) the underlying commodity has a de-
15 liverable supply that is sufficiently large that
16 the contract is highly unlikely to be susceptible
17 to the threat of manipulation;

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

20 “(D)(i) the contract is a security futures
21 product, and (ii) the registered derivatives
22 transaction execution facility is a national secu-
23 rities exchange registered under the Securities
24 Exchange Act of 1934;

1 “(E) the Commission determines, based on
2 the market characteristics, surveillance history,
3 self-regulatory record, and capacity of the facil-
4 ity that trading in the contract (or option) is
5 highly unlikely to be susceptible to the threat of
6 manipulation; or

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

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

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

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

19 “(i) is registered with the Commis-
20 sion;

21 “(ii) is a member of a futures self-reg-
22 ulatory organization or, if the person
23 trades only security futures products on
24 the facility, a national securities associa-

1 tion registered under section 15A(a) of the
2 Securities Exchange Act of 1934;

3 “(iii) is a clearing member of a de-
4 rivatives clearing organization; and

5 “(iv) has net capital of at least
6 \$20,000,000.

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

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

17 “(B) if the board of trade uses the same
18 electronic trading system for trading on the
19 contract market and derivatives transaction
20 execution facility of the board of trade, identify
21 whether the electronic trading is taking place
22 on the contract market or the derivatives trans-
23 action execution facility.

24 “(c) CRITERIA FOR REGISTRATION.—

1 “(1) IN GENERAL.—To be registered as a reg-
2 istered derivatives transaction execution facility, the
3 board of trade shall be required to demonstrate to
4 the Commission only that the board of trade meets
5 the criteria specified in subsection (b) and this sub-
6 section.

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

12 “(A) obtain information necessary to per-
13 form the functions required under this section;
14 or

15 “(B) use technological means to—
16 “(i) provide market participants with
17 impartial access to the market; and
18 “(ii) capture information that may be
19 used in establishing whether rule violations
20 have occurred.

21 “(3) TRADING PROCEDURES.—The board of
22 trade shall establish and enforce rules or terms and
23 conditions defining, or specifications detailing, trad-
24 ing procedures to be used in entering and executing

1 orders traded on the facilities of the board of trade.

2 The rules may authorize—

3 “(A) transfer trades or office trades;

4 “(B) an exchange of—

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

7 “(ii) futures for cash commodities; or

8 “(iii) futures for swaps; or

9 “(C) a futures commission merchant, act-
10 ing as principal or agent, to enter into or con-
11 firm the execution of a contract for the pur-
12 chase or sale of a commodity for future delivery
13 if the contract is reported, recorded, or cleared
14 in accordance with the rules of the registered
15 derivatives transaction execution facility or a
16 derivatives clearing organization.

17 “(4) FINANCIAL INTEGRITY OF TRANS-
18 ACTIONS.—The board of trade shall establish and
19 enforce rules or terms and conditions providing for
20 the financial integrity of transactions entered on or
21 through the facilities of the board of trade, and rules
22 or terms and conditions to ensure the financial in-
23 tegrity of any futures commission merchants and in-
24 troducing brokers and the protection of customer
25 funds.

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

3 “(1) IN GENERAL.—To maintain the registra-
4 tion of a board of trade as a derivatives transaction
5 execution facility, a board of trade shall comply with
6 the core principles specified in this subsection. The
7 board of trade shall have reasonable discretion in es-
8 tablishing the manner in which the board of trade
9 complies with the core principles.

10 “(2) COMPLIANCE WITH RULES.—The board of
11 trade shall monitor and enforce the rules of the fa-
12 cility, including any terms and conditions of any
13 contracts traded on or through the facility and any
14 limitations on access to the facility.

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

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

25 “(A) contract terms and conditions;

1 “(B) trading conventions, mechanisms, and
2 practices;

3 “(C) financial integrity protections; and

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

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

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

20 “(7) CONFLICTS OF INTEREST.—The board of
21 trade shall establish and enforce rules to minimize
22 conflicts of interest in the decision making process
23 of the derivatives transaction execution facility and
24 establish a process for resolving such conflicts of in-
25 terest.

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

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

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

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

16 “(e) USE OF BROKER-DEALERS, DEPOSITORY INSTI-
17 TUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS
18 INTERMEDIARIES.—

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

1 “(A) act as an intermediary in trans-
2 actions executed on the facility on behalf of cus-
3 tomers of the broker-dealer, depository institu-
4 tion, or institution of the Farm Credit System;
5 and

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

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

10 “(A) the broker-dealer be in good standing
11 with the Securities and Exchange Commission,
12 or the depository institution or institution of
13 the Farm Credit System be in good standing
14 with Federal bank regulatory agencies (includ-
15 ing the Farm Credit Administration), as appli-
16 cable; and

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

1 “(3) IMPLEMENTATION.—The Commission shall
2 cooperate and coordinate with the Securities and Ex-
3 change Commission, the Secretary of the Treasury,
4 and Federal banking regulatory agencies (including
5 the Farm Credit Administration) in adopting rules
6 and taking any other appropriate action to facilitate
7 the implementation of this subsection.

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

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

22 “(1) IN GENERAL.—Notwithstanding subsection
23 (b)(2) of this section, a board of trade that is or
24 elects to become a registered derivatives transaction
25 execution facility may trade on the facility any

1 agreements, contracts, or transactions involving ex-
 2 cluded or exempt commodities other than securities,
 3 except contracts of sale for future delivery of exempt
 4 securities under section 3(a)(12) of the Securities
 5 Exchange Act of 1934 as in effect on the date of the
 6 enactment of the Futures Trading Act of 1982, that
 7 are otherwise excluded from this Act under section
 8 2(c), 2(d), or 2(g) of this Act, or exempt under sec-
 9 tion 2(h) of this Act.

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

16 **SEC. 112. DERIVATIVES CLEARING.**

17 (a) IN GENERAL.—Subtitle A of title IV of the Fed-
 18 eral Deposit Insurance Corporation Improvement Act of
 19 1991 is amended—

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

22 **“CHAPTER 1—BILATERAL AND CLEARING**
 23 **ORGANIZATION NETTING”;**

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

1 (3) by inserting after section 407, the following
2 new chapter:

3 **“CHAPTER 2—MULTILATERAL CLEARING**
4 **ORGANIZATIONS**

5 **“SEC. 408. DEFINITIONS.**

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

8 “(1) MULTILATERAL CLEARING ORGANIZA-
9 TION.—The term ‘multilateral clearing organization’
10 means a system utilized by more than two partici-
11 pants in which the bilateral credit exposures of par-
12 ticipants arising from the transactions cleared are
13 effectively eliminated and replaced by a system of
14 guarantees, insurance, or mutualized risk of loss.

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

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

1 row-next, forward, or other foreign exchange or
2 precious metals agreement; a currency swap,
3 option, or forward agreement; an equity index
4 or equity swap, option, or forward agreement; a
5 debt index or debt swap, option, or forward
6 agreement; a credit spread or credit swap, op-
7 tion, or forward agreement; a commodity index
8 or commodity swap, option, or forward agree-
9 ment; and a weather swap, weather derivative,
10 or weather option;

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

24 “(C) any agreement, contract, or trans-
25 action excluded from the Commodity Exchange

1 Act under section 2(e), 2(d), 2(f), or 2(g) of
2 such Act, or exempted under section 2(h) or
3 4(e) of such Act; and

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

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

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

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

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

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

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

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

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

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

14 “(a) CONSERVATORSHIP OR RECEIVERSHIP.—

15 “(1) APPOINTMENT.—The Board may appoint
16 a conservator or receiver to take possession and con-
17 trol of any uninsured State member bank which op-
18 erates, or operates as, a multilateral clearing organi-
19 zation pursuant to section 409 of the Federal De-
20 posit Insurance Corporation Improvement Act of
21 1991 to the same extent and in the same manner as
22 the Comptroller of the Currency may appoint a con-
23 servator or receiver for a national bank.

24 “(2) POWERS.—The conservator or receiver for
25 an uninsured State member bank referred to in

1 paragraph (1) shall exercise the same powers, func-
2 tions, and duties, subject to the same limitations, as
3 a conservator or receiver for a national bank.

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

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

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

22 (1) BANKRUPTCY CODE DEBTORS.—Section
23 109(b)(2) of title 11, United States Code, is amend-
24 ed by striking “; or” and inserting the following: “,
25 except that an uninsured State member bank, or a

1 corporation organized under section 25A of the Fed-
2 eral Reserve Act, which operates, or operates as, a
3 multilateral clearing organization pursuant to sec-
4 tion 409 of the Federal Deposit Insurance Corpora-
5 tion Improvement Act of 1991 may be a debtor if
6 a petition is filed at the direction of the Board of
7 Governors of the Federal Reserve System; or”.

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

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

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

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

24 “(A) means—

1 “(i) a Federal reserve bank or an en-
2 tity (domestic or foreign) that is a com-
3 mercial or savings bank, industrial savings
4 bank, savings and loan association, trust
5 company, or receiver or conservator for
6 such entity and, when any such Federal re-
7 serve bank, receiver, conservator, or entity
8 is acting as agent or custodian for a cus-
9 tomer in connection with a securities con-
10 tract, as defined in section 741 of this
11 title, the customer; or

12 “(ii) in connection with a securities
13 contract, as defined in section 741 of this
14 title, an investment company registered
15 under the Investment Company Act of
16 1940; and

17 “(B) includes any person described in sub-
18 paragraph (A) which operates, or operates as, a
19 multilateral clearing organization pursuant to
20 section 409 of the Federal Deposit Insurance
21 Corporation Improvement Act of 1991;”.

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

1 “(54A) the term ‘uninsured State member bank’
2 means a State member bank (as defined in section 3 of
3 the Federal Deposit Insurance Act) the deposits of which
4 are not insured by the Federal Deposit Insurance Cor-
5 poration; and”.

6 (5) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

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

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

1 “SUBCHAPTER V—CLEARING BANK
2 LIQUIDATION

3 **“§ 781. Definitions**

4 “For purposes of this subchapter, the following defi-
5 nitions shall apply:

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

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

11 “(3) CLEARING BANK.—The term ‘clearing
12 bank’ means an uninsured State member bank, or a
13 corporation organized under section 25A of the Fed-
14 eral Reserve Act, which operates, or operates as, a
15 multilateral clearing organization pursuant to sec-
16 tion 409 of the Federal Deposit Insurance Corpora-
17 tion Improvement Act of 1991.

18 **“§ 782. Selection of trustee**

19 “(a) IN GENERAL.—

20 “(1) APPOINTMENT.—Notwithstanding any
21 other provision of this title, the conservator or re-
22 ceiver who files the petition shall be the trustee
23 under this chapter, unless the Board designates an
24 alternative trustee.

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

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

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

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

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

16 “(1) sell the clearing bank to a depository insti-
17 tution or consortium of depository institutions
18 (which consortium may agree on the allocation of
19 the clearing bank among the consortium);

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

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

1 “(4) transfer assets or liabilities to a depository
2 institution; and

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

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

14 “(B) any references in any such provision
15 of law to the Federal Deposit Insurance Cor-
16 poration shall be construed to be references to
17 the appointing agency and that references to
18 deposit insurance shall be omitted.

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

22 **“§ 784. Right to be heard**

23 “The Board or a Federal reserve bank (in the case
24 of a clearing bank that is a member of that bank) may

1 raise and may appear and be heard on any issue in a case
 2 under this subchapter.”.

3 (6) DEFINITIONS OF CLEARING ORGANIZATION,
 4 CONTRACT MARKET, AND RELATED DEFINITIONS.—

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

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

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

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

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

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

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

23 “SUBCHAPTER V—CLEARING BANK
 24 LIQUIDATION

“Sec.
 “781. Definitions.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.”.

1 (e) RESOLUTION OF EDGE ACT CORPORATIONS.—

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

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

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

17 “(B) EQUIVALENT AUTHORITY.—The
18 Board shall have the same authority with re-
19 spect to any conservator or receiver appointed
20 for a corporation organized under the provisions
21 of this section under this paragraph and any
22 such corporation as the Comptroller of the Cur-
23 rency has with respect to a conservator or re-
24 ceiver of a national bank and the national bank

1 for which a conservator or receiver has been ap-
2 pointed.

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

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

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

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

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

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

9 “(b) VOLUNTARY REGISTRATION.—A derivatives
10 clearing organization that clears agreements, contracts, or
11 transactions excluded from this Act by section 2(c), 2(d),
12 2(f), or 2(g) of this Act or title IV of the Commodity Fu-
13 tures Modernization Act of 2000, or exempted under sec-
14 tion 2(h) or 4(c) of this Act, or other over-the-counter de-
15 rivative instruments (as defined in the Federal Deposit In-
16 surance Corporation Improvement Act of 1991) may reg-
17 ister with the Commission as a derivatives clearing organi-
18 zation.

19 “(c) REGISTRATION OF DERIVATIVES CLEARING OR-
20 GANIZATIONS.—

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

1 minations required for approval under paragraph
2 (2).

3 “(2) CORE PRINCIPLES.—

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

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

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

19 “(i) appropriate admission and con-
20 tinuing eligibility standards (including ap-
21 propriate minimum financial requirements)
22 for members of and participants in the or-
23 ganization; and

1 “(ii) appropriate standards for deter-
2 mining eligibility of agreements, contracts,
3 or transactions submitted to the applicant.

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

9 “(E) SETTLEMENT PROCEDURES.—The
10 applicant shall have the ability to—

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

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

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

20 “(F) TREATMENT OF FUNDS.—The appli-
21 cant shall have standards and procedures de-
22 signed to protect and ensure the safety of mem-
23 ber and participant funds.

24 “(G) DEFAULT RULES AND PROCE-
25 DURES.—The applicant shall have rules and

1 procedures designed to allow for efficient, fair,
2 and safe management of events when members
3 or participants become insolvent or otherwise
4 default on their obligations to the derivatives
5 clearing organization.

6 “(H) RULE ENFORCEMENT.—The appli-
7 cant shall—

8 “(i) maintain adequate arrangements
9 and resources for the effective monitoring
10 and enforcement of compliance with rules
11 of the applicant and for resolution of dis-
12 putes; and

13 “(ii) have the authority and ability to
14 discipline, limit, suspend, or terminate a
15 member’s or participant’s activities for vio-
16 lations of rules of the applicant.

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

19 “(i) has established and will maintain
20 a program of oversight and risk analysis to
21 ensure that the automated systems of the
22 applicant function properly and have ade-
23 quate capacity and security; and

24 “(ii) has established and will maintain
25 emergency procedures and a plan for dis-

1 aster recovery, and will periodically test
2 backup facilities sufficient to ensure daily
3 processing, clearing, and settlement of
4 transactions.

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

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

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

23 “(M) INFORMATION-SHARING.—The appli-
24 cant shall—

1 “(i) enter into and abide by the terms
2 of all appropriate and applicable domestic
3 and international information-sharing
4 agreements; and

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

9 “(N) ANTITRUST CONSIDERATIONS.—Un-
10 less appropriate to achieve the purposes of this
11 Act, the derivatives clearing organization shall
12 avoid—

13 “(i) adopting any rule or taking any
14 action that results in any unreasonable re-
15 straint of trade; or

16 “(ii) imposing any material anti-
17 competitive burden on trading on the con-
18 tract market.

19 “(3) ORDERS CONCERNING COMPETITION.—A
20 derivatives clearing organization may request the
21 Commission to issue an order concerning whether a
22 rule or practice of the applicant is the least anti-
23 competitive means of achieving the objectives, pur-
24 poses, and policies of this Act.

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

9 “(e) APPOINTMENT OF TRUSTEE.—

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

19 “(2) ASSUMPTION OF JURISDICTION.—If the
20 Commission applies for appointment of a trustee
21 under paragraph (1)—

22 “(A) the court may take exclusive jurisdic-
23 tion over the derivatives clearing organization
24 and the records and assets of the derivatives
25 clearing organization, wherever located; and

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

10 “(f) LINKING OF REGULATED CLEARING FACILI-
11 TIES.—

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

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

21 **SEC. 113. COMMON PROVISIONS APPLICABLE TO REG-**
22 **ISTERED ENTITIES.**

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

1 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**
2 **ISTERED ENTITIES.**

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

5 **“(1) IN GENERAL.—**Consistent with the pur-
6 poses of this Act, the Commission may issue inter-
7 pretations, or approve interpretations submitted to
8 the Commission, of sections 5(d), 5a(d), and
9 5b(d)(2) to describe what would constitute an ac-
10 ceptable business practice under such sections.

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

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

17 **“(1) IN GENERAL.—**A contract market or de-
18 rivatives transaction execution facility may comply
19 with any applicable core principle through delegation
20 of any relevant function to a registered futures asso-
21 ciation or another registered entity.

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

1 “(3) NONCOMPLIANCE.—If a contract market
2 or derivatives transaction execution facility that del-
3 egates a function under paragraph (1) becomes
4 aware that a delegated function is not being per-
5 formed as required under this Act, the contract mar-
6 ket or derivatives transaction execution facility shall
7 promptly take steps to address the noncompliance.

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

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

24 “(2) PRIOR APPROVAL.—

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

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

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

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

6 “(d) VIOLATION OF CORE PRINCIPLES.—

7 “(1) IN GENERAL.—If the Commission deter-
8 mines, on the basis of substantial evidence, that a
9 registered entity is violating any applicable core
10 principle specified in section 5(d), 5a(d), or
11 5b(d)(2), the Commission shall—

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

14 “(B) afford the registered entity an oppor-
15 tunity to make appropriate changes to bring the
16 registered entity into compliance with the core
17 principles.

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

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

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

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

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

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

23 “(b) CRITERIA FOR EXEMPTION.—To qualify for an
24 exemption under subsection (a), a board of trade shall
25 limit trading on or through the facilities of the board of

1 trade to contracts of sale of a commodity for future deliv-
2 ery (or options on such contracts or on a commodity)—

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

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

6 “(B) a deliverable supply that is suffi-
7 ciently large, and a cash market sufficiently liq-
8 uid, to render any contract traded on the com-
9 modity highly unlikely to be susceptible to the
10 threat of manipulation; or

11 “(C) no cash market;

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

15 “(3) that are not contracts of sale (or options
16 on such a contract or on a commodity) for future
17 delivery of any security, including any group or
18 index of securities or any interest in, or based on the
19 value of, any security or any group or index of secu-
20 rities.

21 “(c) **ANTIMANIPULATION REQUIREMENTS.**—A party
22 to a contract of sale of a commodity for future delivery
23 (or option on such a contract or on a commodity) that
24 is traded on an exempt board of trade shall be subject
25 to sections 4b, 4c(b), 4o, 6(c), and 9(a)(2), and the Com-

1 mission shall enforce those provisions with respect to any
2 such trading.

3 “(d) PRICE DISCOVERY.—If the Commission finds
4 that an exempt board of trade is a significant source of
5 price discovery for transactions in the cash market for the
6 commodity underlying any contract, agreement, or trans-
7 action traded on or through the facilities of the board of
8 trade, the board of trade shall disseminate publicly on a
9 daily basis trading volume, opening and closing price
10 ranges, open interest, and other trading data as appro-
11 priate to the market.

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

19 “(f) SUBSIDIARIES.—A board of trade that is des-
20 ignated as a contract market or registered as a derivatives
21 transaction execution facility may operate an exempt
22 board of trade by establishing a separate subsidiary or
23 other legal entity and otherwise satisfying the require-
24 ments of this section.

1 “(g) An exempt board of trade that meets the re-
2 quirements of subsection (b) shall not represent to any
3 person that the board of trade is registered with, or des-
4 ignated, recognized, licensed, or approved by the Commis-
5 sion.”.

6 **SEC. 115. SUSPENSION OR REVOCATION OF DESIGNATION**
7 **AS CONTRACT MARKET.**

8 Section 5e of the Commodity Exchange Act (7 U.S.C.
9 7b) (as redesignated by section 20(1)) is amended to read
10 as follows:

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

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

20 **SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

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

1 **SEC. 117. PREEMPTION.**

2 Section 12 of the Commodity Exchange Act (7 U.S.C.
3 16(e)) is amended by striking subsection (e) and inserting
4 the following:

5 “(e) **RELATION TO OTHER LAW, DEPARTMENTS, OR**
6 **AGENCIES.—**

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

9 “(A) criminal prosecution under any Fed-
10 eral criminal statute;

11 “(B) the application of any Federal or
12 State statute (except as provided in paragraph
13 (2)), including any rule or regulation there-
14 under, to any transaction in or involving any
15 commodity, product, right, service, or interest—

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

19 “(ii) (except as otherwise specified by
20 the Commission by rule or regulation) that
21 is not conducted on or subject to the rules
22 of any board of trade, exchange, or market
23 located outside the United States, its terri-
24 tories or possessions; or

1 “(iii) that is not subject to regulation
2 by the Commission under section 4e or 19;
3 or

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

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

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

17 “(B) an agreement, contract, or trans-
18 action that is excluded from this Act under sec-
19 tion 2(c), 2(d), 2(f), or 2(g) of this Act or title
20 IV of the Commodity Futures Modernization
21 Act of 2000, or exempted under section 2(h) or
22 4(e) of this Act (regardless of whether any such
23 agreement, contract, or transaction is otherwise
24 subject to this Act).”.

1 **SEC. 118. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
2 **STITUTIONAL CUSTOMERS.**

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

6 “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR
7 INSTITUTIONAL CUSTOMERS.—Nothing in this section
8 prohibits a registered futures commission merchant from
9 requiring a customer that is an eligible contract partici-
10 pant, as a condition to the commission merchant’s con-
11 ducting a transaction for the customer, to enter into an
12 agreement waiving the right to file a claim under this sec-
13 tion.”.

14 **SEC. 119. CONSIDERATION OF COSTS AND BENEFITS AND**
15 **ANTITRUST LAWS.**

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

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

21 “(a) COSTS AND BENEFITS.—

22 “(1) IN GENERAL.—Before promulgating a reg-
23 ulation under this Act or issuing an order (except as
24 provided in paragraph (3)), the Commission shall
25 consider the costs and benefits of the action of the
26 Commission.

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

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

6 “(B) considerations of the efficiency, com-
7 petitiveness, and financial integrity of futures
8 markets;

9 “(C) considerations of price discovery;

10 “(D) considerations of sound risk manage-
11 ment practices; and

12 “(E) other public interest considerations.

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

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

18 “(B) An emergency action.

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

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

1 **SEC. 120. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
2 **COUNTERPARTIES.**

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

6 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
7 GIBLE COUNTERPARTIES.—No agreement, contract,
8 or transaction between eligible contract participants
9 or persons reasonably believed to be eligible contract
10 participants, and no hybrid instrument sold to any
11 investor, shall be void, voidable, or unenforceable,
12 and no such party shall be entitled to rescind, or re-
13 cover any payment made with respect to, such an
14 agreement, contract, transaction, or instrument
15 under this section or any other provision of Federal
16 or State law, based solely on the failure of the agree-
17 ment, contract, transaction, or instrument to comply
18 with the terms or conditions of an exemption or ex-
19 clusion from any provision of this Act or regulations
20 of the Commission.”.

21 **SEC. 121. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
22 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
23 **TURAL PRODUCERS.**

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

1 **“SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
2 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
3 **TURAL PRODUCERS.**

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

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

12 “(2) increase the ease with which domestic agri-
13 cultural producers may participate in contract mar-
14 kets, including by addressing cost and margin re-
15 quirements, so as to better enable the producers to
16 hedge price risk associated with their production;

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

23 “(4) encourage contract markets to provide in-
24 formation and otherwise facilitate the participation
25 of domestic agricultural producers in contract mar-
26 kets.

1 “(b) REPORT.—Within 1 year after the date of the
2 enactment of this section, the Commission shall submit to
3 the Committee on Agriculture of the House of Representa-
4 tives and the Committee on Agriculture, Nutrition, and
5 Forestry of the Senate a report on the steps it has taken
6 to implement this section and on the activities of contract
7 markets pursuant to this section.”.

8 **SEC. 122. RULE OF CONSTRUCTION.**

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

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

15 (a) COMMODITY EXCHANGE ACT.—

16 (1) Section 1a of the Commodity Exchange Act
17 (7 U.S.C. 1a) (as amended by section 101) is
18 amended—

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

23 (B) in paragraph (24)—

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

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

7 (iii) by adding at the end the fol-
 8 lowing:

9 “A participant in an alternative trading system that
 10 is designated as a contract market pursuant to sec-
 11 tion 5f is deemed a member of the contract market
 12 for purposes of transactions in security futures prod-
 13 ucts through the contract market.”.

14 (2) Section 2 of the Commodity Exchange Act
 15 (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

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

18 **“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF**
 19 **PRINCIPAL FOR ACT OF AGENT; COMMODITY**
 20 **FUTURES TRADING COMMISSION; TRANS-**
 21 **ACTION IN INTERSTATE COMMERCE.**

22 **“(a) JURISDICTION OF COMMISSION; COMMODITY**
 23 **FUTURES TRADING COMMISSION.—**

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

25 **“(A) IN GENERAL.—The”;** and

1 (B) in subsection (a)(1)—

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

4 (I) by striking “subparagraph
5 (B) of this subparagraph” and insert-
6 ing “subparagraphs (C) and (D) of
7 this paragraph and subsections (c)
8 through (i) of this section”;

9 (II) by striking “contract market
10 designated pursuant to section 5 of
11 this Act” and inserting “contract
12 market designated or derivatives
13 transaction execution facility reg-
14 istered pursuant to section 5 or 5a”;

15 (III) by striking clause (ii); and

16 (IV) in clause (iii), by striking
17 “(iii) The” and inserting the fol-
18 lowing:

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

21 (ii) in subparagraph (B)—

22 (I) by striking “(B)” and insert-
23 ing “(C)”;

24 (II) in clause (v)—

1 (aa) by striking “section 3
2 of the Securities Act of 1933”;
3 and

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

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

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

11 (D) in subsection (a)(8)(B)(ii)—

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

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

23 (iii) in the fourth sentence, by striking
24 “designating, or refusing, suspending, or
25 revoking the designation of, a board of

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

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

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

23 (A) in subsection (a)—

24 (i) in paragraph (1), by striking “des-
25 ignated by the Commission as a ‘contract

1 market' for" and inserting "designated or
2 registered by the Commission as a contract
3 market or derivatives transaction execution
4 facility for";

5 (ii) in paragraph (2), by striking
6 "member of such"; and

7 (iii) in paragraph (3), by inserting "or
8 derivatives transaction execution facility"
9 after "contract market"; and

10 (B) in subsection (c)—

11 (i) in paragraph (1)—

12 (I) by striking "designated as a
13 contract market" and inserting "des-
14 ignated or registered as a contract
15 market or derivatives transaction exe-
16 cution facility"; and

17 (II) by striking "section
18 2(a)(1)(B)" and inserting "subpara-
19 graphs (C)(ii) and (D) of section
20 2(a)(1), except that the Commission
21 and the Securities and Exchange
22 Commission may by rule, regulation,
23 or order jointly exclude any agree-
24 ment, contract, or transaction from
25 section 2(a)(1)(D)"; and

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

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

6 (A) in subsection (a)—

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

10 (ii) in the second sentence, by insert-
11 ing “or derivatives transaction execution
12 facility” after “contract market”;

13 (B) in subsection (b)—

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

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

20 (C) in subsection (e)—

21 (i) by striking “contract market or”
22 each place it appears and inserting “con-
23 tract market, derivatives transaction execu-
24 tion facility, or”;

1 (ii) by striking “licensed or des-
2 ignated” each place it appears and insert-
3 ing “licensed, designated, or registered”;
4 and

5 (iii) by striking “contract market, or”
6 and inserting “contract market or deriva-
7 tives transaction execution facility, or”.

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

12 (6) Sections 4c(g), 4d, 4e, and 4f of the Com-
13modity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f)
14 are amended by inserting “or derivatives transaction
15 execution facility” after “contract market” each
16 place it appears.

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

19 (A) in subsection (b), by striking “clear-
20 inghouse and contract market” and inserting
21 “registered entity”; and

22 (B) in subsection (f), by striking “clear-
23 inghouses, contract markets, and exchanges”
24 and inserting “registered entities”.

1 (8) Section 4h of the Commodity Exchange Act
2 (7 U.S.C. 6h) is amended by striking “contract mar-
3 ket” each place it appears and inserting “registered
4 entity”.

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

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

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

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

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

22 (12) Section 6 of the Commodity Exchange Act
23 (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

24 (A) in subsection (a)—

25 (i) in the first sentence—

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

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

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

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

23 (iii) in the third sentence—

24 (I) by striking “board of trade”
25 and inserting “person”; and

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

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

11 (B) in subsection (b)—

12 (i) in the first sentence—

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

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

23 (III) by striking “designation as
24 set forth in section 5 of this Act” and
25 inserting “designation or registration

1 as set forth in sections 5 through 5b
2 or section 5f”;

3 (ii) in the second sentence—

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

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

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

14 (C) in subsection (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) in the first sentence—

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

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

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

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

1 (B) in the second sentence—

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

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

8 (C) in the last sentence—

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

11 (ii) by striking “designated again a
12 contract market” and inserting “des-
13 igned or registered again a registered en-
14 tity”.

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

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

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

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

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

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

7 (22) Section 9 of the Commodity Exchange Act
8 (7 U.S.C. 13) is amended by striking “contract mar-
9 ket” each place it appears and inserting “registered
10 entity”.

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

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

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

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

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

24 (A) in subsection (a)—

25 (i) in paragraph (1)—

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

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

8 (ii) in paragraph (2), by striking “sec-
9 tions 5a(11),” and inserting “sections
10 5(d)(13), 5b(b)(1)(E),”; and

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

14 (B) in subsection (b)—

15 (i) in paragraph (1)—

16 (I) by striking “contract market
17 or clearing organization of a contract
18 market” and inserting “registered en-
19 tity”;

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

23 (III) by striking “contract mar-
24 ket, clearing organization of a con-
25 tract market, or licensed board of

1 trade” and inserting “registered enti-
2 ty”; and

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

6 (ii) in paragraph (3)—

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

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

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

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

22 (b) FEDERAL DEPOSIT INSURANCE CORPORATION
23 IMPROVEMENT ACT OF 1991.—Section 402(2) of the Fed-
24 eral Deposit Insurance Corporation Improvement Act of

1 1991 (12 U.S.C. 4402(2)) is amended by striking sub-
2 paragraph (B) and inserting the following:

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

6 **SEC. 124. PRIVACY.**

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

10 **“SEC. 5g. PRIVACY.**

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

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

1 **SEC. 125. REPORT TO CONGRESS.**

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

10 (1) the core principles and interpretations of ac-
11 ceptable business practices that the Commission has
12 adopted or intends to adopt to replace the provisions
13 of the Act and the Commission’s rules and regula-
14 tions thereunder;

15 (2) the rules and regulations that the Commis-
16 sion has determined must be retained and the rea-
17 sons therefor;

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

22 (4) the regulatory functions the Commission
23 currently performs that can be delegated to a reg-
24 istered futures association (within the meaning of
25 the Act) and the regulatory functions that the Com-

1 mission has determined must be retained and the
2 reasons therefor.

3 (b) In conducting the study, the Commission shall so-
4 licit the views of the public as well as Commission reg-
5 istrants, registered entities, and registered futures asso-
6 ciations (all within the meaning of the Act).

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

12 **SEC. 126. INTERNATIONAL ACTIVITIES OF THE COMMODITY**
13 **FUTURES TRADING COMMISSION.**

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

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

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

21 (3) financial services regulatory policy must be
22 flexible to account for rapidly changing derivatives
23 industry business practices;

1 (4) regulatory impediments to the operation of
2 global business interests can compromise the com-
3 petitiveness of United States businesses;

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

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

13 (7) the Commodity Futures Trading Commis-
14 sion and other United States financial regulators
15 and self-regulatory organizations should continue to
16 foster productive and cooperative working relation-
17 ships with their counterparts in foreign jurisdictions.

18 (b) SENSE OF THE CONGRESS.—It is the sense of
19 the Congress that, consistent with its responsibilities
20 under the Commodity Exchange Act, the Commodity Fu-
21 tures Trading Commission should, as part of its inter-
22 national activities, continue to coordinate with foreign reg-
23 ulatory authorities, to participate in international regu-
24 latory organizations and forums, and to provide technical

1 assistance to foreign government authorities, in order to
2 encourage—

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

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

8 (3) the enhancement of international super-
9 visory cooperation and emergency procedures;

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

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

14 **TITLE II—COORDINATED REGU-**
15 **LATION OF SECURITY FU-**
16 **TURES PRODUCTS**

17 **Subtitle A—Securities Law**
18 **Amendments**

19 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**
20 **CHANGE ACT OF 1934.**

21 Section 3(a) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78c(a)) is amended—

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

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

3 “(11) The term ‘equity security’ means any
4 stock or similar security; or any security future on
5 any such security; or any security convertible, with
6 or without consideration, into such a security, or
7 carrying any warrant or right to subscribe to or pur-
8 chase such a security; or any such warrant or right;
9 or any other security which the Commission shall
10 deem to be of similar nature and consider necessary
11 or appropriate, by such rules and regulations as it
12 may prescribe in the public interest or for the pro-
13 tection of investors, to treat as an equity security.”;

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

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

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

23 “(55)(A) The term ‘security future’ means a
24 contract of sale for future delivery of a single secu-
25 rity or of a narrow-based security index, including

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

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

18 “(i) that has 9 or fewer component securi-
19 ties;

20 “(ii) in which a component security com-
21 prises more than 30 percent of the index’s
22 weighting;

23 “(iii) in which the five highest weighted
24 component securities in the aggregate comprise

1 more than 60 percent of the index’s weighting;
2 or

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

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

21 “(i)(I) it has at least nine component secu-
22 rities;

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

1 “(III) each component security is—
2 “(aa) registered pursuant to section
3 12 of the Securities Exchange Act of 1934;
4 “(bb) one of 750 securities with the
5 largest market capitalization; and
6 “(cc) one of 675 securities with the
7 largest dollar value of average daily trad-
8 ing volume;
9 “(ii) a board of trade was designated as a
10 contract market by the Commodity Futures
11 Trading Commission with respect to a contract
12 of sale for future delivery on the index, before
13 the date of the enactment of the Commodity
14 Futures Modernization Act of 2000;
15 “(iii)(I) a contract of sale for future deliv-
16 ery on the index traded on a designated con-
17 tract market or registered derivatives trans-
18 action execution facility for at least 30 days as
19 a contract of sale for future delivery on an
20 index that was not a narrow-based security
21 index; and
22 “(II) it has been a narrow-based security
23 index for no more than 45 business days over
24 3 consecutive calendar months;

1 “(iv) a contract of sale for future delivery
2 on the index is traded on or subject to the rules
3 of a foreign board of trade and meets such re-
4 quirements as are jointly established by rule or
5 regulation by the Commission and the Com-
6 modity Futures Trading Commission;

7 “(v) no more than 18 months have passed
8 since the date of the enactment of the Com-
9 modity Futures Modernization Act of 2000
10 and—

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

13 “(II) the offer and sale in the United
14 States of a contract of sale for future de-
15 livery on the index was authorized before
16 the date of the enactment of the Com-
17 modity Futures Modernization Act of
18 2000; and

19 “(III) the conditions of such author-
20 ization continue to be met; or

21 “(vi) a contract of sale for future delivery
22 on the index is traded on or subject to the rules
23 of a board of trade and meets such require-
24 ments as are jointly established by rule, regula-

1 tion, or order by the Commission and the Com-
2 modity Futures Trading Commission.

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

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

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

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

21 “(ii) the Commission and the Commodity
22 Futures Trading Commission shall, by rule or
23 regulation, jointly specify the method to be used
24 to determine market capitalization and dollar
25 value of average daily trading volume.

1 “(56) The term ‘security futures product’
2 means a security future or any put, call, straddle,
3 option, or privilege on any security future.

4 “(57)(A) The term ‘margin’, when used with
5 respect to a security futures product, means the
6 amount, type, and form of collateral required to se-
7 cure any extension or maintenance of credit, or the
8 amount, type, and form of collateral required as a
9 performance bond related to the purchase, sale, or
10 carrying of a security futures product.

11 “(B) The terms ‘margin level’ and ‘level of mar-
12 gin’, when used with respect to a security futures
13 product, mean the amount of margin required to se-
14 cure any extension or maintenance of credit, or the
15 amount of margin required as a performance bond
16 related to the purchase, sale, or carrying of a secu-
17 rity futures product.

18 “(C) The terms ‘higher margin level’ and ‘high-
19 er level of margin’, when used with respect to a se-
20 curity futures product, mean a margin level estab-
21 lished by a national securities exchange registered
22 pursuant to section 6(g) that is higher than the min-
23 imum amount established and in effect pursuant to
24 section 7(c)(2)(B).”.

1 **SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING**
2 **SECURITY FUTURES PRODUCTS.**

3 (a) EXPEDITED REGISTRATION AND EXEMPTION.—
4 Section 6 of the Securities Exchange Act of 1934 (15
5 U.S.C. 78f) is amended by adding at the end the fol-
6 lowing:

7 “(g) NOTICE REGISTRATION OF SECURITY FUTURES
8 PRODUCT EXCHANGES.—

9 “(1) REGISTRATION REQUIRED.—An exchange
10 that lists or trades security futures products may
11 register as a national securities exchange solely for
12 the purposes of trading security futures products
13 if—

14 “(A) the exchange is a board of trade, as
15 that term is defined by the Commodity Ex-
16 change Act (7 U.S.C. 1a(2)), that—

17 “(i) has been designated a contract
18 market by the Commodity Futures Trad-
19 ing Commission and such designation is
20 not suspended by order of the Commodity
21 Futures Trading Commission; or

22 “(ii) is registered as a derivative
23 transaction execution facility under section
24 5a of the Commodity Exchange Act and
25 such registration is not suspended by the

1 Commodity Futures Trading Commission;
2 and

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

6 “(i) security futures products; or

7 “(ii) futures on exempted securities or
8 groups or indexes of securities or options
9 thereon that have been authorized under
10 section 2(a)(1)(C) of the Commodity Ex-
11 change Act.

12 “(2) REGISTRATION BY NOTICE FILING.—

13 “(A) FORM AND CONTENT.—An exchange
14 required to register only because such exchange
15 lists or trades security futures products may
16 register for purposes of this section by filing
17 with the Commission a written notice in such
18 form as the Commission, by rule, may prescribe
19 containing the rules of the exchange and such
20 other information and documents concerning
21 such exchange, comparable to the information
22 and documents required for national securities
23 exchanges under section 6(a), as the Commis-
24 sion, by rule, may prescribe as necessary or ap-
25 propriate in the public interest or for the pro-

1 tection of investors. If such exchange has filed
2 documents with the Commodity Futures Trad-
3 ing Commission, to the extent that such docu-
4 ments contain information satisfying the Com-
5 mission’s informational requirements, copies of
6 such documents may be filed with the Commis-
7 sion in lieu of the required written notice.

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

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

19 “(3) PUBLIC AVAILABILITY.—The Commission
20 shall promptly publish in the Federal Register an ac-
21 knowledgment of receipt of all notices the Commis-
22 sion receives under this subsection and shall make
23 all such notices available to the public.

24 “(4) EXEMPTION OF EXCHANGES FROM SPECI-
25 FIED PROVISIONS.—

1 “(A) TRANSACTION EXEMPTIONS.—An ex-
2 change that is registered under paragraph (1)
3 of this subsection shall be exempt from, and
4 shall not be required to enforce compliance by
5 its members with, and its members shall not,
6 solely with respect to those transactions effected
7 on such exchange in security futures products,
8 be required to comply with, the following provi-
9 sions of this title and the rules thereunder:

10 “(i) Subsections (b)(2), (b)(3), (b)(4),
11 (b)(7), (b)(9), (c), (d), and (e) of this sec-
12 tion.

13 “(ii) Section 8.

14 “(iii) Section 11.

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

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

19 “(B) RULE CHANGE EXEMPTIONS.—An ex-
20 change that registered under paragraph (1) of
21 this subsection shall also be exempt from sub-
22 mitting proposed rule changes pursuant to sec-
23 tion 19(b) of this title, except that—

24 “(i) such exchange shall file proposed
25 rule changes related to higher margin lev-

1 els, fraud or manipulation, recordkeeping,
2 reporting, listing standards, or decimal
3 pricing for security futures products, sales
4 practices for security futures products for
5 persons who effect transactions in security
6 futures products, or rules effectuating such
7 exchange’s obligation to enforce the securi-
8 ties laws pursuant to section 19(b)(7);

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

14 “(iii) such exchange shall file pursu-
15 ant to section 19(b)(1) proposed rule
16 changes that have been abrogated by the
17 Commission pursuant to section
18 19(b)(7)(C).

19 “(5) TRADING IN SECURITY FUTURES PROD-
20 UCTS.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), it shall be unlawful for any person
23 to execute or trade a security futures product
24 until the later of—

1 “(i) 1 year after the date of the enact-
2 ment of the Commodity Futures Mod-
3 ernization Act of 2000; or

4 “(ii) such date that a futures associa-
5 tion registered under section 17 of the
6 Commodity Exchange Act has met the re-
7 quirements set forth in section 15A(k)(2)
8 of this title.

9 “(B) PRINCIPAL-TO-PRINCIPAL TRANS-
10 ACTIONS.—Notwithstanding subparagraph (A),
11 a person may execute or trade a security fu-
12 tures product transaction if—

13 “(i) the transaction is entered into—

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

19 “(II) only between eligible con-
20 tract participants (as defined in sub-
21 paragraphs (A), (B)(ii), and (C) of
22 such section 1a(12)) at the time at
23 which the persons enter into the
24 agreement, contract, or transaction;
25 and

1 “(ii) the transaction is entered into on
2 or after the later of—

3 “(I) 8 months after the date of
4 the enactment of the Commodity Fu-
5 tures Modernization Act of 2000; or

6 “(II) such date that a futures as-
7 sociation registered under section 17
8 of the Commodity Exchange Act has
9 met the requirements set forth in sec-
10 tion 15A(k)(2) of this title.”.

11 (b) COMMISSION REVIEW OF PROPOSED RULE
12 CHANGES.—

13 (1) EXPEDITED REVIEW.—Section 19(b) of the
14 Securities Exchange Act of 1934 (15 U.S.C. 78s(b))
15 is amended by adding at the end the following:

16 “(7) SECURITY FUTURES PRODUCT RULE
17 CHANGES.—

18 “(A) FILING REQUIRED.—A self-regulatory
19 organization that is an exchange registered with
20 the Commission pursuant to section 6(g) of this
21 title or that is a national securities association
22 registered pursuant to section 15A(k) of this
23 title shall file with the Commission, in accord-
24 ance with such rules as the Commission may
25 prescribe, copies of any proposed rule change or

1 any proposed change in, addition to, or deletion
2 from the rules of such self-regulatory organiza-
3 tion (hereinafter in this paragraph collectively
4 referred to as a ‘proposed rule change’) that re-
5 lates to higher margin levels, fraud or manipu-
6 lation, recordkeeping, reporting, listing stand-
7 ards, or decimal pricing for security futures
8 products, sales practices for security futures
9 products for persons who effect transactions in
10 security futures products, or rules effectuating
11 such self-regulatory organization’s obligation to
12 enforce the securities laws. Such proposed rule
13 change shall be accompanied by a concise gen-
14 eral statement of the basis and purpose of such
15 proposed rule change. The Commission shall,
16 upon the filing of any proposed rule change,
17 promptly publish notice thereof together with
18 the terms of substance of the proposed rule
19 change or a description of the subjects and
20 issues involved. The Commission shall give in-
21 terested persons an opportunity to submit data,
22 views, and arguments concerning such proposed
23 rule change.

24 “(B) FILING WITH CFTC.—A proposed rule
25 change filed with the Commission pursuant to

1 subparagraph (A) shall be filed concurrently
2 with the Commodity Futures Trading Commis-
3 sion. Such proposed rule change may take ef-
4 fect upon filing of a written certification with
5 the Commodity Futures Trading Commission
6 under section 5c(c) of the Commodity Exchange
7 Act, upon a determination by the Commodity
8 Futures Trading Commission that review of the
9 proposed rule change is not necessary, or upon
10 approval of the proposed rule change by the
11 Commodity Futures Trading Commission.

12 “(C) ABROGATION OF RULE CHANGES.—
13 Any proposed rule change of a self-regulatory
14 organization that has taken effect pursuant to
15 subparagraph (B) may be enforced by such self-
16 regulatory organization to the extent such rule
17 is not inconsistent with the provisions of this
18 title, the rules and regulations thereunder, and
19 applicable Federal law. At any time within 60
20 days of the date of the filing of a written cer-
21 tification with the Commodity Futures Trading
22 Commission under section 5c(c) of the Com-
23modity Exchange Act, the date the Commodity
24 Futures Trading Commission determines that
25 review of such proposed rule change is not nec-

1 essary, or the date the Commodity Futures
2 Trading Commission approves such proposed
3 rule change, the Commission, after consultation
4 with the Commodity Futures Trading Commis-
5 sion, may summarily abrogate the proposed rule
6 change and require that the proposed rule
7 change be refiled in accordance with the provi-
8 sions of paragraph (1), if it appears to the
9 Commission that such proposed rule change un-
10 duly burdens competition or efficiency, conflicts
11 with the securities laws, or is inconsistent with
12 the public interest and the protection of inves-
13 tors. Commission action pursuant to the pre-
14 ceding sentence shall not affect the validity or
15 force of the rule change during the period it
16 was in effect and shall not be reviewable under
17 section 25 of this title nor deemed to be a final
18 agency action for purposes of section 704 of
19 title 5, United States Code.

20 “(D) REVIEW OF RESUBMITTED ABRO-
21 GATED RULES.—

22 “(i) PROCEEDINGS.—Within 35 days
23 of the date of publication of notice of the
24 filing of a proposed rule change that is ab-
25 rogated in accordance with subparagraph

1 (C) and refiled in accordance with para-
2 graph (1), or within such longer period as
3 the Commission may designate up to 90
4 days after such date if the Commission
5 finds such longer period to be appropriate
6 and publishes its reasons for so finding or
7 as to which the self-regulatory organization
8 consents, the Commission shall—

9 “(I) by order approve such pro-
10 posed rule change; or

11 “(II) after consultation with the
12 Commodity Futures Trading Commis-
13 sion, institute proceedings to deter-
14 mine whether the proposed rule
15 change should be disapproved. Pro-
16 ceedings under subclause (II) shall in-
17 clude notice of the grounds for dis-
18 approval under consideration and op-
19 portunity for hearing and be con-
20 cluded within 180 days after the date
21 of publication of notice of the filing of
22 the proposed rule change. At the con-
23 clusion of such proceedings, the Com-
24 mission, by order, shall approve or
25 disapprove such proposed rule change.

1 The Commission may extend the time
2 for conclusion of such proceedings for
3 up to 60 days if the Commission finds
4 good cause for such extension and
5 publishes its reasons for so finding or
6 for such longer period as to which the
7 self-regulatory organization consents.

8 “(ii) GROUNDS FOR APPROVAL.—The
9 Commission shall approve a proposed rule
10 change of a self-regulatory organization
11 under this subparagraph if the Commission
12 finds that such proposed rule change does
13 not unduly burden competition or effi-
14 ciency, does not conflict with the securities
15 laws, and is not inconsistent with the pub-
16 lic interest or the protection of investors.
17 The Commission shall disapprove such a
18 proposed rule change of a self-regulatory
19 organization if it does not make such find-
20 ing. The Commission shall not approve any
21 proposed rule change prior to the 30th day
22 after the date of publication of notice of
23 the filing thereof, unless the Commission
24 finds good cause for so doing and pub-
25 lishes its reasons for so finding.”.

1 (2) DECIMAL PRICING PROVISIONS.—Section
2 19(b) of the Securities Exchange Act of 1934 (15
3 U.S.C. 78s(b)) is amended by inserting after para-
4 graph (7), as added by paragraph (1), the following:

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

14 (3) CONSULTATION PROVISIONS.—Section 19(b)
15 of the Securities Exchange Act of 1934 (15 U.S.C.
16 78s(b)) is amended by inserting after paragraph (8),
17 as added by paragraph (2), the following:

18 “(9) CONSULTATION WITH CFTC.—

19 “(A) CONSULTATION REQUIRED.—The
20 Commission shall consult with and consider the
21 views of the Commodity Futures Trading Com-
22 mission prior to approving or disapproving a
23 proposed rule change filed by a national securi-
24 ties association registered pursuant to section
25 15A(a) or a national securities exchange subject

1 to the provisions of subsection (a) that pri-
2 marily concerns conduct related to transactions
3 in security futures products, except where the
4 Commission determines that an emergency ex-
5 ists requiring expeditious or summary action
6 and publishes its reasons therefor.

7 “(B) RESPONSES TO CFTC COMMENTS AND
8 FINDINGS.—If the Commodity Futures Trading
9 Commission comments in writing to the Com-
10 mission on a proposed rule that has been pub-
11 lished for comment, the Commission shall re-
12 spond in writing to such written comment be-
13 fore approving or disapproving the proposed
14 rule. If the Commodity Futures Trading Com-
15 mission determines, and notifies the Commis-
16 sion, that such rule, if implemented or as ap-
17 plied, would—

18 “(i) adversely affect the liquidity or
19 efficiency of the market for security fu-
20 tures products; or

21 “(ii) impose any burden on competi-
22 tion not necessary or appropriate in fur-
23 therance of the purposes of this section,
24 the Commission shall, prior to approving or dis-
25 approving the proposed rule, find that such rule

1 is necessary and appropriate in furtherance of
2 the purposes of this section notwithstanding the
3 Commodity Futures Trading Commission's de-
4 termination.”.

5 (c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Sec-
6 tion 19(d) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78s(d)) is amended by adding at the end the fol-
8 lowing:

9 “(3) The provisions of this subsection shall apply to
10 an exchange registered pursuant to section 6(g) of this
11 title or a national securities association registered pursu-
12 ant to section 15A(k) of this title only to the extent that
13 such exchange or association imposes any final discipli-
14 nary sanction for—

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

17 “(B) a violation of a rule of such exchange or
18 association, as to which a proposed change would be
19 required to be filed under section 19 of this title, ex-
20 cept that, to the extent that the exchange or associa-
21 tion rule violation relates to any account, agreement,
22 contract, or transaction, this subsection shall apply
23 only to the extent such violation involves a security
24 futures product.”.

1 **SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES**
2 **TRADING SECURITY FUTURES PRODUCTS.**

3 (a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

4 (1) AMENDMENT.—Section 15(b) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C. 78o(b)) is
6 amended by adding at the end the following:

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

10 “(A) NOTICE REGISTRATION.—

11 “(i) CONTENTS OF NOTICE.—Not-
12 withstanding paragraphs (1) and (2), a
13 broker or dealer required to register only
14 because it effects transactions in security
15 futures products on an exchange registered
16 pursuant to section 6(g) may register for
17 purposes of this section by filing with the
18 Commission a written notice in such form
19 and containing such information con-
20 cerning such broker or dealer and any per-
21 sons associated with such broker or dealer
22 as the Commission, by rule, may prescribe
23 as necessary or appropriate in the public
24 interest or for the protection of investors.
25 A broker or dealer may not register under
26 this paragraph unless that broker or dealer

1 is a member of a national securities asso-
2 ciation registered under section 15A(k).

3 “(ii) IMMEDIATE EFFECTIVENESS.—
4 Such registration shall be effective contem-
5 poraneously with the submission of notice,
6 in written or electronic form, to the Com-
7 mission, except that such registration shall
8 not be effective if the registration would be
9 subject to suspension or revocation under
10 paragraph (4).

11 “(iii) SUSPENSION.—Such registration
12 shall be suspended immediately if a na-
13 tional securities association registered pur-
14 suant to section 15A(k) of this title sus-
15 pends the membership of that broker or
16 dealer.

17 “(iv) TERMINATION.—Such registra-
18 tion shall be terminated immediately if any
19 of the above stated conditions for registra-
20 tion set forth in this paragraph are no
21 longer satisfied.

22 “(B) EXEMPTIONS FOR REGISTERED BRO-
23 KERS AND DEALERS.—A broker or dealer reg-
24 istered pursuant to the requirements of sub-
25 paragraph (A) shall be exempt from the fol-

1 lowing provisions of this title and the rules
2 thereunder with respect to transactions in secu-
3 rity futures products:

4 “(i) Section 8.

5 “(ii) Section 11.

6 “(iii) Subsections (c)(3) and (c)(5) of
7 this section.

8 “(iv) Section 15B.

9 “(v) Section 15C.

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

12 (2) CONFORMING AMENDMENT.—Section 28(e)
13 of the Securities Exchange Act of 1934 (15 U.S.C.
14 78bb(e)) is amended by adding at the end the fol-
15 lowing:

16 “(4) The provisions of this subsection shall not apply
17 with regard to securities that are security futures prod-
18 ucts.”.

19 (b) FLOOR BROKERS AND FLOOR TRADERS.—Sec-
20 tion 15(b) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78o(b)) is amended by inserting after paragraph
22 (11), as added by subsection (a), the following:

23 “(12) EXEMPTION FOR SECURITY FUTURES
24 PRODUCT EXCHANGE MEMBERS.—

1 “(A) REGISTRATION EXEMPTION.—A nat-
2 ural person shall be exempt from the registra-
3 tion requirements of this section if such
4 person—

5 “(i) is a member of a designated con-
6 tract market registered with the Commis-
7 sion as an exchange pursuant to section
8 6(g);

9 “(ii) effects transactions only in secu-
10 rities on the exchange of which such per-
11 son is a member; and

12 “(iii) does not directly accept or solicit
13 orders from public customers or provide
14 advice to public customers in connection
15 with the trading of security futures prod-
16 ucts.

17 “(B) OTHER EXEMPTIONS.—A natural
18 person exempt from registration pursuant to
19 subparagraph (A) shall also be exempt from the
20 following provisions of this title and the rules
21 thereunder:

22 “(i) Section 8.

23 “(ii) Section 11.

24 “(iii) Subsections (c)(3), (c)(5), and
25 (e) of this section.

1 “(iv) Section 15B.

2 “(v) Section 15C.

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

5 (c) LIMITED PURPOSE NATIONAL SECURITIES ASSO-
6 CIATION.—Section 15A of the Securities Exchange Act of
7 1934 (15 U.S.C. 78o–3) is amended by adding at the end
8 the following:

9 “(k) LIMITED PURPOSE NATIONAL SECURITIES AS-
10 SOCIATION.—

11 “(1) REGULATION OF MEMBERS WITH RESPECT
12 TO SECURITY FUTURES PRODUCTS.—A futures asso-
13 ciation registered under section 17 of the Com-
14 modity Exchange Act shall be a registered national
15 securities association for the limited purpose of reg-
16 ulating the activities of members who are registered
17 as brokers or dealers in security futures products
18 pursuant to section 15(b)(11).

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

21 “(A) be so organized and have the capacity
22 to carry out the purposes of the securities laws
23 applicable to security futures products and to
24 comply, and (subject to any rule or order of the
25 Commission pursuant to section 19(g)(2)) to

1 enforce compliance by its members and persons
2 associated with its members, with the provisions
3 of the securities laws applicable to security fu-
4 tures products, the rules and regulations there-
5 under, and its rules;

6 “(B) have rules that—

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

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

23 “(C) have rules that provide that (subject
24 to any rule or order of the Commission pursu-
25 ant to section 19(g)(2)) its members and per-

1 sons associated with its members shall be ap-
2 propriately disciplined for violation of any provi-
3 sion of the securities laws applicable to security
4 futures products, the rules or regulations there-
5 under, or the rules of the association, by expul-
6 sion, suspension, limitation of activities, func-
7 tions, and operations, fine, censure, being sus-
8 pended or barred from being associated with a
9 member, or any other fitting sanction; and

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

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

21 “(A) the association shall file proposed
22 rule changes related to higher margin levels,
23 fraud or manipulation, recordkeeping, report-
24 ing, listing standards, or decimal pricing for se-
25 curity futures products, sales practices for, ad-

1 vertising of, or standards of training, experi-
2 ence, competence, or other qualifications for se-
3 curity futures products for persons who effect
4 transactions in security futures products, or
5 rules effectuating the association's obligation to
6 enforce the securities laws pursuant to section
7 19(b)(7);

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

12 “(C) the association shall file pursuant to
13 section 19(b)(1) proposed rule changes that
14 have been abrogated by the Commission pursu-
15 ant to section 19(b)(7)(C).

16 “(4) OTHER EXEMPTIONS.—Such a securities
17 association shall be exempt from and shall not be re-
18 quired to enforce compliance by its members, and its
19 members shall not, solely with respect to their trans-
20 actions effected in security futures products, be re-
21 quired to comply, with the following provisions of
22 this title and the rules thereunder:

23 “(A) Section 8.

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

4 “(C) Subsections (d), (f), and (k) of sec-
5 tion 17.

6 “(D) Subsections (a), (f), and (h) of sec-
7 tion 19.”.

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

10 (1) Section 16(14) of the Securities Investor
11 Protection Act of 1970 (15 U.S.C. 78lll(14)) is
12 amended by inserting “or any security future as that
13 term is defined in section 3(a)(55)(A) of the Securi-
14 ties Exchange Act of 1934,” after “certificate of de-
15 posit for a security,”.

16 (2) Section 3(a)(2)(A) of the Securities Investor
17 Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A))
18 is amended—

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

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

23 (C) by adding at the end the following:

24 “(iii) persons who are registered as a
25 broker or dealer pursuant to section

1 15(b)(11)(A) of the Securities Exchange
2 Act of 1934.”.

3 **SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY CO-**
4 **OPERATION.**

5 Section 17(b) of the Securities Exchange Act of 1934
6 (15 U.S.C. 78q(b)) is amended—

7 (1) by striking “(b) All” and inserting the fol-
8 lowing:

9 “(b) RECORDS SUBJECT TO EXAMINATION.—

10 “(1) PROCEDURES FOR COOPERATION WITH
11 OTHER AGENCIES.—All”;

12 (2) by striking “prior to conducting any such
13 examination of a registered clearing” and inserting
14 the following: “prior to conducting any such exam-
15 ination of a—

16 “(A) registered clearing”;

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

19 (4) by striking the period at the end of the first
20 sentence and inserting the following: “; or

21 “(B) broker or dealer registered pursuant
22 to section 15(b)(11), exchange registered pursu-
23 ant to section 6(g), or national securities asso-
24 ciation registered pursuant to section 15A(k)
25 gives notice to the Commodity Futures Trading

1 Commission of such proposed examination and
2 consults with the Commodity Futures Trading
3 Commission concerning the feasibility and de-
4 sirability of coordinating such examination with
5 examinations conducted by the Commodity Fu-
6 tures Trading Commission in order to avoid un-
7 necessary regulatory duplication or undue regu-
8 latory burdens for such broker or dealer or ex-
9 change.”;

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

12 “(2) FURNISHING DATA AND REPORTS TO
13 CFTC.—The Commission shall notify the Commodity
14 Futures Trading Commission of any examination
15 conducted of any broker or dealer registered pursu-
16 ant to section 15(b)(11), exchange registered pursu-
17 ant to section 6(g), or national securities association
18 registered pursuant to section 15A(k) and, upon re-
19 quest, furnish to the Commodity Futures Trading
20 Commission any examination report and data sup-
21 plied to, or prepared by, the Commission in connec-
22 tion with such examination.

23 “(3) USE OF CFTC REPORTS.—Prior to con-
24 ducting an examination under paragraph (1), the
25 Commission shall use the reports of examinations, if

1 the information available therein is sufficient for the
2 purposes of the examination, of—

3 “(A) any broker or dealer registered pursu-
4 ant to section 15(b)(11);

5 “(B) exchange registered pursuant to sec-
6 tion 6(g); or

7 “(C) national securities association reg-
8 istered pursuant to section 15A(k);

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

13 “(4) RULES OF CONSTRUCTION.—

14 “(A) Notwithstanding any other provision
15 of this subsection, the records of a broker or
16 dealer registered pursuant to section 15(b)(11),
17 an exchange registered pursuant to section
18 6(g), or a national securities association reg-
19 istered pursuant to section 15A(k) described in
20 this subparagraph shall not be subject to rou-
21 tine periodic examinations by the Commission.

22 “(B) Any recordkeeping rules adopted
23 under this subsection for a broker or dealer reg-
24 istered pursuant to section 15(b)(11), an ex-
25 change registered pursuant to section 6(g), or a

1 national securities association registered pursu-
2 ant to section 15A(k) shall be limited to records
3 with respect to persons, accounts, agreements,
4 contracts, and transactions involving security
5 futures products.”; and

6 (6) in paragraph (4)(C) (as redesignated by
7 paragraph (3) of this section), by striking “Nothing
8 in the proviso to the preceding sentence” and insert-
9 ing “Nothing in the proviso in paragraph (1)”.

10 **SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SE-**
11 **CURITY FUTURES PRODUCTS.**

12 (a) ADDITION OF SECURITY FUTURES PRODUCTS TO
13 OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

14 (1) PROHIBITION AGAINST MANIPULATION.—
15 Section 9(b) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78i(b)) is amended—

17 (A) in paragraph (1)—

18 (i) by inserting “(A)” after “ac-
19 quires”; and

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

23 (B) in paragraph (2)—

24 (i) by inserting “(A)” after “interest
25 in any”; and

1 (ii) by striking “; or” and inserting “;
2 or (B) such security futures product; or”;
3 and

4 (C) in paragraph (3)—

5 (i) by inserting “(A)” after “interest
6 in any”; and

7 (ii) by inserting “; or (B) such secu-
8 rity futures product” after “privilege”.

9 (2) MANIPULATION IN OPTIONS AND OTHER
10 DERIVATIVE PRODUCTS.—Section 9(g) of the Securi-
11 ties Exchange Act of 1934 (15 U.S.C. 78i(g)) is
12 amended—

13 (A) by inserting “(1)” after “(g)”;

14 (B) by inserting “other than a security fu-
15 tures product” after “future delivery”; and

16 (C) by adding at the end the following:

17 “(2) Notwithstanding the Commodity Exchange Act,
18 the Commission shall have the authority to regulate the
19 trading of any security futures product to the extent pro-
20 vided in the securities laws.”.

21 (3) LIABILITY OF CONTROLLING PERSONS AND
22 PERSONS WHO AID AND ABET VIOLATIONS.—Section
23 20(d) of the Securities Exchange Act of 1934 (15
24 U.S.C. 78t(d)) is amended by striking “or privilege”

1 and inserting “, privilege, or security futures prod-
2 uct”.

3 (4) LIABILITY TO CONTEMPORANEOUS TRADERS
4 FOR INSIDER TRADING.—Section 21A(a)(1) of the
5 Securities Exchange Act of 1934 (15 U.S.C. 78u-
6 1(a)(1)) is amended by striking “standardized op-
7 tions, the Commission—” and inserting “standard-
8 ized options or security futures products, the Com-
9 mission—”.

10 (5) ENFORCEMENT CONSULTATION.—Section
11 21 of the Securities Exchange Act of 1934 (15
12 U.S.C. 78u) is amended by adding at the end the
13 following:

14 “(i) INFORMATION TO CFTC.—The Commission
15 shall provide the Commodity Futures Trading Commission
16 with notice of the commencement of any proceeding and
17 a copy of any order entered by the Commission against
18 any broker or dealer registered pursuant to section
19 15(b)(11), any exchange registered pursuant to section
20 6(g), or any national securities association registered pur-
21 suant to section 15A(k).”.

22 **SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SE-**
23 **CURITY FUTURES PRODUCTS.**

24 (a) LISTING STANDARDS AND CONDITIONS FOR
25 TRADING.—Section 6 of the Securities Exchange Act of

1 1934 (15 U.S.C. 78f) is amended by inserting after sub-
2 section (g), as added by section 202, the following:

3 “(h) TRADING IN SECURITY FUTURES PRODUCTS.—

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

10 “(2) LISTING STANDARDS REQUIRED.—Except
11 as otherwise provided in paragraph (7), a national
12 securities exchange or a national securities associa-
13 tion registered pursuant to section 15A(a) may trade
14 only security futures products that (A) conform with
15 listing standards that such exchange or association
16 files with the Commission under section 19(b) and
17 (B) meet the criteria specified in section
18 2(a)(1)(D)(i) of the Commodity Exchange Act.

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

22 “(A) except as otherwise provided in a
23 rule, regulation, or order issued pursuant to
24 paragraph (4), require that any security under-
25 lying the security future, including each compo-

1 nent security of a narrow-based security index,
2 be registered pursuant to section 12 of this
3 title;

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

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

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

23 “(E) require that the security futures
24 product is cleared by a clearing agency that has
25 in place provisions for linked and coordinated

1 clearing with other clearing agencies that clear
2 security futures products, which permits the se-
3 curity futures product to be purchased on one
4 market and offset on another market that
5 trades such product;

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

11 “(G) require that the security futures
12 product be subject to the prohibition against
13 dual trading in section 4j of the Commodity Ex-
14 change Act (7 U.S.C. 6j) and the rules and reg-
15 ulations thereunder or the provisions of section
16 11(a) of this title and the rules and regulations
17 thereunder, except to the extent otherwise per-
18 mitted under this title and the rules and regula-
19 tions thereunder;

20 “(H) require that trading in the security
21 futures product not be readily susceptible to
22 manipulation of the price of such security fu-
23 tures product, nor to causing or being used in
24 the manipulation of the price of any underlying

1 security, option on such security, or option on
2 a group or index including such securities;

3 “(I) require that procedures be in place for
4 coordinated surveillance among the market on
5 which the security futures product is traded,
6 any market on which any security underlying
7 the security futures product is traded, and
8 other markets on which any related security is
9 traded to detect manipulation and insider trad-
10 ing;

11 “(J) require that the market on which the
12 security futures product is traded has in place
13 audit trails necessary or appropriate to facili-
14 tate the coordinated surveillance required in
15 subparagraph (I);

16 “(K) require that the market on which the
17 security futures product is traded has in place
18 procedures to coordinate trading halts between
19 such market and any market on which any se-
20 curity underlying the security futures product is
21 traded and other markets on which any related
22 security is traded; and

23 “(L) require that the margin requirements
24 for a security futures product comply with the
25 regulations prescribed pursuant to section

1 7(c)(2)(B), except that nothing in this subpara-
2 graph shall be construed to prevent a national
3 securities exchange or national securities asso-
4 ciation from requiring higher margin levels for
5 a security futures product when it deems such
6 action to be necessary or appropriate.

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

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

19 “(B) AUTHORITY TO GRANT EXEMP-
20 TIONS.—The Commission and the Commodity
21 Futures Trading Commission, by order, may
22 jointly exempt any person from compliance with
23 the listing standard requirement specified in
24 subparagraph (E) of paragraph (3) to the ex-
25 tent such exemption fosters the development of

1 fair and orderly markets in security futures
2 products, is necessary or appropriate in the
3 public interest, and is consistent with the pro-
4 tection of investors.

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

19 “(A) has in place procedures for coordi-
20 nated surveillance among such person, the mar-
21 ket trading the securities underlying the secu-
22 rity future products, and other markets trading
23 related securities to detect manipulation and in-
24 sider trading;

1 “(B) has rules to require audit trails nec-
2 essary or appropriate to facilitate the coordi-
3 nated surveillance required in subparagraph
4 (A); and

5 “(C) has rules to require such person to
6 coordinate trading halts with markets trading
7 the securities underlying the security future
8 products and other markets trading related se-
9 curities.

10 “(6) DEFERRAL OF OPTIONS ON SECURITY FU-
11 TURES TRADING.—No person shall offer to enter
12 into, enter into, or confirm the execution of any put,
13 call, straddle, option, or privilege on a security fu-
14 ture, except that, after 3 years after the date of the
15 enactment of this subsection, the Commission and
16 the Commodity Futures Trading Commission may
17 by order jointly determine to permit trading of puts,
18 calls, straddles, options, or privileges on any security
19 future authorized to be traded under the provisions
20 of this Act and the Commodity Exchange Act.

21 “(7) DEFERRAL OF LINKED AND COORDINATED
22 CLEARING.—

23 “(A) Notwithstanding paragraph (2), until
24 the compliance date, a national securities ex-
25 change or national securities association reg-

1 istered pursuant to section 15A(a) may trade a
2 security futures product that does not—

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

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

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

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

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

1 average aggregate comparable share vol-
2 ume of options on single equity securities
3 traded on all national securities exchanges
4 and any national securities associations
5 registered pursuant to section 15A(a); or

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

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

11 (1) in subsection (a), by inserting “or a security
12 futures product” after “exempted security”;

13 (2) in subsection (c)(1)(A), by inserting “except
14 as provided in paragraph (2),” after “security,”;

15 (3) by redesignating paragraph (2) of sub-
16 section (c) as paragraph (3) of such subsection; and

17 (4) by inserting after paragraph (1) of such
18 subsection the following:

19 “(2) MARGIN REGULATIONS.—

20 “(A) COMPLIANCE WITH MARGIN RULES
21 REQUIRED.—It shall be unlawful for any
22 broker, dealer, or member of a national securi-
23 ties exchange to, directly or indirectly, extend
24 or maintain credit to or for, or collect margin
25 from any customer on, any security futures

1 product unless such activities comply with the
2 regulations—

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

5 “(ii) if the Board determines to dele-
6 gate the authority to prescribe such regula-
7 tions, which the Commission and the Com-
8 modity Futures Trading Commission shall
9 jointly prescribe pursuant to subparagraph
10 (B).

11 If the Board delegates the authority to pre-
12 scribe such regulations under clause (ii) and the
13 Commission and the Commodity Futures Trad-
14 ing Commission have not jointly prescribed such
15 regulations within a reasonable period of time
16 after the date of such delegation, the Board
17 shall prescribe such regulations pursuant to
18 subparagraph (B).

19 “(B) CRITERIA FOR ISSUANCE OF
20 RULES.—The Board shall prescribe, or, if the
21 authority is delegated pursuant to subpara-
22 graph (A)(ii), the Commission and the Com-
23 modity Futures Trading Commission shall
24 jointly prescribe, such regulations to establish
25 margin requirements, including the establish-

1 ment of levels of margin (initial and mainte-
2 nance) for security futures products under such
3 terms, and at such levels, as the Board deems
4 appropriate, or as the Commission and the
5 Commodity Futures Trading Commission joint-
6 ly deem appropriate—

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

10 “(ii) to prevent systemic risk;

11 “(iii) to require that—

12 “(I) the margin requirements for
13 a security future product be con-
14 sistent with the margin requirements
15 for comparable option contracts trad-
16 ed on any exchange registered pursu-
17 ant to section 6(a) of this title; and

18 “(II) initial and maintenance
19 margin levels for a security future
20 product not be lower than the lowest
21 level of margin, exclusive of premium,
22 required for any comparable option
23 contract traded on any exchange reg-
24 istered pursuant to section 6(a) of

1 this title, other than an option on a
2 security future;

3 except that nothing in this subparagraph
4 shall be construed to prevent a national se-
5 curities exchange or national securities as-
6 sociation from requiring higher margin lev-
7 els for a security future product when it
8 deems such action to be necessary or ap-
9 propriate; and

10 “(iv) to ensure that the margin re-
11 quirements (other than levels of margin),
12 including the type, form, and use of collat-
13 eral for security futures products, are and
14 remain consistent with the requirements
15 established by the Board, pursuant to sub-
16 paragraphs (A) and (B) of paragraph
17 (1).”.

18 (c) INCORPORATION OF SECURITY FUTURES PROD-
19 UCTS INTO THE NATIONAL MARKET SYSTEM.—Section
20 11A of the Securities Exchange Act of 1934 (15 U.S.C.
21 78k-1) is amended by adding at the end the following:

22 “(e) NATIONAL MARKETS SYSTEM FOR SECURITY
23 FUTURES PRODUCTS.—

24 “(1) CONSULTATION AND COOPERATION RE-
25 QUIRED.—With respect to security futures products,

1 the Commission and the Commodity Futures Trad-
2 ing Commission shall consult and cooperate so that,
3 to the maximum extent practicable, their respective
4 regulatory responsibilities may be fulfilled and the
5 rules and regulations applicable to security futures
6 products may foster a national market system for
7 security futures products if the Commission and the
8 Commodity Futures Trading Commission jointly de-
9 termine that such a system would be consistent with
10 the congressional findings in subsection (a)(1). In
11 accordance with this objective, the Commission shall,
12 at least 15 days prior to the issuance for public com-
13 ment of any proposed rule or regulation under this
14 section concerning security futures products, consult
15 and request the views of the Commodity Futures
16 Trading Commission.

17 “(2) APPLICATION OF RULES BY ORDER OF
18 CFTC.—No rule adopted pursuant to this section
19 shall be applied to any person with respect to the
20 trading of security futures products on an exchange
21 that is registered under section 6(g) unless the Com-
22 modity Futures Trading Commission has issued an
23 order directing that such rule is applicable to such
24 persons.”.

1 (d) INCORPORATION OF SECURITY FUTURES PROD-
2 UCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND
3 SETTLEMENT.—Section 17A(b) of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78q–1(b)) is amended by
5 adding at the end the following:

6 “(7)(A) A clearing agency that is regulated directly
7 or indirectly by the Commodity Futures Trading Commis-
8 sion through its association with a designated contract
9 market for security futures products that is a national se-
10 curities exchange registered pursuant to section 6(g), and
11 that would be required to register pursuant to paragraph
12 (1) of this subsection only because it performs the func-
13 tions of a clearing agency with respect to security futures
14 products effected pursuant to the rules of the designated
15 contract market with which such agency is associated, is
16 exempted from the provisions of this section and the rules
17 and regulations thereunder, except that if such a clearing
18 agency performs the functions of a clearing agency with
19 respect to a security futures product that is not cash set-
20 tled, it must have arrangements in place with a registered
21 clearing agency to effect the payment and delivery of the
22 securities underlying the security futures product.

23 “(B) Any clearing agency that performs the functions
24 of a clearing agency with respect to security futures prod-
25 ucts must coordinate with and develop fair and reasonable

1 links with any and all other clearing agencies that perform
2 the functions of a clearing agency with respect to security
3 futures products, in order to permit, as of the compliance
4 date (as defined in section 6(h)(6)(C)), security futures
5 products to be purchased on one market and offset on an-
6 other market that trades such products.”.

7 (e) MARKET EMERGENCY POWERS AND CIRCUIT
8 BREAKERS.—Section 12(k) of the Securities Exchange
9 Act of 1934 (15 U.S.C. 78l(k)) is amended—

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

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

22 (f) TRANSACTION FEES.—Section 31 of the Securi-
23 ties Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

24 (1) in subsection (a), by inserting “and assess-
25 ments” after “fees”;

1 (2) in subsections (b), (c), and (d)(1), by strik-
2 ing “and other evidences of indebtedness” and in-
3 serting “other evidences of indebtedness, and secu-
4 rity futures products”;

5 (3) in subsection (f), by inserting “or assess-
6 ment” after “fee”;

7 (4) in subsection (g), by inserting “and assess-
8 ment” after “fee”;

9 (5) by redesignating subsections (e), (f), and
10 (g) as subsections (f), (g), and (h), respectively; and

11 (6) by inserting after subsection (d) the fol-
12 lowing new subsection:

13 “(e) ASSESSMENTS ON SECURITY FUTURES TRANS-
14 ACTIONS.—Each national securities exchange and national
15 securities association shall pay to the Commission an as-
16 sessment equal to \$0.02 for each round turn transaction
17 (treated as including one purchase and one sale of a con-
18 tract of sale for future delivery) on a security future trad-
19 ed on such national securities exchange or by or through
20 any member of such association otherwise than on a na-
21 tional securities exchange, except that for fiscal year 2007
22 or any succeeding fiscal year such assessment shall be
23 equal to \$0.0075 for each such transaction. Assessments
24 collected pursuant to this subsection shall be deposited
25 and collected as general revenue of the Treasury.”.

1 (g) EXEMPTION FROM SHORT SALE PROVISIONS.—

2 Section 10(a) of the Securities Exchange Act of 1934 (15

3 U.S.C 78j(a)) is amended—

4 (1) by inserting “(1)” after “(a)”; and

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

6 “(2) Paragraph (1) of this subsection shall not apply

7 to security futures products.”.

8 (h) RULEMAKING AUTHORITY TO ADDRESS DUPLI-

9 CATIVE REGULATION OF DUAL REGISTRANTS.—Section

10 15(c)(3) of the Securities Exchange Act of 1934 (15

11 U.S.C. 78o(c)(3)) is amended—

12 (1) by inserting “(A)” after “(3)”; and

13 (2) by adding at the end the following:

14 “(B) Consistent with this title, the Commission, in

15 consultation with the Commodity Futures Trading Com-

16 mission, shall issue such rules, regulations, or orders as

17 are necessary to avoid duplicative or conflicting regula-

18 tions applicable to any broker or dealer registered with

19 the Commission pursuant to section 15(b) (except para-

20 graph (11) thereof), that is also registered with the Com-

21 modity Futures Trading Commission pursuant to section

22 4f(a) of the Commodity Exchange Act (except paragraph

23 (2) thereof), with respect to the application of: (i) the pro-

24 visions of section 8, section 15(c)(3), and section 17 of

25 this title and the rules and regulations thereunder related

1 to the treatment of customer funds, securities, or prop-
2 erty, maintenance of books and records, financial report-
3 ing, or other financial responsibility rules, involving secu-
4 rity futures products; and (ii) similar provisions of the
5 Commodity Exchange Act and rules and regulations there-
6 under involving security futures products.”.

7 (i) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
8 LATION OF DUAL REGISTRANTS.—Section 6 of the Securi-
9 ties Exchange Act of 1934 (15 U.S.C. 78f) is amended
10 by inserting after subsection (h), as added by subsection
11 (a) of this section, the following:

12 “(i) Consistent with this title, each national securities
13 exchange registered pursuant to subsection (a) of this sec-
14 tion shall issue such rules as are necessary to avoid dupli-
15 cative or conflicting rules applicable to any broker or deal-
16 er registered with the Commission pursuant to section
17 15(b) (except paragraph (11) thereof), that is also reg-
18 istered with the Commodity Futures Trading Commission
19 pursuant to section 4f(a) of the Commodity Exchange Act
20 (except paragraph (2) thereof), with respect to the appli-
21 cation of—

22 (1) rules of such national securities exchange of
23 the type specified in section 15(c)(3)(B) involving
24 security futures products; and

1 (2) similar rules of national securities ex-
2 changes registered pursuant to section 6(g) and na-
3 tional securities associations registered pursuant to
4 section 15A(k) involving security futures products.”.

5 (j) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
6 LATION OF DUAL REGISTRANTS.—Section 15A of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78o–3) is
8 amended by inserting after subsection (k), as added by
9 section 203, the following:

10 “(1) Consistent with this title, each national securities
11 association registered pursuant to subsection (a) of this
12 section shall issue such rules as are necessary to avoid du-
13 plicative or conflicting rules applicable to any broker or
14 dealer registered with the Commission pursuant to section
15 15(b) (except paragraph (11) thereof), that is also reg-
16 istered with the Commodity Futures Trading Commission
17 pursuant to section 4f(a) of the Commodity Exchange Act
18 (except paragraph (2) thereof), with respect to the appli-
19 cation of—

20 “(1) rules of such national securities association
21 of the type specified in section 15(c)(3)(B) involving
22 security futures products; and

23 “(2) similar rules of national securities associa-
24 tions registered pursuant to subsection (k) of this
25 section and national securities exchanges registered

1 pursuant to section 6(g) involving security futures
2 products.”.

3 (k) OBLIGATION TO PUT IN PLACE PROCEDURES
4 AND ADOPT RULES.—

5 (1) NATIONAL SECURITIES ASSOCIATIONS.—

6 Section 15A of the Securities Exchange Act of 1934
7 (15 U.S.C. 78o–3) is amended by inserting after
8 subsection (l), as added by subsection (j) of this sec-
9 tion, the following new subsection:

10 “(m) PROCEDURES AND RULES FOR SECURITY FU-
11 TURE PRODUCTS.—A national securities association reg-
12 istered pursuant to subsection (a) shall, not later than 8
13 months after the date of the enactment of the Commodity
14 Futures Modernization Act of 2000, implement the proce-
15 dures specified in section 6(h)(5)(A) of this title and adopt
16 the rules specified in subparagraphs (B) and (C) of section
17 6(h)(5) of this title.”.

18 (2) NATIONAL SECURITIES EXCHANGES.—Sec-

19 tion 6 of the Securities Exchange Act of 1934 (15
20 U.S.C. 78f) is amended by inserting after subsection
21 (i), as added by subsection (i) of this section, the fol-
22 lowing new subsection:

23 “(j) PROCEDURES AND RULES FOR SECURITY FU-
24 TURE PRODUCTS.—A national securities exchange reg-
25 istered pursuant to subsection (a) shall implement the pro-

1 cedures specified in section 6(h)(5)(A) of this title and
2 adopt the rules specified in subparagraphs (B) and (C)
3 of section 6(h)(5) of this title not later than 8 months
4 after the date of receipt of a request from an alternative
5 trading system for such implementation and rules.”.

6 (l) OBLIGATION TO ADDRESS SECURITY FUTURES
7 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section
8 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
9 is amended by adding after subsection (j), as added by
10 subsection (k) of this section, the following:

11 “(k)(1) To the extent necessary or appropriate in the
12 public interest, to promote fair competition, and consistent
13 with the promotion of market efficiency, innovation, and
14 expansion of investment opportunities, the protection of
15 investors, and the maintenance of fair and orderly mar-
16 kets, the Commission and the Commodity Futures Trad-
17 ing Commission shall jointly issue such rules, regulations,
18 or orders as are necessary and appropriate to permit the
19 offer and sale of a security futures product traded on or
20 subject to the rules of a foreign board of trade to United
21 States persons.

22 “(2) The rules, regulations, or orders adopted under
23 paragraph (1) shall take into account, as appropriate, the
24 nature and size of the markets that the securities under-
25 lying the security futures product reflect.”.

1 **SEC. 207. CLEARANCE AND SETTLEMENT.**

2 Section 17A(b) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78q-1(b)) is amended—

4 (1) in paragraph (3)(A), by inserting “and de-
5 rivative agreements, contracts, and transactions”
6 after “prompt and accurate clearance and settlement
7 of securities transactions”;

8 (2) in paragraph (3)(F), by inserting “and, to
9 the extent applicable, derivative agreements, con-
10 tracts, and transactions” after “designed to promote
11 the prompt and accurate clearance and settlement of
12 securities transactions”; and

13 (3) by inserting after paragraph (7), as added
14 by section 206(d), the following:

15 “(8) A registered clearing agency shall be permitted
16 to provide facilities for the clearance and settlement of any
17 derivative agreements, contracts, or transactions that are
18 excluded from the Commodity Exchange Act, subject to
19 the requirements of this section and to such rules and reg-
20 ulations as the Commission may prescribe as necessary or
21 appropriate in the public interest, for the protection of in-
22 vestors, or otherwise in furtherance of the purposes of this
23 title.”.

1 **SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND**
2 **DISCLOSURE ISSUES UNDER THE SECURI-**
3 **TIES ACT OF 1933 AND THE SECURITIES EX-**
4 **CHANGE ACT OF 1934.**

5 (a) AMENDMENTS TO THE SECURITIES ACT OF
6 1933.—

7 (1) TREATMENT OF SECURITY FUTURES PROD-
8 UCTS.—Section 2(a) of the Securities Act of 1933
9 (15 U.S.C. 77b(a)) is amended—

10 (A) in paragraph (1), by inserting “secu-
11 rity future,” after “treasury stock,”;

12 (B) in paragraph (3), by adding at the end
13 the following: “Any offer or sale of a security
14 futures product by or on behalf of the issuer of
15 the securities underlying the security futures
16 product, an affiliate of the issuer, or an under-
17 writer, shall constitute a contract for sale of,
18 sale of, offer for sale, or offer to sell the under-
19 lying securities.”; and

20 (C) by adding at the end the following:

21 “(16) The terms ‘security future’, ‘narrow-
22 based security index’, and ‘security futures product’
23 have the same meanings as provided in section
24 3(a)(55) of the Securities Exchange Act of 1934.”.

25 (2) EXEMPTION FROM REGISTRATION.—Section
26 3(a) of the Securities Act of 1933 (15 U.S.C.

1 77c(a)) is amended by adding at the end the fol-
2 lowing:

3 “(14) Any security futures product that is—

4 “(A) cleared by a clearing agency reg-
5 istered under section 17A of the Securities Ex-
6 change Act of 1934 or exempt from registration
7 under subsection (b)(7) of such section 17A;
8 and

9 “(B) traded on a national securities ex-
10 change or a national securities association reg-
11 istered pursuant to section 15A(a) of the Secu-
12 rities Exchange Act of 1934.”.

13 (3) CONFORMING AMENDMENT.—Section
14 12(a)(2) of the Securities Act of 1933 (15 U.S.C.
15 77l(a)(2)) is amended by striking “paragraph (2)”
16 and inserting “paragraphs (2) and (14)”.

17 (b) AMENDMENTS TO THE SECURITIES EXCHANGE
18 ACT OF 1934.—

19 (1) EXEMPTION FROM REGISTRATION.—Section
20 12(a) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78l(a)) is amended by adding at the end the
22 following: “The provisions of this subsection shall
23 not apply in respect of a security futures product
24 traded on a national securities exchange.”.

1 (2) EXEMPTIONS FROM REPORTING REQUIRE-
2 MENT.—Section 12(g)(5) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by
4 adding at the end the following: “For purposes of
5 this subsection, a security futures product shall not
6 be considered a class of equity security of the issuer
7 of the securities underlying the security futures
8 product.”.

9 (3) TRANSACTIONS BY CORPORATE INSIDERS.—
10 Section 16 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78p) is amended by adding at the end
12 the following:

13 “(f) TREATMENT OF TRANSACTIONS IN SECURITY
14 FUTURES PRODUCTS.—The provisions of this section
15 shall apply to ownership of and transactions in security
16 futures products.”.

17 **SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY**

18 **ACT OF 1940 AND THE INVESTMENT ADVIS-**

19 **ERS ACT OF 1940.**

20 (a) DEFINITIONS UNDER THE INVESTMENT COM-
21 PANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT
22 OF 1940.—

23 (1) Section 2(a)(36) of the Investment Com-
24 pany Act of 1940 (15 U.S.C. 80a-2(a)(36)) is

1 amended by inserting “security future,” after
2 “treasury stock,”.

3 (2) Section 202(a)(18) of the Investment Advis-
4 ers Act of 1940 (15 U.S.C. 80b–2(a)(18)) is amend-
5 ed by inserting “security future,” after “treasury
6 stock,”.

7 (3) Section 2(a) of the Investment Company
8 Act of 1940 (15 U.S.C. 80a–2(a)) is amended by
9 adding at the end the following:

10 “(52) The terms ‘security future’ and ‘narrow-
11 based security index’ have the same meanings as
12 provided in section 3(a)(55) of the Securities Ex-
13 change Act of 1934.”.

14 (4) Section 202(a) of the Investment Advisers
15 Act of 1940 (15 U.S.C. 80b–2(a)) is amended by
16 adding at the end the following:

17 “(27) The terms ‘security future’ and ‘narrow-
18 based security index’ have the same meanings as
19 provided in section 3(a)(55) of the Securities Ex-
20 change Act of 1934.”.

21 (b) OTHER PROVISION.—Section 203(b) of the In-
22 vestment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is
23 amended—

24 (1) by striking “or” at the end of paragraph

25 (4);

1 (2) by striking the period at the end of para-
2 graph (5) and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(6) any investment adviser that is registered
5 with the Commodity Futures Trading Commission
6 as a commodity trading advisor whose business does
7 not consist primarily of acting as an investment ad-
8 viser, as defined in section 202(a)(11) of this title,
9 and that does not act as an investment adviser to—

10 “(A) an investment company registered
11 under title I of this Act; or

12 “(B) a company which has elected to be a
13 business development company pursuant to sec-
14 tion 54 of title I of this Act and has not with-
15 drawn its election.”.

16 **SEC. 210. PREEMPTION OF STATE LAWS.**

17 Section 28(a) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78bb(a)) is amended—

19 (1) in the last sentence—

20 (A) by inserting “subject to this title”
21 after “privilege, or other security”; and

22 (B) by striking “any such instrument, if
23 such instrument is traded pursuant to rules and
24 regulations of a self-regulatory organization
25 that are filed with the Commission pursuant to

1 section 19(b) of this Act” and inserting “any
2 such security”; and

3 (2) by adding at the end the following new sen-
4 tence: “No provision of State law regarding the
5 offer, sale, or distribution of securities shall apply to
6 any transaction in a security futures product, except
7 that this sentence shall not be construed as limiting
8 any State antifraud law of general applicability.”.

9 **Subtitle B—Amendments to the** 10 **Commodity Exchange Act**

11 **SEC. 251. JURISDICTION OF SECURITIES AND EXCHANGE** 12 **COMMISSION; OTHER PROVISIONS.**

13 (a) JURISDICTION OF SECURITIES AND EXCHANGE
14 COMMISSION.—

15 (1) Section 2(a)(1)(C) of the Commodity Ex-
16 change Act (7 U.S.C. 2a) (as redesignated by sec-
17 tion 34(a)(2)(C)) is amended—

18 (A) in clause (ii)—

19 (i) by inserting “or register a deriva-
20 tives transaction execution facility that
21 trades or executes,” after “contract market
22 in,”;

23 (ii) by inserting after “contracts) for
24 future delivery” the following: “, and no
25 derivatives transaction execution facility

1 shall trade or execute such contracts of
2 sale (or options on such contracts) for fu-
3 ture delivery,”;

4 (iii) by striking “making such applica-
5 tion demonstrates and the Commission ex-
6 pressly finds that the specific contract (or
7 option on such contract) with respect to
8 which the application has been made
9 meets” and inserting “or the derivatives
10 transaction execution facility, and the ap-
11 plicable contract, meet”; and

12 (iv) by striking subclause (III) of
13 clause (ii) and inserting the following:

14 “(III) Such group or index of securities
15 shall not constitute a narrow-based security
16 index.”;

17 (B) by striking clause (iii);

18 (C) by striking clause (iv) and inserting
19 the following:

20 “(iii) If, in its discretion, the Commission deter-
21 mines that a stock index futures contract, notwith-
22 standing its conformance with the requirements in
23 clause (ii) of this subparagraph, can reasonably be
24 used as a surrogate for trading a security (including
25 a security futures product), it may, by order, require

1 such contract and any option thereon be traded and
2 regulated as security futures products as defined in
3 section 3(a)(56) of the Securities Exchange Act of
4 1934 and section 1a of this Act subject to all rules
5 and regulations applicable to security futures prod-
6 ucts under this Act and the securities laws as de-
7 fined in section 3(a)(47) of the Securities Exchange
8 Act of 1934.”; and

9 (D) by redesignating clause (v) as clause
10 (iv).

11 (2) Section 2(a)(1) of the Commodity Exchange
12 Act (7 U.S.C. 2, 2a, 4) is amended by adding at the
13 end the following:

14 “(D)(i) Notwithstanding any other provision of this
15 Act, the Securities and Exchange Commission shall have
16 jurisdiction and authority over security futures as defined
17 in section 3(a)(55) of the Securities Exchange Act of
18 1934, section 2(a)(16) of the Securities Act of 1933, sec-
19 tion 2(a)(52) of the Investment Company Act of 1940,
20 and section 202(a)(27) of the Investment Advisers Act of
21 1940, options on security futures, and persons effecting
22 transactions in security futures and options thereon, and
23 this Act shall apply to and the Commission shall have ju-
24 risdiction with respect to accounts, agreements (including
25 any transaction which is of the character of, or is com-

1 monly known to the trade as, an ‘option’, ‘privilege’, ‘in-
2 demnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or
3 ‘decline guaranty’), contracts, and transactions involving,
4 and may designate a board of trade as a contract market
5 in, or register a derivatives transaction execution facility
6 that trades or executes, a security futures product as de-
7 fined in section 1a of this Act: *Provided, however,* That,
8 except as provided in clause (vi) of this subparagraph, no
9 board of trade shall be designated as a contract market
10 with respect to, or registered as a derivatives transaction
11 execution facility for, any such contracts of sale for future
12 delivery unless the board of trade and the applicable con-
13 tract meet the following criteria:

14 “(I) Except as otherwise provided in a rule,
15 regulation, or order issued pursuant to clause (v) of
16 this subparagraph, any security underlying the secu-
17 rity future, including each component security of a
18 narrow-based security index, is registered pursuant
19 to section 12 of the Securities Exchange Act of
20 1934.

21 “(II) If the security futures product is not cash
22 settled, the board of trade on which the security fu-
23 tures product is traded has arrangements in place
24 with a clearing agency registered pursuant to section
25 17A of the Securities Exchange Act of 1934 for the

1 payment and delivery of the securities underlying the
2 security futures product.

3 “(III) Except as otherwise provided in a rule,
4 regulation, or order issued pursuant to clause (v) of
5 this subparagraph, the security future is based upon
6 common stock and such other equity securities as
7 the Commission and the Securities and Exchange
8 Commission jointly determine appropriate.

9 “(IV) The security futures product is cleared by
10 a clearing agency that has in place provisions for
11 linked and coordinated clearing with other clearing
12 agencies that clear security futures products, which
13 permits the security futures product to be purchased
14 on a designated contract market, registered deriva-
15 tives transaction execution facility, national securi-
16 ties exchange registered under section 6(a) of the
17 Securities Exchange Act of 1934, or national securi-
18 ties association registered pursuant to section
19 15A(a) of the Securities Exchange Act of 1934 and
20 offset on another designated contract market, reg-
21 istered derivatives transaction execution facility, na-
22 tional securities exchange registered under section
23 6(a) of the Securities Exchange Act of 1934, or na-
24 tional securities association registered pursuant to

1 section 15A(a) of the Securities Exchange Act of
2 1934.

3 “(V) Only futures commission merchants, intro-
4 ducing brokers, commodity trading advisors, com-
5 modity pool operators or associated persons subject
6 to suitability rules comparable to those of a national
7 securities association registered pursuant to section
8 15A(a) of the Securities Exchange Act of 1934 so-
9 licit, accept any order for, or otherwise deal in any
10 transaction in or in connection with the security fu-
11 tures product.

12 “(VI) The security futures product is subject to
13 a prohibition against dual trading in section 4j of
14 this Act and the rules and regulations thereunder or
15 the provisions of section 11(a) of the Securities Ex-
16 change Act of 1934 and the rules and regulations
17 thereunder, except to the extent otherwise permitted
18 under the Securities Exchange Act of 1934 and the
19 rules and regulations thereunder.

20 “(VII) Trading in the security futures product
21 is not readily susceptible to manipulation of the
22 price of such security futures product, nor to caus-
23 ing or being used in the manipulation of the price
24 of any underlying security, option on such security,

1 or option on a group or index including such securi-
2 ties;

3 “(VIII) The board of trade on which the secu-
4 rity futures product is traded has procedures in
5 place for coordinated surveillance among such board
6 of trade, any market on which any security under-
7 lying the security futures product is traded, and
8 other markets on which any related security is trad-
9 ed to detect manipulation and insider trading, except
10 that, if the board of trade is an alternative trading
11 system, a national securities association registered
12 pursuant to section 15A(a) of the Securities Ex-
13 change Act of 1934 or national securities exchange
14 registered pursuant to section 6(a) of the Securities
15 Exchange Act of 1934 of which such alternative
16 trading system is a member has in place such proce-
17 dures.

18 “(IX) The board of trade on which the security
19 futures product is traded has in place audit trails
20 necessary or appropriate to facilitate the coordinated
21 surveillance required in subclause (VIII), except
22 that, if the board of trade is an alternative trading
23 system, a national securities association registered
24 pursuant to section 15A(a) of the Securities Ex-
25 change Act of 1934 or national securities exchange

1 registered pursuant to section 6(a) of the Securities
2 Exchange Act of 1934 of which such alternative
3 trading system is a member has rules to require
4 such audit trails.

5 “(X) The board of trade on which the security
6 futures product is traded has in place procedures to
7 coordinate trading halts between such board of trade
8 and markets on which any security underlying the
9 security futures product is traded and other markets
10 on which any related security is traded, except that,
11 if the board of trade is an alternative trading sys-
12 tem, a national securities association registered pur-
13 suant to section 15A(a) of the Securities Exchange
14 Act of 1934 or national securities exchange reg-
15 istered pursuant to section 6(a) of the Securities Ex-
16 change Act of 1934 of which such alternative trad-
17 ing system is a member has rules to require such co-
18 ordinated trading halts.

19 “(XI) The margin requirements for a security
20 futures product comply with the regulations pre-
21 scribed pursuant to section 7(c)(2)(B) of the Securi-
22 ties Exchange Act of 1934, except that nothing in
23 this subclause shall be construed to prevent a board
24 of trade from requiring higher margin levels for a

1 security futures product when it deems such action
2 to be necessary or appropriate.

3 “(ii) It shall be unlawful for any person to offer, to
4 enter into, to execute, to confirm the execution of, or to
5 conduct any office or business anywhere in the United
6 States, its territories or possessions, for the purpose of
7 soliciting, or accepting any order for, or otherwise dealing
8 in, any transaction in, or in connection with, a security
9 futures product unless—

10 “(I) the transaction is conducted on or subject
11 to the rules of a board of trade that—

12 “(aa) has been designated by the Commis-
13 sion as a contract market in such security fu-
14 tures product; or

15 “(bb) is a registered derivatives trans-
16 action execution facility for the security futures
17 product that has provided a certification with
18 respect to the security futures product pursuant
19 to clause (vii);

20 “(II) the contract is executed or consummated
21 by, through, or with a member of the contract mar-
22 ket or registered derivatives transaction execution
23 facility; and

24 “(III) the security futures product is evidenced
25 by a record in writing which shows the date, the

1 parties to such security futures product and their
2 addresses, the property covered, and its price, and
3 each contract market member or registered deriva-
4 tives transaction execution facility member shall
5 keep the record for a period of 3 years from the date
6 of the transaction, or for a longer period if the Com-
7 mission so directs, which record shall at all times be
8 open to the inspection of any duly authorized rep-
9 resentative of the Commission.

10 “(iii)(I) Except as provided in subclause (II) but not-
11 withstanding any other provision of this Act, no person
12 shall offer to enter into, enter into, or confirm the execu-
13 tion of any option on a security future.

14 “(II) After 3 years after the date of the enactment
15 of the Commodity Futures Modernization Act of 2000, the
16 Commission and the Securities and Exchange Commission
17 may by order jointly determine to permit trading of op-
18 tions on any security future authorized to be traded under
19 the provisions of this Act and the Securities Exchange Act
20 of 1934.

21 “(iv)(I) All relevant records of a futures commission
22 merchant or introducing broker registered pursuant to
23 section 4f(a)(2), floor broker or floor trader exempt from
24 registration pursuant to section 4f(a)(3), associated per-
25 son exempt from registration pursuant to section 4k(6),

1 or board of trade designated as a contract market in a
2 security futures product pursuant to section 5f shall be
3 subject to such reasonable periodic or special examinations
4 by representatives of the Commission as the Commission
5 deems necessary or appropriate in the public interest, for
6 the protection of investors, or otherwise in furtherance of
7 the purposes of this Act, and the Commission, before con-
8 ducting any such examination, shall give notice to the Se-
9 curities and Exchange Commission of the proposed exam-
10 ination and consult with the Securities and Exchange
11 Commission concerning the feasibility and desirability of
12 coordinating the examination with examinations conducted
13 by the Securities and Exchange Commission in order to
14 avoid unnecessary regulatory duplication or undue regu-
15 latory burdens for the registrant or board of trade.

16 “(II) The Commission shall notify the Securities and
17 Exchange Commission of any examination conducted of
18 any futures commission merchant or introducing broker
19 registered pursuant to section 4f(a)(2), floor broker or
20 floor trader exempt from registration pursuant to section
21 4f(a)(3), associated person exempt from registration pur-
22 suant to section 4k(6), or board of trade designated as
23 a contract market in a security futures product pursuant
24 to section 5f, and, upon request, furnish to the Securities
25 and Exchange Commission any examination report and

1 data supplied to or prepared by the Commission in connec-
2 tion with the examination.

3 “(III) Before conducting an examination under sub-
4 clause (I), the Commission shall use the reports of exami-
5 nations, unless the information sought is unavailable in
6 the reports, of any futures commission merchant or intro-
7 ducing broker registered pursuant to section 4f(a)(2),
8 floor broker or floor trader exempt from registration pur-
9 suant to section 4f(a)(3), associated person exempt from
10 registration pursuant to section 4k(6), or board of trade
11 designated as a contract market in a security futures
12 product pursuant to section 5f that is made by the Securi-
13 ties and Exchange Commission, a national securities asso-
14 ciation registered pursuant to section 15A(a) of the Secu-
15 rities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a
16 national securities exchange registered pursuant to section
17 6(a) of the Securities Exchange Act of 1934 (15 U.S.C.
18 78f(a)).

19 “(IV) Any records required under this subsection for
20 a futures commission merchant or introducing broker reg-
21 istered pursuant to section 4f(a)(2), floor broker or floor
22 trader exempt from registration pursuant to section
23 4f(a)(3), associated person exempt from registration pur-
24 suant to section 4k(6), or board of trade designated as
25 a contract market in a security futures product pursuant

1 to section 5f, shall be limited to records with respect to
2 accounts, agreements, contracts, and transactions involv-
3 ing security futures products.

4 “(v)(I) The Commission and the Securities and Ex-
5 change Commission, by rule, regulation, or order, may
6 jointly modify the criteria specified in subclause (I) or
7 (III) of clause (i), including the trading of security futures
8 based on securities other than equity securities, to the ex-
9 tent such modification fosters the development of fair and
10 orderly markets in security futures products, is necessary
11 or appropriate in the public interest, and is consistent with
12 the protection of investors.

13 “(II) The Commission and the Securities and Ex-
14 change Commission, by order, may jointly exempt any per-
15 son from compliance with the criterion specified in clause
16 (i)(IV) to the extent such exemption fosters the develop-
17 ment of fair and orderly markets in security futures prod-
18 ucts, is necessary or appropriate in the public interest, and
19 is consistent with the protection of investors.

20 “(vi)(I) Notwithstanding clauses (i) and (vii), until
21 the compliance date, a board of trade shall not be required
22 to meet the criterion specified in clause (i)(IV).

23 “(II) The Commission and the Securities and Ex-
24 change Commission shall jointly publish in the Federal

1 Register a notice of the compliance date no later than 165
2 days before the compliance date.

3 “(III) For purposes of this clause, the term ‘compli-
4 ance date’ means the later of—

5 “(aa) 180 days after the end of the first full
6 calendar month period in which the average aggre-
7 gate comparable share volume for all security fu-
8 tures products based on single equity securities trad-
9 ed on all designated contract markets and registered
10 derivatives transaction execution facilities equals or
11 exceeds 10 percent of the average aggregate com-
12 parable share volume of options on single equity se-
13 curities traded on all national securities exchanges
14 registered pursuant to section 6(a) of the Securities
15 Exchange Act of 1934 and any national securities
16 associations registered pursuant to section 15A(a) of
17 such Act; or

18 “(bb) 2 years after the date on which trading
19 in any security futures product commences under
20 this Act.

21 “(vii) It shall be unlawful for a board of trade to
22 trade or execute a security futures product unless the
23 board of trade has provided the Commission with a certifi-
24 cation that the specific security futures product and the
25 board of trade, as applicable, meet the criteria specified

1 in subclauses (I) through (XI) of clause (i), except as oth-
2 erwise provided in clause (vi).”.

3 (b) MARGIN ON SECURITY FUTURES.—Section
4 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C.
5 2a(vi)) (as redesignated by section 34) is amended—

6 (1) by redesignating subclause (V) as subclause
7 (VI); and

8 (2) by striking “(vi)(I)” and all that follows
9 through subclause (IV) and inserting the following:

10 “(v)(I) Notwithstanding any other provision of
11 this Act, any contract market in a stock index fu-
12 tures contract (or option thereon) other than a secu-
13 rity futures product, or any derivatives transaction
14 execution facility on which such contract or option
15 is traded, shall file with the Board of Governors of
16 the Federal Reserve System any rule establishing or
17 changing the levels of margin (initial and mainte-
18 nance) for such stock index futures contract (or op-
19 tion thereon) other than security futures products.

20 “(II) The Board may at any time request any
21 contract market or derivatives transaction execution
22 facility to set the margin for any stock index futures
23 contract (or option thereon), other than for any se-
24 curity futures product, at such levels as the Board
25 in its judgment determines are appropriate to pre-

1 serve the financial integrity of the contract market
2 or derivatives transaction execution facility, or its
3 clearing system, or to prevent systemic risk. If the
4 contract market or derivatives transaction execution
5 facility fails to do so within the time specified by the
6 Board in its request, the Board may direct the con-
7 tract market or derivatives transaction execution fa-
8 cility to alter or supplement the rules of the contract
9 market or derivatives transaction execution facility
10 as specified in the request.

11 “(III) Subject to such conditions as the Board
12 may determine, the Board may delegate any or all
13 of its authority, relating to margin for any stock
14 index futures contract (or option thereon), other
15 than security futures products, under this clause to
16 the Commission.

17 “(IV) It shall be unlawful for any futures com-
18 mission merchant to, directly or indirectly, extend or
19 maintain credit to or for, or collect margin from any
20 customer on any security futures product unless
21 such activities comply with the regulations pre-
22 scribed pursuant to section 7(c)(2)(B) of the Securi-
23 ties Exchange Act of 1934.

24 “(V) Nothing in this clause shall supersede or
25 limit the authority granted to the Commission in

1 section 8a(9) to direct a contract market or reg-
2 istered derivatives transaction execution facility, on
3 finding an emergency to exist, to raise temporary
4 margin levels on any futures contract, or option on
5 the contract covered by this clause, or on any secu-
6 rity futures product.”.

7 (c) DUAL TRADING.—Section 4j of the Commodity
8 Exchange Act (7 U.S.C. 6j) is amended to read as follows:

9 **“SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY**
10 **FUTURES PRODUCTS ON DESIGNATED CON-**
11 **TRACT MARKETS AND REGISTERED DERIVA-**
12 **TIVES TRANSACTION EXECUTION FACILITIES.**

13 “(a) The Commission shall issue regulations to pro-
14 hibit the privilege of dual trading in security futures prod-
15 ucts on each contract market and registered derivatives
16 transaction execution facility. The regulations issued by
17 the Commission under this section—

18 “(1) shall provide that the prohibition of dual
19 trading thereunder shall take effect upon issuance of
20 the regulations; and

21 “(2) shall provide exceptions, as the Commis-
22 sion determines appropriate, to ensure fairness and
23 orderly trading in security futures product markets,
24 including—

1 “(A) exceptions for spread transactions
2 and the correction of trading errors;

3 “(B) allowance for a customer to designate
4 in writing not less than once annually a named
5 floor broker to execute orders for such cus-
6 tomer, notwithstanding the regulations to pro-
7 hibit the privilege of dual trading required
8 under this section; and

9 “(C) other measures reasonably designed
10 to accommodate unique or special characteris-
11 tics of individual boards of trade or contract
12 markets, to address emergency or unusual mar-
13 ket conditions, or otherwise to further the pub-
14 lic interest consistent with the promotion of
15 market efficiency, innovation, and expansion of
16 investment opportunities, the protection of in-
17 vestors, and with the purposes of this section.

18 “(b) As used in this section, the term ‘dual trading’
19 means the execution of customer orders by a floor broker
20 during the same trading session in which the floor broker
21 executes any trade in the same contract market or reg-
22 istered derivatives transaction execution facility for—

23 “(1) the account of such floor broker;

24 “(2) an account for which such floor broker has
25 trading discretion; or

1 “(3) an account controlled by a person with
2 whom such floor broker has a relationship through
3 membership in a broker association.

4 “(c) As used in this section, the term ‘broker associa-
5 tion’ shall include two or more contract market members
6 or registered derivatives transaction execution facility
7 members with floor trading privileges of whom at least one
8 is acting as a floor broker, who—

9 “(1) engage in floor brokerage activity on be-
10 half of the same employer,

11 “(2) have an employer and employee relation-
12 ship which relates to floor brokerage activity,

13 “(3) share profits and losses associated with
14 their brokerage or trading activity, or

15 “(4) regularly share a deck of orders.”.

16 (d) EXEMPTION FROM REGISTRATION FOR INVEST-
17 MENT ADVISERS.—Section 4m of the Commodity Ex-
18 change Act (7 U.S.C. 6m) is amended by adding at the
19 end the following:

20 “(3) Subsection (1) of this section shall not apply to
21 any commodity trading advisor that is registered with the
22 Securities and Exchange Commission as an investment ad-
23 viser whose business does not consist primarily of acting
24 as a commodity trading advisor, as defined in section
25 1a(6), and that does not act as a commodity trading advi-

1 sor to any investment trust, syndicate, or similar form of
2 enterprise that is engaged primarily in trading in any com-
3 modity for future delivery on or subject to the rules of
4 any contract market or registered derivatives transaction
5 execution facility.”.

6 (e) EXEMPTION FROM INVESTIGATIONS OF MARKETS
7 IN UNDERLYING SECURITIES.—Section 16 of the Com-
8 modity Exchange Act (7 U.S.C. 20) is amended by adding
9 at the end the following:

10 “(e) This section shall not apply to investigations in-
11 volving any security underlying a security futures prod-
12 uct.”.

13 (f) RULEMAKING AUTHORITY TO ADDRESS DUPLI-
14 CATIVE REGULATION OF DUAL REGISTRANTS.—Section
15 4d of the Commodity Exchange Act (7 U.S.C. 6d) is
16 amended—

17 (1) by inserting “(a)” before the first undesig-
18 nated paragraph;

19 (2) by inserting “(b)” before the second undes-
20 igned paragraph; and

21 (3) by adding at the end the following:

22 “(c) Consistent with this Act, the Commission, in
23 consultation with the Securities and Exchange Commis-
24 sion, shall issue such rules, regulations, or orders as are
25 necessary to avoid duplicative or conflicting regulations

1 applicable to any futures commission merchant registered
2 with the Commission pursuant to section 4f(a) (except
3 paragraph (2) thereof), that is also registered with the
4 Securities and Exchange Commission pursuant to section
5 15(b) of the Securities Exchange Act (except paragraph
6 (11) thereof), involving the application of—

7 “(1) section 8, section 15(e)(3), and section 17
8 of the Securities Exchange Act of 1934 and the
9 rules and regulations thereunder related to the treat-
10 ment of customer funds, securities, or property,
11 maintenance of books and records, financial report-
12 ing or other financial responsibility rules (as defined
13 in section 3(a)(40) of the Securities Exchange Act
14 of 1934), involving security futures products; and

15 “(2) similar provisions of this Act and the rules
16 and regulations thereunder involving security futures
17 products.”.

18 (g) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
19 LATION OF DUAL REGISTRANTS.—Section 17 of the Com-
20 modity Exchange Act (7 U.S.C. 21) is amended by adding
21 at the end the following:

22 “(r) Consistent with this Act, each futures associa-
23 tion registered under this section shall issue such rules
24 as are necessary to avoid duplicative or conflicting rules
25 applicable to any futures commission merchant registered

1 with the Commission pursuant to section 4f(a) of this Act
2 (except paragraph (2) thereof), that is also registered with
3 the Securities and Exchange Commission pursuant to sec-
4 tion 15(b) of the Securities and Exchange Act of 1934
5 (except paragraph (11) thereof), with respect to the appli-
6 cation of—

7 “(1) rules of such futures association of the
8 type specified in section 4d(3) of this Act involving
9 security futures products; and

10 “(2) similar rules of national securities associa-
11 tions registered pursuant to section 15A(a) of the
12 Securities and Exchange Act of 1934 involving secu-
13 rity futures products.”.

14 (h) OBLIGATION TO ADDRESS DUPLICATIVE REGU-
15 LATION OF DUAL REGISTRANTS.—Section 5c of the Com-
16 modity Exchange Act (as added by section 114) is amend-
17 ed by adding at the end the following:

18 “(f) Consistent with this Act, each designated con-
19 tract market and registered derivatives transaction execu-
20 tion facility shall issue such rules as are necessary to avoid
21 duplicative or conflicting rules applicable to any futures
22 commission merchant registered with the Commission pur-
23 suant to section 4f(a) of this Act (except paragraph (2)
24 thereof), that is also registered with the Securities and
25 Exchange Commission pursuant to section 15(b) of the

1 Securities Exchange Act of 1934 (except paragraph (11)
2 thereof) with respect to the application of—

3 “(1) rules of such designated contract market
4 or registered derivatives transaction execution facil-
5 ity of the type specified in section 4d(3) of this Act
6 involving security futures products; and

7 “(2) similar rules of national securities associa-
8 tions registered pursuant to section 15A(a) of the
9 Securities Exchange Act of 1934 and national secu-
10 rities exchanges registered pursuant to section 6(g)
11 of such Act involving security futures products.”.

12 (i) OBLIGATION TO ADDRESS SECURITY FUTURES
13 PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section
14 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a,
15 and 4) is amended by adding at the end the following:

16 “(E)(i) To the extent necessary or appropriate in the
17 public interest, to promote fair competition, and consistent
18 with promotion of market efficiency, innovation, and ex-
19 pansion of investment opportunities, the protection of in-
20 vestors, and the maintenance of fair and orderly markets,
21 the Commission and the Securities and Exchange Com-
22 mission shall jointly issue such rules, regulations, or or-
23 ders as are necessary and appropriate to permit the offer
24 and sale of a security futures product traded on or subject

1 to the rules of a foreign board of trade to United States
2 persons.

3 “(ii) The rules, regulations, or orders adopted under
4 clause (i) shall take into account, as appropriate, the na-
5 ture and size of the markets that the securities underlying
6 the security futures product reflects.”.

7 (j) SECURITY FUTURES PRODUCTS TRADED ON
8 FOREIGN BOARDS OF TRADE.—Section 2(a)(1) of the
9 Commodity Exchange Act (7 U.S.C. 2, 2a, and 4) is
10 amended by adding at the end the following:

11 “(F)(i) Nothing in this Act is intended to prohibit
12 a futures commission merchant from carrying security fu-
13 tures products traded on or subject to the rules of a for-
14 eign board of trade in the accounts of persons located out-
15 side of the United States.

16 “(ii) Nothing in this Act is intended to prohibit any
17 eligible contract participant located in the United States
18 from purchasing or carrying securities futures products
19 traded on or subject to the rules of a foreign board of
20 trade, exchange, or market to the same extent such person
21 may be authorized to purchase or carry other securities
22 traded on a foreign board of trade, exchange, or market
23 so long as any underlying security for such security fu-
24 tures products is traded principally on, by, or through any
25 exchange or market located outside the United States.”.

1 **SEC. 252. APPLICATION OF THE COMMODITY EXCHANGE**
2 **ACT TO NATIONAL SECURITIES EXCHANGES**
3 **AND NATIONAL SECURITIES ASSOCIATIONS**
4 **THAT TRADE SECURITY FUTURES.**

5 (a) NOTICE DESIGNATION OF NATIONAL SECURITIES
6 EXCHANGES AND NATIONAL SECURITIES ASSOCIA-
7 TIONS.—The Commodity Exchange Act is amended by in-
8 serting after section 5e (7 U.S.C. 7b), as redesignated by
9 section 21(1), the following:

10 **“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND**
11 **ASSOCIATIONS AS CONTRACT MARKETS.**

12 “(a) Any board of trade that is registered with the
13 Securities and Exchange Commission as a national securi-
14 ties exchange, is a national securities association reg-
15 istered pursuant to section 15A(a) of the Securities Ex-
16 change Act of 1934, or is an alternative trading system
17 shall be a designated contract market in security futures
18 products if—

19 “(1) such national securities exchange, national
20 securities association, or alternative trading system
21 lists or trades no other contracts of sale for future
22 delivery, except for security futures products;

23 “(2) such national securities exchange, national
24 securities association, or alternative trading system
25 files written notice with the Commission in such
26 form as the Commission, by rule, may prescribe con-

1 taining such information as the Commission, by rule,
2 may prescribe as necessary or appropriate in the
3 public interest or for the protection of customers;
4 and

5 “(3) the registration of such national securities
6 exchange, national securities association, or alter-
7 native trading system is not suspended pursuant to
8 an order by the Securities and Exchange Commis-
9 sion.

10 Such designation shall be effective contemporaneously
11 with the submission of notice, in written or electronic
12 form, to the Commission.

13 “(b)(1) A national securities exchange, national secu-
14 rities association, or alternative trading system that is des-
15 ignated as a contract market pursuant to section 5f shall
16 be exempt from the following provisions of this Act and
17 the rules thereunder:

18 “(A) Subsections (c), (e), and (g) of section 4e.

19 “(B) Section 4j.

20 “(C) Section 5.

21 “(D) Section 5c.

22 “(E) Section 6a.

23 “(F) Section 8(d).

24 “(G) Section 9(f).

25 “(H) Section 16.

1 “(2) An alternative trading system that is a des-
2 igned contract market under this section shall be re-
3 quired to be a member of a futures association registered
4 under section 17 and shall be exempt from any provision
5 of this Act that would require such alternative trading sys-
6 tem to—

7 “(A) set rules governing the conduct of sub-
8 scribers other than the conduct of such subscribers’
9 trading on such alternative trading system; or

10 “(B) discipline subscribers other than by exclu-
11 sion from trading.

12 “(3) To the extent that an alternative trading system
13 is exempt from any provision of this Act pursuant to para-
14 graph (2) of this subsection, the futures association reg-
15 istered under section 17 of which the alternative trading
16 system is a member shall set rules governing the conduct
17 of subscribers to the alternative trading system and dis-
18 cipline the subscribers.

19 “(4)(A) Except as provided in subparagraph (B), but
20 notwithstanding any other provision of this Act, the Com-
21 mission, by rule, regulation, or order, may conditionally
22 or unconditionally exempt any designated contract market
23 in security futures subject to the designation requirement
24 of this section from any provision of this Act or of any
25 rule or regulation thereunder, to the extent such exemp-

1 tion is necessary or appropriate in the public interest and
2 is consistent with the protection of investors.

3 “(B) The Commission shall, by rule or regulation, de-
4 termine the procedures under which an exemptive order
5 under this section is granted and may, in its sole discre-
6 tion, decline to entertain any application for an order of
7 exemption under this section.

8 “(C) An alternative trading system shall not be
9 deemed to be an exchange for any purpose as a result of
10 the designation of such alternative trading system as a
11 contract market under this section.”.

12 (b) NOTICE REGISTRATION OF CERTAIN SECURITIES
13 BROKER-DEALERS; EXEMPTION FROM REGISTRATION
14 FOR CERTAIN SECURITIES BROKER-DEALERS.—Section
15 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a))
16 is amended—

17 (1) by inserting “(1)” after “(a)”; and

18 (2) by adding at the end the following:

19 “(2) Notwithstanding paragraph (1), and except as
20 provided in paragraph (3), any broker or dealer that is
21 registered with the Securities and Exchange Commission
22 shall be registered as a futures commission merchant or
23 introducing broker, as applicable, if—

24 “(A) the broker or dealer limits its solicitation
25 of orders, acceptance of orders, or execution of or-

1 ders, or placing of orders on behalf of others involv-
2 ing any contracts of sale of any commodity for fu-
3 ture delivery, on or subject to the rules of any con-
4 tract market or registered derivatives transaction
5 execution facility to security futures products;

6 “(B) the broker or dealer files written notice
7 with the Commission in such form as the Commis-
8 sion, by rule, may prescribe containing such infor-
9 mation as the Commission, by rule, may prescribe as
10 necessary or appropriate in the public interest or for
11 the protection of investors;

12 “(C) the registration of the broker or dealer is
13 not suspended pursuant to an order of the Securities
14 and Exchange Commission; and

15 “(D) the broker or dealer is a member of a na-
16 tional securities association registered pursuant to
17 section 15A(a) of the Securities Exchange Act of
18 1934.

19 The registration shall be effective contemporaneously with
20 the submission of notice, in written or electronic form, to
21 the Commission.

22 “(3) A floor broker or floor trader shall be exempt
23 from the registration requirements of section 4e and para-
24 graph (1) of this subsection if—

1 “(A) the floor broker or floor trader is a broker
2 or dealer registered with the Securities and Ex-
3 change Commission;

4 “(B) the floor broker or floor trader limits its
5 solicitation of orders, acceptance of orders, or execu-
6 tion of orders, or placing of orders on behalf of oth-
7 ers involving any contracts of sale of any commodity
8 for future delivery, on or subject to the rules of any
9 contract market to security futures products; and

10 “(C) the registration of the floor broker or floor
11 trader is not suspended pursuant to an order of the
12 Securities and Exchange Commission.”.

13 (c) EXEMPTION FOR SECURITIES BROKER-DEALERS
14 FROM CERTAIN PROVISIONS OF THE COMMODITY EX-
15 CHANGE ACT.—Section 4f(a) of the Commodity Exchange
16 Act (7 U.S.C. 6f(a)) is amended by inserting after para-
17 graph (3), as added by subsection (b) of this section, the
18 following:

19 “(4)(A) A broker or dealer that is registered as a fu-
20 tures commission merchant or introducing broker pursu-
21 ant to paragraph (2), or that is a floor broker or floor
22 trader exempt from registration pursuant to paragraph
23 (3), shall be exempt from the following provisions of this
24 Act and the rules thereunder:

1 “(i) Subsections (b), (d), (e), and (g) of section
2 4c.

3 “(ii) Sections 4d, 4e, and 4h.

4 “(iii) Subsections (b) and (c) of this section.

5 “(iv) Section 4j.

6 “(v) Section 4k(1).

7 “(vi) Section 4p.

8 “(vii) Section 6d.

9 “(viii) Subsections (d) and (g) of section 8.

10 “(ix) Section 16.

11 “(B)(i) Except as provided in clause (ii) of this sub-
12 paragraph, but notwithstanding any other provision of this
13 Act, the Commission, by rule, regulation, or order, may
14 conditionally or unconditionally exempt any broker or
15 dealer subject to the registration requirement of para-
16 graph (2), or any broker or dealer exempt from registra-
17 tion pursuant to paragraph (3), from any provision of this
18 Act or of any rule or regulation thereunder, to the extent
19 the exemption is necessary or appropriate in the public
20 interest and is consistent with the protection of investors.

21 “(ii) The Commission shall, by rule or regulation, de-
22 termine the procedures under which an exemptive order
23 under this section shall be granted and may, in its sole
24 discretion, decline to entertain any application for an
25 order of exemption under this section.

1 “(C)(i) A broker or dealer that is registered as a fu-
2 tures commission merchant or introducing broker pursu-
3 ant to paragraph (2) or an associated person thereof, or
4 that is a floor broker or floor trader exempt from registra-
5 tion pursuant to paragraph (3), shall not be required to
6 become a member of any futures association registered
7 under section 17.

8 “(ii) No futures association registered under section
9 17 shall limit its members from carrying an account, ac-
10 cepting an order, or transacting business with a broker
11 or dealer that is registered as a futures commission mer-
12 chant or introducing broker pursuant to paragraph (2) or
13 an associated person thereof, or that is a floor broker or
14 floor trader exempt from registration pursuant to para-
15 graph (3).”.

16 (d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SE-
17 CURITIES BROKER-DEALERS.—Section 4k of the Com-
18 modity Exchange Act (7 U.S.C. 6k), is amended by insert-
19 ing after paragraph (4), as added by subsection (c) of this
20 section, the following:

21 “(5) Any associated person of a broker or dealer that
22 is registered with the Securities and Exchange Commis-
23 sion, and who limits its solicitation of orders, acceptance
24 of orders, or execution of orders, or placing of orders on
25 behalf of others involving any contracts of sale of any com-

1 modify for future delivery or any option on such a con-
2 tract, on or subject to the rules of any contract market
3 or registered derivatives transaction execution facility to
4 security futures products, shall be exempt from the fol-
5 lowing provisions of this Act and the rules thereunder:

6 “(A) Subsections (b), (d), (e), and (g) of section
7 4c.

8 “(B) Sections 4d, 4e, and 4h.

9 “(C) Subsections (b) and (c) of section 4f.

10 “(D) Section 4j.

11 “(E) Paragraph (1) of this section.

12 “(F) Section 4p.

13 “(G) Section 6d.

14 “(H) Subsections (d) and (g) of section 8.

15 “(I) Section 16.”.

16 **SEC. 253. NOTIFICATION OF INVESTIGATIONS AND EN-**
17 **FORCEMENT ACTIONS.**

18 (a) Section 8(a) of the Commodity Exchange Act (7
19 U.S.C. 12(a)) is amended by adding at the end the fol-
20 lowing:

21 “(3) The Commission shall provide the Securities and
22 Exchange Commission with notice of the commencement
23 of any proceeding and a copy of any order entered by the
24 Commission against any futures commission merchant or
25 introducing broker registered pursuant to section 4f(a)(2),

1 any floor broker or floor trader exempt from registration
2 pursuant to section 4f(a)(3), any associated person exempt
3 from registration pursuant to section 4k(6), or any board
4 of trade designated as a contract market pursuant to sec-
5 tion 5f.”.

6 (b) Section 6 of the Commodity Exchange Act (7
7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at
8 the end the following:

9 “(g) The Commission shall provide the Securities and
10 Exchange Commission with notice of the commencement
11 of any proceeding and a copy of any order entered by the
12 Commission pursuant to subsections (c) and (d) of this
13 section against any futures commission merchant or intro-
14 ducing broker registered pursuant to section 4f(a)(2), any
15 floor broker or floor trader exempt from registration pur-
16 suant to section 4f(a)(3), any associated person exempt
17 from registration pursuant to section 4k(6), or any board
18 of trade designated as a contract market pursuant to sec-
19 tion 5f.”.

20 (c) Section 6c of the Commodity Exchange Act (7
21 U.S.C. 13a-1) is amended by adding at the end the fol-
22 lowing:

23 “(h) The Commission shall provide the Securities and
24 Exchange Commission with notice of the commencement
25 of any proceeding and a copy of any order entered by the

1 Commission against any futures commission merchant or
2 introducing broker registered pursuant to section 4f(a)(2),
3 any floor broker or floor trader exempt from registration
4 pursuant to section 4f(a)(3), any associated person exempt
5 from registration pursuant to section 4k(6), or any board
6 of trade designated as a contract market pursuant to sec-
7 tion 5f.”.

8 **TITLE III—LEGAL CERTAINTY**
9 **FOR SWAP AGREEMENTS**

10 **SEC. 301. SWAP AGREEMENT.**

11 (a) AMENDMENT.—Title II of the Gramm-Leach-Bli-
12 ley Act (Public Law 106–102) is amended by inserting
13 after section 206 the following new sections:

14 **“SEC. 206A. SWAP AGREEMENT.**

15 “(a) IN GENERAL.—Except as provided in subsection
16 (b), as used in this section, the term ‘swap agreement’
17 means any agreement, contract, or transaction between el-
18 igible contract participants (as defined in section 1a(12)
19 of the Commodity Exchange Act as in effect on the date
20 of the enactment of this section), other than a person that
21 is an eligible contract participant under section 1a(12)(C)
22 of the Commodity Exchange Act, the material terms of
23 which (other than price and quantity) are subject to indi-
24 vidual negotiation, and that—

1 “(1) is a put, call, cap, floor, collar, or similar
2 option of any kind for the purchase or sale of, or
3 based on the value of, one or more interest or other
4 rates, currencies, commodities, indices, quantitative
5 measures, or other financial or economic interests or
6 property of any kind;

7 “(2) provides for any purchase, sale, payment
8 or delivery (other than a dividend on an equity secu-
9 rity) that is dependent on the occurrence, non-occur-
10 rence, or the extent of the occurrence of an event or
11 contingency associated with a potential financial,
12 economic, or commercial consequence;

13 “(3) provides on an executory basis for the ex-
14 change, on a fixed or contingent basis, of one or
15 more payments based on the value or level of one or
16 more interest or other rates, currencies, commod-
17 ities, securities, instruments of indebtedness, indices,
18 quantitative measures, or other financial or eco-
19 nomic interests or property of any kind, or any in-
20 terest therein or based on the value thereof, and
21 that transfers, as between the parties to the trans-
22 action, in whole or in part, the financial risk associ-
23 ated with a future change in any such value or level
24 without also conveying a current or future direct or
25 indirect ownership interest in an asset (including

1 any enterprise or investment pool) or liability that
2 incorporates the financial risk so transferred, includ-
3 ing any such agreement, contract, or transaction
4 commonly known as an interest rate swap, including
5 a rate floor, rate cap, rate collar, cross-currency rate
6 swap, basis swap, currency swap, equity index swap,
7 equity swap, debt index swap, debt swap, credit
8 spread, credit default swap, credit swap, weather
9 swap, or commodity swap;

10 “(4) provides for the purchase or sale, on a
11 fixed or contingent basis, of any commodity, cur-
12 rency, instrument, interest, right, service, good, arti-
13 cle, or property of any kind; or

14 “(5) is any combination or permutation of, or
15 option on, any agreement, contract, or transaction
16 described in any of paragraphs (1) through (4).

17 “(b) EXCLUSIONS.—The term ‘swap agreement’ does
18 not include—

19 “(1) any put, call, straddle, option, or privilege
20 on any security, certificate of deposit, or group or
21 index of securities, including any interest therein or
22 based on the value thereof;

23 “(2) any put, call, straddle, option, or privilege
24 entered into on a national securities exchange reg-

1 istered pursuant to section 6(a) of the Securities Ex-
2 change Act of 1934 relating to foreign currency;

3 “(3) any agreement, contract, or transaction
4 providing for the purchase or sale of one or more se-
5 curities on a fixed basis;

6 “(4) any agreement, contract, or transaction
7 providing for the purchase or sale of one or more se-
8 curities on a contingent basis, unless such agree-
9 ment, contract, or transaction predicates such pur-
10 chase or sale on the occurrence of a bona fide con-
11 tingency that might reasonably be expected to affect
12 or be affected by the creditworthiness of a party
13 other than a party to the agreement, contract, or
14 transaction;

15 “(5) any note, bond, or evidence of indebted-
16 ness that is a security as defined in section 2(a)(1)
17 of the Securities Act of 1933 or section 3(a)(10) of
18 the Securities Exchange Act of 1934; or

19 “(6) any agreement, contract, or transaction
20 that is—

21 “(A) based on a security; and

22 “(B) entered into directly or through an
23 underwriter (as defined in section 2(a) of the
24 Securities Act of 1933) by the issuer of such se-
25 curity for the purposes of raising capital, unless

1 such agreement, contract, or transaction is en-
2 tered into to manage a risk associated with cap-
3 ital raising.

4 “(c) **RULE OF CONSTRUCTION REGARDING MASTER**
5 **AGREEMENTS.**—As used in this section, the term ‘swap
6 agreement’ shall be construed to include a master agree-
7 ment that provides for an agreement, contract, or trans-
8 action that is a swap agreement pursuant to subsections
9 (a) and (b), together with all supplements to any such
10 master agreement, without regard to whether the master
11 agreement contains an agreement, contract, or transaction
12 that is not a swap agreement pursuant to subsections (a)
13 and (b), except that the master agreement shall be consid-
14 ered to be a swap agreement only with respect to each
15 agreement, contract, or transaction under the master
16 agreement that is a swap agreement pursuant to sub-
17 sections (a) and (b).

18 **“SEC. 206B. SECURITY-BASED SWAP AGREEMENT.**

19 “As used in this section, the term ‘security-based
20 swap agreement’ means a swap agreement (as defined in
21 section 206A) of which a material term is based on the
22 price, yield, value, or volatility of any security or any
23 group or index of securities, or any interest therein.

1 **“SEC. 206C. NON-SECURITY-BASED SWAP AGREEMENT.**

2 “As used in this section, the term ‘non-security-based
3 swap agreement’ means any swap agreement (as defined
4 in section 206A) that is not a security-based swap agree-
5 ment (as defined in section 206B).”.

6 (b) SECURITY DEFINITION.—As used in the amend-
7 ment made by subsection (a), the term “security” has the
8 same meaning as in section 2(a)(1) of the Securities Act
9 of 1933 or section 3(a)(10) of the Securities Exchange
10 Act of 1934.

11 **SEC. 302. AMENDMENTS TO THE SECURITIES ACT OF 1933.**

12 (a) ENFORCEMENT FOCUS.—The Securities Act of
13 1933 is amended by inserting after section 2 (15 U.S.C.
14 77b) the following new section:

15 **“SEC. 2A. SWAP AGREEMENTS.**

16 “(a) NON-SECURITY-BASED SWAP AGREEMENTS.—
17 The definition of ‘security’ in section 2(a)(1) of this title
18 does not include any non-security-based swap agreement
19 (as defined in section 206C of the Gramm-Leach-Bliley
20 Act).

21 “(b) SECURITY-BASED SWAP AGREEMENTS.—

22 “(1) The definition of ‘security’ in section
23 2(a)(1) of this title does not include any security-
24 based swap agreement (as defined in section 206B
25 of the Gramm-Leach-Bliley Act).

1 “(2) The Commission is prohibited from reg-
2 istering, or requiring, recommending, or suggesting,
3 the registration under this title of any security-based
4 swap agreement (as defined in section 206B of the
5 Gramm-Leach-Bliley Act). If the Commission be-
6 comes aware that a registrant has filed a registra-
7 tion statement with respect to such a swap agree-
8 ment, the Commission shall promptly so notify the
9 registrant. Any such registration statement with re-
10 spect to such a swap agreement shall be void and of
11 no force or effect.

12 “(3) The Commission is prohibited from—

13 “(A) promulgating, interpreting, or enforce-
14 ing rules; or

15 “(B) issuing orders of general applicability;
16 under this title in a manner that imposes or speci-
17 fies reporting or recordkeeping requirements, proce-
18 dures, or standards as prophylactic measures against
19 fraud, manipulation, or insider trading with respect
20 to any security-based swap agreement (as defined in
21 section 206B of the Gramm-Leach-Bliley Act).

22 “(4) References in this title to the ‘purchase’ or
23 ‘sale’ of a security-based swap agreement shall be
24 deemed to mean the execution, termination (prior to
25 its scheduled maturity date), assignment, exchange,

1 or similar transfer or conveyance of, or extinguishing
2 of rights or obligations under, a security-based swap
3 agreement (as defined in section 206B of the
4 Gramm-Leach-Bliley Act), as the context may re-
5 quire.”.

6 (b) ANTI-FRAUD AND ANTI-MANIPULATION EN-
7 FORCEMENT AUTHORITY.—Section 17(a) of the Securities
8 Act of 1933 (15 U.S.C. 77q(a)) is amended to read as
9 follows:

10 “(a) It shall be unlawful for any person in the offer
11 or sale of any securities or any security-based swap agree-
12 ment (as defined in section 206B of the Gramm-Leach-
13 Bliley Act) by the use of any means or instruments of
14 transportation or communication in interstate commerce
15 or by use of the mails, directly or indirectly—

16 “(1) to employ any device, scheme, or artifice to
17 defraud, or

18 “(2) to obtain money or property by means of
19 any untrue statement of a material fact or any omis-
20 sion to state a material fact necessary in order to
21 make the statements made, in light of the cir-
22 cumstances under which they were made, not mis-
23 leading; or

1 “(3) to engage in any transaction, practice, or
2 course of business which operates or would operate
3 as a fraud or deceit upon the purchaser.”.

4 (c) LIMITATION.—Section 17 of the Securities Act of
5 1933 is amended by adding at the end the following new
6 subsection:

7 “(d) The authority of the Commission under this sec-
8 tion with respect to security-based swap agreements (as
9 defined in section 206B of the Gramm-Leach-Bliley Act)
10 shall be subject to the restrictions and limitations of sec-
11 tion 2A(b) of this title.”.

12 **SEC. 303. AMENDMENTS TO THE SECURITIES EXCHANGE**
13 **ACT OF 1934.**

14 (a) ENFORCEMENT FOCUS.—The Securities Ex-
15 change Act of 1934 is amended by inserting after section
16 3 (15 U.S.C. 78c) the following new section:

17 **“SEC. 3A. SWAP AGREEMENTS.**

18 “(a) NON-SECURITY-BASED SWAP AGREEMENTS.—
19 The definition of ‘security’ in section 3(a)(10) of this title
20 does not include any non-security-based swap agreement
21 (as defined in section 206C of the Gramm-Leach-Bliley
22 Act).

23 “(b) SECURITY-BASED SWAP AGREEMENTS.—

24 “(1) The definition of ‘security’ in section
25 3(a)(10) of this title does not include any security-

1 based swap agreement (as defined in section 206B
2 of the Gramm-Leach-Bliley Act).

3 “(2) The Commission is prohibited from reg-
4 istering, or requiring, recommending, or suggesting,
5 the registration under this title of any security-based
6 swap agreement (as defined in section 206B of the
7 Gramm-Leach-Bliley Act). If the Commission be-
8 comes aware that a registrant has filed a registra-
9 tion application with respect to such a swap agree-
10 ment, the Commission shall promptly so notify the
11 registrant. Any such registration with respect to
12 such a swap agreement shall be void and of no force
13 or effect.

14 “(3) Except as provided in section 16(a) with
15 respect to reporting requirements, the Commission is
16 prohibited from—

17 “(A) promulgating, interpreting, or enforce-
18 ing rules; or

19 “(B) issuing orders of general applicability;
20 under this title in a manner that imposes or speci-
21 fies reporting or recordkeeping requirements, proce-
22 dures, or standards as prophylactic measures against
23 fraud, manipulation, or insider trading with respect
24 to any security-based swap agreement (as defined in
25 section 206B of the Gramm-Leach-Bliley Act).

1 “(4) References in this title to the ‘purchase’ or
2 ‘sale’ of a security-based swap agreement (as defined
3 in section 206B of the Gramm-Leach-Bliley Act)
4 shall be deemed to mean the execution, termination
5 (prior to its scheduled maturity date), assignment,
6 exchange, or similar transfer or conveyance of, or
7 extinguishing of rights or obligations under, a secu-
8 rity-based swap agreement, as the context may re-
9 quire.”.

10 (b) ANTI-FRAUD, ANTI-MANIPULATION ENFORCE-
11 MENT AUTHORITY.—Paragraphs (2) through (5) of sec-
12 tion 9(a) of the Securities Exchange Act of 1934 (15
13 U.S.C. 78i(a)(2)–(5)) are amended to read as follows:

14 “(2) To effect, alone or with one or more other per-
15 sons, a series of transactions in any security registered
16 on a national securities exchange or in connection with
17 any security-based swap agreement (as defined in section
18 206B of the Gramm-Leach-Bliley Act) with respect to
19 such security creating actual or apparent active trading
20 in such security, or raising or depressing the price of such
21 security, for the purpose of inducing the purchase or sale
22 of such security by others.

23 “(3) If a dealer or broker, or other person selling or
24 offering for sale or purchasing or offering to purchase the
25 security or a security-based swap agreement (as defined

1 in section 206B of the Gramm-Leach-Bliley Act) with re-
2 spect to such security, to induce the purchase or sale of
3 any security registered on a national securities exchange
4 or any security-based swap agreement (as defined in sec-
5 tion 206B of the Gramm-Leach-Bliley Act) with respect
6 to such security by the circulation or dissemination in the
7 ordinary course of business of information to the effect
8 that the price of any such security will or is likely to rise
9 or fall because of market operations of any one or more
10 persons conducted for the purpose of raising or depressing
11 the price of such security.

12 “(4) If a dealer or broker, or the person selling or
13 offering for sale or purchasing or offering to purchase the
14 security or a security-based swap agreement (as defined
15 in section 206B of the Gramm-Leach-Bliley Act) with re-
16 spect to such security, to make, regarding any security
17 registered on a national securities exchange or any secu-
18 rity-based swap agreement (as defined in section 206B of
19 the Gramm-Leach-Bliley Act) with respect to such secu-
20 rity, for the purpose of inducing the purchase or sale of
21 such security or such security-based swap agreement, any
22 statement which was at the time and in the light of the
23 circumstances under which it was made, false or mis-
24 leading with respect to any material fact, and which he

1 knew or had reasonable ground to believe was so false or
2 misleading.

3 “(5) For a consideration, received directly or indi-
4 rectly from a dealer or broker, or other person selling or
5 offering for sale or purchasing or offering to purchase the
6 security or a security-based swap agreement (as defined
7 in section 206B of the Gramm-Leach-Bliley Act) with re-
8 spect to such security, to induce the purchase of any secu-
9 rity registered on a national securities exchange or any
10 security-based swap agreement (as defined in section
11 206B of the Gramm-Leach-Bliley Act) with respect to
12 such security by the circulation or dissemination of infor-
13 mation to the effect that the price of any such security
14 will or is likely to rise or fall because of the market oper-
15 ations of any one or more persons conducted for the pur-
16 pose of raising or depressing the price of such security.”.

17 (c) LIMITATION.—Section 9 of the Securities Ex-
18 change Act of 1934 is amended by adding at the end the
19 following new subsection:

20 “(i) The authority of the Commission under this sec-
21 tion with respect to security-based swap agreements (as
22 defined in section 206B of the Gramm-Leach-Bliley Act)
23 shall be subject to the restrictions and limitations of sec-
24 tion 3A(b) of this title.”.

1 (d) REGULATIONS ON THE USE OF MANIPULATIVE
2 AND DECEPTIVE DEVICES.—Section 10 of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78j) is amended—

4 (1) in subsection (b), by inserting “or any secu-
5 rities-based swap agreement (as defined in section
6 206B of the Gramm-Leach-Bliley Act),” before “any
7 manipulative or deceptive device”; and

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

9 “Rules promulgated under subsection (b) that prohibit
10 fraud, manipulation, or insider trading (but not rules im-
11 posing or specifying reporting or recordkeeping require-
12 ments, procedures, or standards as prophylactic measures
13 against fraud, manipulation, or insider trading), and judi-
14 cial precedents decided under subsection (b) and rules pro-
15 mulgated thereunder that prohibit fraud, manipulation, or
16 insider trading, shall apply to security-based swap agree-
17 ments (as defined in section 206B of the Gramm-Leach-
18 Bliley Act) to the same extent as they apply to securities.
19 Judicial precedents decided under section 17(a) of the Se-
20 curities Act of 1933 and sections 9, 15, 16, 20, and 21A
21 of this title, and judicial precedents decided under applica-
22 ble rules promulgated under such sections, shall apply to
23 security-based swap agreements (as defined in section
24 206B of the Gramm-Leach-Bliley Act) to the same extent
25 as they apply to securities.”.

1 (e) BROKER, DEALER ANTI-FRAUD, ANTI-MANIPU-
2 LATION ENFORCEMENT AUTHORITY.—Section 15(c)(1) of
3 the Securities Exchange Act of 1934 (15 U.S.C.
4 78o(c)(1)) is amended to read as follows:

5 “(c)(1)(A) No broker or dealer shall make use of the
6 mails or any means or instrumentality of interstate com-
7 merce to effect any transaction in, or to induce or attempt
8 to induce the purchase or sale of, any security (other than
9 commercial paper, bankers’ acceptances, or commercial
10 bills) otherwise than on a national securities exchange of
11 which it is a member, or any security-based swap agree-
12 ment (as defined in section 206B of the Gramm-Leach-
13 Bliley Act), by means of any manipulative, deceptive, or
14 other fraudulent device or contrivance.

15 “(B) No municipal securities dealer shall make use
16 of the mails or any means or instrumentality of interstate
17 commerce to effect any transaction in, or to induce or at-
18 tempt to induce the purchase or sale of, any municipal
19 security or any security-based swap agreement (as defined
20 in section 206B of the Gramm-Leach-Bliley Act) involving
21 a municipal security by means of any manipulative, decep-
22 tive, or other fraudulent device or contrivance.

23 “(C) No government securities broker or government
24 securities dealer shall make use of the mails or any means
25 or instrumentality of interstate commerce to effect any

1 transaction in, or to induce or to attempt to induce the
2 purchase or sale of, any government security or any secu-
3 rity-based swap agreement (as defined in section 206B of
4 the Gramm-Leach-Bliley Act) involving a government se-
5 curity by means of any manipulative, deceptive, or other
6 fraudulent device or contrivance.”.

7 (f) LIMITATION.—Section 15 of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78o) is amended by adding
9 at the end the following new subsection:

10 “(i) The authority of the Commission under this sec-
11 tion with respect to security-based swap agreements (as
12 defined in section 206B of the Gramm-Leach-Bliley Act)
13 shall be subject to the restrictions and limitations of sec-
14 tion 3A(b) of this title.”.

15 (g) ANTI-INSIDER TRADING ENFORCEMENT AU-
16 THORITY.—Subsections (a) and (b) of section 16 (15
17 U.S.C. 78p(a), (b)) of the Securities Exchange of 1934
18 are amended to read as follows:

19 “(a) Every person who is directly or indirectly the
20 beneficial owner of more than 10 per centum of any class
21 of any equity security (other than an exempted security)
22 which is registered pursuant to section 12 of this title,
23 or who is a director or an officer of the issuer of such
24 security, shall file, at the time of the registration of such
25 security on a national securities exchange or by the effec-

1 tive date of a registration statement filed pursuant to sec-
2 tion 12(g) of this title, or within ten days after he becomes
3 such beneficial owner, director, or officer, a statement
4 with the Commission (and, if such security is registered
5 on a national securities exchange, also with the exchange)
6 of the amount of all equity securities of such issuer of
7 which he is the beneficial owner, and within ten days after
8 the close of each calendar month thereafter, if there has
9 been a change in such ownership or if such person shall
10 have purchased or sold a security-based swap agreement
11 (as defined in section 206B of the Gramm-Leach-Bliley
12 Act) involving such equity security during such month,
13 shall file with the Commission (and if such security is reg-
14 istered on a national securities exchange, shall also file
15 with the exchange), a statement indicating his ownership
16 at the close of the calendar month and such changes in
17 his ownership and such purchases and sales of such secu-
18 rity-based swap agreements as have occurred during such
19 calendar month.

20 “(b) For the purpose of preventing the unfair use of
21 information which may have been obtained by such bene-
22 ficial owner, director, or officer by reason of his relation-
23 ship to the issuer, any profit realized by him from any
24 purchase and sale, or any sale and purchase, of any equity
25 security of such issuer (other than an exempted security)

1 or a security-based swap agreement (as defined in section
2 206B of the Gramm-Leach-Bliley Act) involving any such
3 equity security within any period of less than six months,
4 unless such security or security-based swap agreement was
5 acquired in good faith in connection with a debt previously
6 contracted, shall inure to and be recoverable by the issuer,
7 irrespective of any intention on the part of such beneficial
8 owner, director, or officer in entering into such transaction
9 of holding the security or security-based swap agreement
10 purchased or of not repurchasing the security or security-
11 based swap agreement sold for a period exceeding six
12 months. Suit to recover such profit may be instituted at
13 law or in equity in any court of competent jurisdiction by
14 the issuer, or by the owner of any security of the issuer
15 in the name and in behalf of the issuer if the issuer shall
16 fail or refuse to bring such suit within sixty days after
17 request or shall fail diligently to prosecute the same there-
18 after; but no such suit shall be brought more than two
19 years after the date such profit was realized. This sub-
20 section shall not be construed to cover any transaction
21 where such beneficial owner was not such both at the time
22 of the purchase and sale, or the sale and purchase, of the
23 security or security-based swap agreement (as defined in
24 section 206B of the Gramm-Leach-Bliley Act) involved, or
25 any transaction or transactions which the Commission by

1 rules and regulations may exempt as not comprehended
2 within the purpose of this subsection.”.

3 (h) LIMITATION.—Section 16 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78p) is amended by adding
5 at the end the following new subsection:

6 “(g) The authority of the Commission under this sec-
7 tion with respect to security-based swap agreements (as
8 defined in section 206B of the Gramm-Leach-Bliley Act)
9 shall be subject to the restrictions and limitations of sec-
10 tion 3A(b) of this title.”.

11 (i) MATERIAL NONPUBLIC INFORMATION.—Section
12 20(d) of the Securities Exchange Act of 1934 (15 U.S.C.
13 78t(d)) is amended to read as follows:

14 “(d) Wherever communicating, or purchasing or sell-
15 ing a security while in possession of, material nonpublic
16 information would violate, or result in liability to any pur-
17 chaser or seller of the security under any provisions of
18 this title, or any rule or regulation thereunder, such con-
19 duct in connection with a purchase or sale of a put, call,
20 straddle, option, privilege or security-based swap agree-
21 ment (as defined in section 206B of the Gramm-Leach-
22 Bliley Act) with respect to such security or with respect
23 to a group or index of securities including such security,
24 shall also violate and result in comparable liability to any

1 purchaser or seller of that security under such provision,
2 rule, or regulation.”.

3 (j) LIMITATION.—Section 20 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78t) is amended by adding
5 at the end the following new subsection:

6 “(f) The authority of the Commission under this sec-
7 tion with respect to security-based swap agreements (as
8 defined in section 206B of the Gramm-Leach-Bliley Act)
9 shall be subject to the restrictions and limitations of sec-
10 tion 3A(b) of this title.”.

11 (k) CIVIL PENALTIES.—Section 21A(a)(1) of the Se-
12 curities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(1))
13 is amended by inserting after “purchasing or selling a se-
14 curity” the following: “or security-based swap agreement
15 (as defined in section 206B of the Gramm-Leach-Bliley
16 Act)”.

17 (l) LIMITATION.—Section 21A of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78u–1) is amended by add-
19 ing at the end the following new subsection:

20 “(g) The authority of the Commission under this sec-
21 tion with respect to security-based swap agreements (as
22 defined in section 206B of the Gramm-Leach-Bliley Act)
23 shall be subject to the restrictions and limitations of sec-
24 tion 3A(b) of this title.”.

1 **SEC. 304. SAVINGS PROVISIONS.**

2 Nothing in this Act or the amendments made by this
3 Act shall be construed as finding or implying that any
4 swap agreement is or is not a security for any purpose
5 under the securities laws. Nothing in this Act or the
6 amendments made by this Act shall be construed as find-
7 ing or implying that any swap agreement is or is not a
8 futures contract or commodity option for any purpose
9 under the Commodity Exchange Act.

10 **TITLE IV—REGULATORY RE-**
11 **SPONSIBILITY FOR BANK**
12 **PRODUCTS**

13 **SEC. 401. SHORT TITLE.**

14 This title may be cited as the “Legal Certainty for
15 Bank Products Act of 2000”.

16 **SEC. 402. DEFINITIONS.**

17 (a) BANK.—In this title, the term “bank” means—

18 (1) any depository institution (as defined in sec-
19 tion 3(c) of the Federal Deposit Insurance Act);

20 (2) any foreign bank or branch or agency of a
21 foreign bank (each as defined in section 1(b) of the
22 International Banking Act of 1978);

23 (3) any Federal or State credit union (as de-
24 fined in section 101 of the Federal Credit Union
25 Act);

1 (4) any corporation organized under section
2 25A of the Federal Reserve Act;

3 (5) any corporation operating under section 25
4 of the Federal Reserve Act;

5 (6) any trust company; or

6 (7) any subsidiary of any entity described in
7 paragraph (1) through (6) of this subsection, if the
8 subsidiary is regulated as if the subsidiary were part
9 of the entity and is not a broker or dealer (as such
10 terms are defined in section 3 of the Securities Ex-
11 change Act of 1934) or a futures commission mer-
12 chant (as defined in section 1a(20) of the Com-
13 modity Exchange Act).

14 (b) IDENTIFIED BANKING PRODUCT.—In this title,
15 the term “identified banking product” shall have the same
16 meaning as in paragraphs (1) through (5) of section
17 206(a) of the Gramm-Leach-Bliley Act, except that in ap-
18 plying such section for purposes of this title—

19 (1) the term “bank” shall have the meaning
20 given in subsection (a) of this section; and

21 (2) the term “qualified investor” means eligible
22 contract participant (as defined in section 1a(12) of
23 the Commodity Exchange Act, as in effect on the
24 date of the enactment of the Commodity Futures
25 Modernization Act of 2000).

1 (c) HYBRID INSTRUMENT.—In this title, the term
2 “hybrid instrument” means an identified banking product
3 not excluded by section 403 of this Act, offered by a bank,
4 having one or more payments indexed to the value, level,
5 or rate of, or providing for the delivery of, one or more
6 commodities (as defined in section 1a(4) of the Com-
7 modity Exchange Act).

8 (d) COVERED SWAP AGREEMENT.—In this title, the
9 term “covered swap agreement” means a swap agreement
10 (as defined in section 206(b) of the Gramm-Leach-Bliley
11 Act), including a credit or equity swap, based on a com-
12 modity other than an agricultural commodity enumerated
13 in section 1a(4) of the Commodity Exchange Act if—

14 (1) the swap agreement—

15 (A) is entered into only between persons
16 that are eligible contract participants (as de-
17 fined in section 1a(12) of the Commodity Ex-
18 change Act, as in effect on the date of the en-
19 actment of the Commodity Futures Moderniza-
20 tion Act of 2000) at the time the persons enter
21 into the swap agreement; and

22 (B) is not entered into or executed on a
23 trading facility (as defined in section 1a(33) of
24 the Commodity Exchange Act); or

25 (2) the swap agreement—

1 (A) is entered into or executed on an elec-
2 tronic trading facility (as defined in section
3 1a(10) of the Commodity Exchange Act);

4 (B) is entered into on a principal-to-prin-
5 cipal basis between parties trading for their
6 own accounts or as described in section
7 1a(12)(B)(ii) of the Commodity Exchange Act;

8 (C) is entered into only between persons
9 that are eligible contract participants as de-
10 scribed in subparagraph (A), (B)(ii), or (C) of
11 section 1a(12) of the Commodity Exchange Act,
12 as in effect on the date of the enactment of the
13 Commodity Futures Modernization Act of 2000,
14 at the time the persons enter into the swap
15 agreement; and

16 (D) is an agreement, contract or trans-
17 action in an excluded commodity (as defined in
18 section 1a(13) of the Commodity Exchange
19 Act).

20 **SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCTS**

21 **COMMONLY OFFERED ON OR BEFORE DE-**
22 **CEMBER 5, 2000.**

23 No provision of the Commodity Exchange Act shall
24 apply to, and the Commodity Futures Trading Commis-

1 sion shall not exercise regulatory authority with respect
2 to, an identified banking product if—

3 (1) an appropriate banking agency certifies that
4 the product has been commonly offered, entered
5 into, or provided in the United States by any bank
6 on or before December 5, 2000, under applicable
7 banking law; and

8 (2) the product was not prohibited by the Com-
9modity Exchange Act and not regulated by the Com-
10modity Futures Trading Commission as a contract
11of sale of a commodity for future delivery (or an op-
12tion on such a contract) or an option on a com-
13modity, on or before December 5, 2000.

14 **SEC. 404. EXCLUSION OF CERTAIN IDENTIFIED BANKING**
15 **PRODUCTS OFFERED BY BANKS AFTER DE-**
16 **CEMBER 5, 2000.**

17 No provision of the Commodity Exchange Act shall
18 apply to, and the Commodity Futures Trading Commis-
19 sion shall not exercise regulatory authority with respect
20 to, an identified banking product which had not been com-
21 monly offered, entered into, or provided in the United
22 States by any bank on or before December 5, 2000, under
23 applicable banking law if—

24 (1) the product has no payment indexed to the
25 value, level, or rate of, and does not provide for the

1 delivery of, any commodity (as defined in section
2 1a(4) of the Commodity Exchange Act); or

3 (2) the product or commodity is otherwise ex-
4 cluded from the Commodity Exchange Act.

5 **SEC. 405. EXCLUSION OF CERTAIN OTHER IDENTIFIED**
6 **BANKING PRODUCTS.**

7 (a) IN GENERAL.—No provision of the Commodity
8 Exchange Act shall apply to, and the Commodity Futures
9 Trading Commission shall not exercise regulatory author-
10 ity with respect to, a banking product if the product is
11 a hybrid instrument that is predominantly a banking prod-
12 uct under the predominance test set forth in subsection
13 (b).

14 (b) PREDOMINANCE TEST.—A hybrid instrument
15 shall be considered to be predominantly a banking product
16 for purposes of this section if—

17 (1) the issuer of the hybrid instrument receives
18 payment in full of the purchase price of the hybrid
19 instrument substantially contemporaneously with de-
20 livery of the hybrid instrument;

21 (2) the purchaser or holder of the hybrid in-
22 strument is not required to make under the terms
23 of the instrument, or any arrangement referred to in
24 the instrument, any payment to the issuer in addi-
25 tion to the purchase price referred to in paragraph

1 (1), whether as margin, settlement payment, or oth-
2 erwise during the life of the hybrid instrument or at
3 maturity;

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

7 (4) the hybrid instrument is not marketed as a
8 contract of sale of a commodity for future delivery
9 (or option on such a contract) subject to the Com-
10 modity Exchange Act.

11 (c) **MARK-TO-MARKET MARGINING REQUIREMENT.**—

12 For purposes of subsection (b)(3), mark-to-market mar-
13 gining requirements shall not include the obligation of an
14 issuer of a secured debt instrument to increase the amount
15 of collateral held in pledge for the benefit of the purchaser
16 of the secured debt instrument to secure the repayment
17 obligations of the issuer under the secured debt instru-
18 ment.

19 **SEC. 406. ADMINISTRATION OF THE PREDOMINANCE TEST.**

20 (a) **IN GENERAL.**—No provision of the Commodity
21 Exchange Act shall apply to, and the Commodity Futures
22 Trading Commission shall not regulate, a hybrid instru-
23 ment, unless the Commission determines, by or under a
24 rule issued in accordance with this section, that—

1 (1) the action is necessary and appropriate in
2 the public interest;

3 (2) the action is consistent with the Commodity
4 Exchange Act and the purposes of the Commodity
5 Exchange Act; and

6 (3) the hybrid instrument is not predominantly
7 a banking product under the predominance test set
8 forth in section 405(b) of this Act.

9 (b) CONSULTATION.—Before commencing a rule-
10 making or making a determination pursuant to a rule
11 issued under this title, the Commodity Futures Trading
12 Commission shall consult with and seek the concurrence
13 of the Board of Governors of the Federal Reserve System
14 concerning—

15 (1) the nature of the hybrid instrument; and

16 (2) the history, purpose, extent, and appro-
17 priateness of the regulation of the hybrid instrument
18 under the Commodity Exchange Act and under ap-
19 propriate banking laws.

20 (c) OBJECTION TO COMMISSION REGULATION.—

21 (1) FILING OF PETITION FOR REVIEW.—The
22 Board of Governors of the Federal Reserve System
23 may obtain review of any rule or determination re-
24 ferred to in subsection (a) in the United States
25 Court of Appeals for the District of Columbia Cir-

1 cuit by filing in the court, not later than 60 days
2 after the date of publication of the rule or deter-
3 mination, a written petition requesting that the rule
4 or determination be set aside. Any proceeding to
5 challenge any such rule or determination shall be ex-
6 pedited by the court.

7 (2) TRANSMITTAL OF PETITION AND
8 RECORD.—A copy of a petition described in para-
9 graph (1) shall be transmitted as soon as possible by
10 the Clerk of the court to an officer or employee of
11 the Commodity Futures Trading Commission des-
12 ignated for that purpose. Upon receipt of the peti-
13 tion, the Commission shall file with the court the
14 rule or determination under review and any docu-
15 ments referred to therein, and any other relevant
16 materials prescribed by the court.

17 (3) EXCLUSIVE JURISDICTION.—On the date of
18 the filing of a petition under paragraph (1), the
19 court shall have jurisdiction, which shall become ex-
20 clusive on the filing of the materials set forth in
21 paragraph (2), to affirm and enforce or to set aside
22 the rule or determination at issue.

23 (4) STANDARD OF REVIEW.—The court shall
24 determine to affirm and enforce or set aside a rule
25 or determination of the Commodity Futures Trading

1 Commission under this section, based on the deter-
2 mination of the court as to whether—

3 (A) the subject product is predominantly a
4 banking product; and

5 (B) making the provision or provisions of
6 the Commodity Exchange Act at issue applica-
7 ble to the subject instrument is appropriate in
8 light of the history, purpose, and extent of reg-
9 ulation under such Act, this title, and under the
10 appropriate banking laws, giving deference nei-
11 ther to the views of the Commodity Futures
12 Trading Commission nor the Board of Gov-
13 ernors of the Federal Reserve System.

14 (5) JUDICIAL STAY.—The filing of a petition by
15 the Board pursuant to paragraph (1) shall operate
16 as a judicial stay, until the date on which the deter-
17 mination of the court is final (including any appeal
18 of the determination).

19 (6) OTHER AUTHORITY TO CHALLENGE.—Any
20 aggrieved party may seek judicial review pursuant to
21 section 6(c) of the Commodity Exchange Act of a
22 determination or rulemaking by the Commodity Fu-
23 tures Trading Commission under this section.

1 **SEC. 407. EXCLUSION OF COVERED SWAP AGREEMENTS.**

2 No provision of the Commodity Exchange Act (other
3 than section 5b of such Act with respect to the clearing
4 of covered swap agreements) shall apply to, and the Com-
5 modity Futures Trading Commission shall not exercise
6 regulatory authority with respect to, a covered swap agree-
7 ment offered, entered into, or provided by a bank.

8 **SEC. 408. CONTRACT ENFORCEMENT.**

9 (a) HYBRID INSTRUMENTS.—No hybrid instrument
10 shall be void, voidable, or unenforceable, and no party to
11 a hybrid instrument shall be entitled to rescind, or recover
12 any payment made with respect to, a hybrid instrument
13 under any provision of Federal or State law, based solely
14 on the failure of the hybrid instrument to satisfy the pre-
15 dominance test set forth in section 405(b) of this Act or
16 to comply with the terms or conditions of an exemption
17 or exclusion from any provision of the Commodity Ex-
18 change Act or any regulation of the Commodity Futures
19 Trading Commission.

20 (b) COVERED SWAP AGREEMENTS.—No covered
21 swap agreement shall be void, voidable, or unenforceable,
22 and no party to a covered swap agreement shall be entitled
23 to rescind, or recover any payment made with respect to,
24 a covered swap agreement under any provision of Federal
25 or State law, based solely on the failure of the covered
26 swap agreement to comply with the terms or conditions

1 of an exemption or exclusion from any provision of the
2 Commodity Exchange Act or any regulation of the Com-
3 modity Futures Trading Commission.

4 (c) PREEMPTION.—This title shall supersede and pre-
5 empt the application of any State or local law that pro-
6 hibits or regulates gaming or the operation of bucket
7 shops (other than antifraud provisions of general applica-
8 bility) in the case of—

9 (1) a hybrid instrument that is predominantly
10 a banking product; or

11 (2) a covered swap agreement.

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