

106TH CONGRESS
1ST SESSION

S. 1968

To amend the Federal securities laws to enhance oversight over certain derivatives dealers and hedge funds, reduce the potential for such entities to increase systemic risk in the financial markets, enhance investor protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 1999

Mr. DORGAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Federal securities laws to enhance oversight over certain derivatives dealers and hedge funds, reduce the potential for such entities to increase systemic risk in the financial markets, enhance investor protections, 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.**

4 This Act may be cited as the “Derivatives Market
5 Reform Act of 1999”.

1 **SEC. 2. DEFINITIONS.**

2 Section 3(a) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78c(a)) is amended by adding at the end the
4 following new paragraphs:

5 “(55) The term ‘derivative’ means any financial
6 contract or other instrument that derives its value
7 from the value or performance of any security, cur-
8 rency exchange rate, or interest rate (or group or
9 index thereof), but does not include—

10 “(A) any security that is traded on a na-
11 tional securities exchange or on an automated
12 interdealer quotation system sponsored by a se-
13 curities association registered under section
14 15A of this title;

15 “(B) any forward contract which has a
16 maturity at the time of issuance not exceeding
17 270 days;

18 “(C) any contract of sale of a commodity
19 for future delivery, or any option on such a con-
20 tract, traded or executed on a designated con-
21 tract market and subject to regulation under
22 the Commodity Exchange Act; or

23 “(D) any deposit held by a financial insti-
24 tution.

25 “(56) The term ‘derivatives dealer’ means any
26 person engaged in the business of buying, selling, or

1 entering into derivatives for his own account, but
2 does not include—

3 “(A) any person insofar as such person
4 buys, sells, or enters into derivatives for his own
5 account, either individually or in a fiduciary ca-
6 pacity, but not as part of a regular business; or

7 “(B) any financial institution.

8 “(57) The term ‘material associated person’
9 means any associated person of a broker, dealer,
10 government securities broker, government securities
11 dealer, municipal securities dealer, or derivatives
12 dealer (other than a natural person) whose business
13 activities are reasonably likely to have a material im-
14 pact on the financial or operational condition of any
15 such broker, dealer, government securities broker,
16 government securities dealer, municipal securities
17 dealer, or derivatives dealer, including on its net
18 capital, its liquidity, or its ability to conduct or fi-
19 nance its operations.

20 “(58) The term ‘person associated with a de-
21 rivatives dealer’ or ‘associated person of a deriva-
22 tives dealer’ means any partner, officer, director, or
23 branch manager of such derivatives dealer (or any
24 person occupying a similar status or performing
25 similar functions), and any other employee of such

1 derivatives dealer who is engaged in the manage-
 2 ment, direction, supervision, or performance of any
 3 activities relating to derivatives, and any person di-
 4 rectly or indirectly controlling, controlled by, or
 5 under common control with such derivatives dealer.

6 “(59) The term ‘designated examining author-
 7 ity’ means the national securities exchange or reg-
 8 istered securities association of which a registered
 9 broker or dealer is a member, and if such broker or
 10 dealer is a member of more than 1 such self-regu-
 11 latory organization, the organization designated by
 12 the Commission as the principal examining authority
 13 for such broker or dealer.”.

14 **TITLE I—DERIVATIVES DEALERS**

15 **SEC. 101. DERIVATIVES DEALER REGISTRATION.**

16 The Securities Exchange Act of 1934 is amended by
 17 inserting after section 15C (15 U.S.C. 78o–5) the fol-
 18 lowing new section:

19 **“SEC. 15D. DERIVATIVES DEALERS.**

20 **“(a) REGISTRATION REQUIRED.—**

21 **“(1) REGISTRATION OF DERIVATIVES DEAL-**
 22 **ERS.—**

23 **“(A) REGISTRATION REQUIREMENT.—It**
 24 **shall be unlawful for any derivatives dealer**
 25 **(other than a registered broker or dealer, or a**

1 material associated person of a registered
2 broker or dealer that has filed notice in accord-
3 ance with subparagraph (B) of this paragraph)
4 to make use of the mails or any means or in-
5 strumentality of interstate commerce to effect
6 any transaction in, or to induce or attempt to
7 induce the purchase or sale of, any derivative
8 unless such derivatives dealer is registered in
9 accordance with paragraph (2) of this sub-
10 section.

11 “(B) MATERIAL ASSOCIATED PERSONS OF
12 BROKERS AND DEALERS.—

13 “(i) NOTICE REQUIREMENT.—It shall
14 be unlawful for any derivatives dealer that
15 is a material associated person of a reg-
16 istered broker or dealer (other than a ma-
17 terial associated person of a registered
18 broker or dealer that is itself a registered
19 broker or dealer, or a derivatives dealer
20 that is registered in accordance with para-
21 graph (2) of this subsection) to make use
22 of the mails or any means or instrumen-
23 tality of interstate commerce to effect any
24 transaction in, or to induce or attempt to
25 induce the purchase or sale of, any deriva-

tive unless such derivatives dealer has filed with the Commission written notice that it is a derivatives dealer. When such a derivatives dealer ceases to act as such it shall file with the Commission a written notice that it is no longer acting as a derivatives dealer.

“(ii) FORM OF NOTICE.—Such notices shall be in such form and contain such information concerning a derivatives dealer and any persons associated with such derivatives dealer as the Commission shall, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(2) REGISTRATION PROCEDURE.—

“(A) APPLICATION FOR REGISTRATION.—

A derivatives dealer subject to the registration requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such derivatives dealer and any of its associated persons as the Commission, by rule, may prescribe as necessary or

appropriate in the public interest or for the protection of investors.

“(B) INITIAL ACTION.—Within 45 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

“(i) by order grant registration, or

“(ii) institute proceedings to determine whether registration should be denied.

“(C) PROCEEDINGS ON APPLICATION.—Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

“(D) EFFECTIVE DATE OF REGISTRATION.—The order granting registration shall

1 not be effective until such derivatives dealer has
 2 become a member of a securities association
 3 registered under section 15A of this title, unless
 4 the Commission has exempted such derivatives
 5 dealer, by rule or order, from such membership.

6 “(E) GROUNDS FOR DECISION.—The Com-
 7 mission shall grant the registration of a deriva-
 8 tives dealer if the Commission finds that the re-
 9 quirements of this section are satisfied. The
 10 Commission shall deny such registration if it
 11 does not make such a finding or if it finds that
 12 if the applicant were so registered, its registra-
 13 tion would be subject to suspension or revoca-
 14 tion under subsection (c) of this section.

15 “(3) PROHIBITED CONDUCT.—Any provision of
 16 this title (other than section 5 or paragraph (1) of
 17 this subsection) which prohibits any act, practice, or
 18 course of business if the mails or any means or in-
 19 strumentality of interstate commerce is used in con-
 20 nection therewith shall also prohibit any such act,
 21 practice, or course of business by any derivatives
 22 dealer registered or having filed notice under para-
 23 graph (1) of this subsection or any person acting on
 24 behalf of such derivatives dealer, irrespective of any

1 use of the mails or any means or instrumentality of
 2 interstate commerce in connection therewith.

3 “(4) EXEMPTIONS.—The Commission, by rule
 4 or order, upon the Commission’s own motion or
 5 upon application, may conditionally or uncondition-
 6 ally exempt any derivatives dealer, or class of deriva-
 7 tives dealers, from any provision of this section, or
 8 the rules thereunder, if the Commission finds that
 9 such exemption is consistent with the public interest,
 10 the protection of investors, and the purposes of this
 11 title.

12 “(b) RULES.—

13 “(1) AUTHORITY.—The Commission shall pro-
 14 pose and adopt rules to effect the purposes of this
 15 title with respect to transactions in derivatives ef-
 16 fected by derivatives dealers registered or required to
 17 register under subsection (a)(1)(A) of this section as
 18 follows:

19 “(A) FINANCIAL RESPONSIBILITY.—Such
 20 rules shall provide safeguards with respect to
 21 the financial responsibility and related practices
 22 of such derivatives dealers including, but not
 23 limited to, capital adequacy standards and the
 24 carrying and use of customers’ deposits or cred-
 25 it balances.

1 “(B) REPORTS.—Such rules shall require
2 every such derivatives dealer to make reports to
3 and furnish copies of records to the Commis-
4 sion, and to file with the Commission, annually
5 or more frequently, a balance sheet and income
6 statement certified by an independent public ac-
7 countant, prepared on a calendar or fiscal year
8 basis, and such other financial statements
9 (which shall, as the Commission specifies, be
10 certified) and information concerning its finan-
11 cial condition as required by such rules.

12 “(C) RECORDKEEPING.—Such rules shall
13 require records to be made and kept by such
14 derivatives dealers and shall specify the periods
15 for which such records shall be preserved.

16 “(2) AUTHORITY TO LIMIT DISCLOSURE OF IN-
17 FORMATION.—Notwithstanding any other provision
18 of law, the Commission shall not be compelled to
19 disclose any information required to be kept or re-
20 ported under rules adopted under paragraph (1) of
21 this subsection. Nothing in this paragraph shall au-
22 thorize the Commission to withhold information
23 from Congress, or prevent the Commission from
24 complying with a request for information from any
25 other Federal department or agency requesting the

1 information for purposes within the scope of its ju-
2 risdiction, or complying with an order of a court of
3 the United States in an action brought by the
4 United States or the Commission. For purposes of
5 section 552 of title 5, United States Code, this para-
6 graph shall be considered a statute described in sub-
7 section (b)(3)(B) of such section 552.

8 “(3) FRAUDULENT ACTS AND PRACTICES.—
9 With respect to any derivatives dealer, the Commis-
10 sion may, by rule or regulation define, and prescribe
11 means reasonably designed to prevent, such acts and
12 practices as are fraudulent, deceptive, or manipula-
13 tive.

14 “(4) COMPLIANCE WITH RULES UNDER THIS
15 SECTION.—No derivatives dealer shall make use of
16 the mails or any means or instrumentality of inter-
17 state commerce to effect any transaction in, or to in-
18 duce or attempt to induce the purchase or sale of,
19 any derivative in contravention of any rule under
20 this section.

21 “(c) ENFORCEMENT BY THE COMMISSION.—

22 “(1) ADMINISTRATIVE POWERS TO IMPOSE
23 SANCTIONS.—With respect to any derivatives dealer
24 registered or required to register under subsection
25 (a)(1)(A) of this section:

“(A) DERIVATIVES DEALERS.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such derivatives dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such derivatives dealer, or any person associated with such derivatives dealer (whether prior or subsequent to becoming so associated), has committed or omitted any act or omission enumerated in subparagraph (A), (D), (E), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

“(B) SUSPENSION OR WITHDRAWAL PENDING FINAL DETERMINATION.—Pending final determination whether registration of any derivatives dealer shall be revoked, the Commission,

1 by order, may suspend such registration, if such
2 suspension appears to the Commission, after
3 notice and opportunity for hearing, to be nec-
4 essary or appropriate in the public interest or
5 for the protection of investors. Any registered
6 derivatives dealer may, upon such terms and
7 conditions as the Commission may deem nec-
8 essary in the public interest or for the protec-
9 tion of investors, withdraw from registration by
10 filing a written notice of withdrawal with the
11 Commission. If the Commission finds that any
12 registered derivatives dealer is no longer in ex-
13 istence or has ceased to do business as a deriva-
14 tives dealer, the Commission, by order, shall
15 cancel the registration of such derivatives deal-
16 er.

17 “(C) ASSOCIATED PERSONS.—The Com-
18 mission, by order, shall censure or place limita-
19 tions on the activities or functions of any per-
20 son associated, or seeking to become associated,
21 with a derivatives dealer registered or required
22 to register under subsection (a)(1)(A) of this
23 section or suspend for a period not exceeding
24 12 months or bar any such person from being
25 associated with such a derivatives dealer, if the

1 Commission finds, on the record after notice
2 and opportunity for hearing, that such censure,
3 placing of limitations, suspension, or bar is in
4 the public interest and that such person has
5 committed or omitted any act or omission enu-
6 merated in subparagraph (A), (D), (E), or (G)
7 of paragraph (4) of section 15(b) of this title,
8 has been convicted of any offense specified in
9 subparagraph (B) of such paragraph (4) within
10 10 years of the commencement of the pro-
11 ceedings under this paragraph, or is enjoined
12 from any action, conduct, or practice specified
13 in subparagraph (C) of such paragraph (4).

14 “(2) PERSONS SUSPENDED OR BARRED FROM
15 ASSOCIATION.—It shall be unlawful for any person
16 as to whom an order entered pursuant to paragraph
17 (1) of this subsection suspending or barring him
18 from being associated with a derivatives dealer is in
19 effect willfully to become, or to be, associated with
20 a derivatives dealer without the consent of the Com-
21 mission, and it shall be unlawful for any derivatives
22 dealer to permit such a person to become, or remain,
23 a person associated with it without the consent of
24 the Commission, if such derivatives dealer knew, or,

1 in the exercise of reasonable care should have
2 known, of such order.

3 “(d) EXAMINATION OF RECORDS.—All records of a
4 derivatives dealer registered or required to register under
5 subsection (a)(1)(A) of this section, or that has filed notice
6 or is required to file notice under subsection (a)(1)(B) of
7 this section, are subject at any time, or from time to time,
8 to such reasonable periodic, special, or other examinations
9 by representatives of the Commission as the Commission
10 deems necessary or appropriate in the public interest, for
11 the protection of investors, or otherwise in furtherance of
12 the purposes of this title.

13 “(e) SECURITIES ASSOCIATION MEMBERSHIP.—

14 “(1) MEMBERSHIP REQUIREMENT.—It shall be
15 unlawful for any derivatives dealer registered or re-
16 quired to register with the Commission under sub-
17 section (a)(1)(A) of this section to effect any trans-
18 action in, or induce or attempt to induce the pur-
19 chase or sale of, any derivative, unless such deriva-
20 tives dealer is a member of a securities association
21 registered under section 15A of this title.

22 “(2) EXEMPTION.—The Commission, by rule or
23 order, as it deems consistent with the public interest
24 and the protection of investors, may conditionally or
25 unconditionally exempt from paragraph (1) of this

1 subsection any derivatives dealer or class of deriva-
 2 tives dealers specified in such rule or order.”.

3 **TITLE II—BROKER-DEALER** 4 **OVERSIGHT REFORMS**

5 **SEC. 201. DERIVATIVES ON SECURITIES.**

6 Section 3(a)(10) of the Securities Exchange Act of
 7 1934 (15 U.S.C. 78c(a)(10)) is amended by inserting “de-
 8 rivative,” after “any put, call, straddle, option,” the first
 9 place it appears.

10 **SEC. 202. NATIONAL SECURITIES EXCHANGES.**

11 Section 6 of the Securities Exchange Act of 1934 (15
 12 U.S.C. 78f) is amended by adding at the end the following
 13 new subsection:

14 “(g) **AUTHORITY TO ADOPT RULES RELATING TO**
 15 **TRANSACTIONS IN DERIVATIVES.**—A national securities
 16 exchange may adopt and implement rules applicable to
 17 members of such exchange, and material associated per-
 18 sons that have filed notice or are required to file notice
 19 under section 15D(a)(1)(B) of this title and that are asso-
 20 ciated with members for which the exchange is the des-
 21 ignated examining authority, who engage in transactions
 22 in derivatives—

23 “(1) to enforce compliance with applicable pro-
 24 visions of this title and the rules and regulations
 25 thereunder;

1 “(2) to provide that any such person shall be
 2 appropriately disciplined for violations of applicable
 3 provisions of this title and the rules and regulations
 4 thereunder;

5 “(3) to provide for reasonable inspection and
 6 examination of the books and records of any such
 7 person;

8 “(4) to prevent fraudulent and manipulative
 9 acts and practices;

10 “(5) to promote just and equitable principles of
 11 trade; and

12 “(6) to require the establishment of, and adher-
 13 ence to, appropriate internal controls structures.”.

14 **SEC. 203. FINANCIAL RESPONSIBILITY.**

15 Section 15(c)(3) of the Securities Exchange Act of
 16 1934 (15 U.S.C. 78o(c)(3)) is amended—

17 (1) by striking “and” at the end of clause (A);
 18 and

19 (2) by inserting after “requirements for all bro-
 20 kers and dealers” the following: “, and (C) require
 21 the maintenance of sufficient capital levels taking
 22 into account the financial activities conducted by,
 23 the customary sources of capital and funding of, and
 24 the credit risk and aggregate leverage of, any deriva-
 25 tives dealer that is a material associated person of

1 the broker or dealer and that has filed notice or is
 2 required to file notice under section 15D(a)(1)(B) of
 3 this title”.

4 **SEC. 204. REGISTERED SECURITIES ASSOCIATION.**

5 Section 15A of the Securities Exchange Act of 1934
 6 (15 U.S.C. 78o–3) is hereby amended by adding at the
 7 end the following new subsection:

8 “(j) **AUTHORITY TO ADOPT RULES RELATING TO**
 9 **TRANSACTIONS IN DERIVATIVES.**—A registered securities
 10 association may adopt and implement rules applicable to
 11 members of such association, and material associated per-
 12 sons that have filed notice or are required to file notice
 13 under section 15D(a)(1)(B) of this title and that are asso-
 14 ciated with members for which the association is the des-
 15 ignated examining authority, who engage in transactions
 16 in derivatives—

17 “(1) to enforce compliance with applicable pro-
 18 visions of this title and the rules and regulations
 19 thereunder;

20 “(2) to provide that any such person shall be
 21 appropriately disciplined, in accordance with sub-
 22 sections (b)(7), (b)(8), and (h) of this section, for
 23 violations of applicable provisions of this title and
 24 the rules and regulations thereunder;

1 “(3) to provide for reasonable inspection and
 2 examination of the books and records of any such
 3 person;

4 “(4) to prevent fraudulent and manipulative
 5 acts and practices;

6 “(5) to promote just and equitable principles of
 7 trade; and

8 “(6) to require the establishment of, and adher-
 9 ence to, appropriate internal controls structures.”.

10 **SEC. 205. RISK ASSESSMENT FOR GOVERNMENT SECURI-**
 11 **TIES BROKERS AND DEALERS.**

12 Section 15C(b)(2) of the Securities Exchange Act of
 13 1934 (15 U.S.C. 78o–5(b)(2)) is amended

14 (1) in subparagraph (A)—

15 (A) by striking “Such records shall de-
 16 scribe, in the aggregate,” in the second sen-
 17 tence and inserting “Such records may be re-
 18 quired to describe”;

19 (B) by striking “summary” in the third
 20 sentence;

21 (2) by redesignating subparagraphs (C) through
 22 (F) as subparagraphs (G) through (J), respectively;

23 (3) by inserting after subparagraph (B) the fol-
 24 lowing new subparagraphs:

1 “(C) REPORTING BY HOLDING COMPANIES

2 AND OTHER MATERIAL ASSOCIATED PER-

3 SONS.—Every person, other than a natural per-

4 son, who is associated with a government secu-

5 rities broker or government securities dealer for

6 which the Commission is the appropriate regu-

7 latory agency, and whose business activities are

8 reasonably likely to have a material impact on

9 the financial or operational condition of such

10 registered person, including its net capital, its

11 liquidity, or its ability to conduct or finance its

12 operations, shall make such reports concerning

13 the associated person’s policies, procedures, or

14 systems for monitoring and controlling the fi-

15 nancial and operational risks to the registered

16 person and its associated persons as the Sec-

17 retary, by rule, prescribes. Such reports may be

18 required to describe, without limitation, each of

19 the associated person’s financial and securities

20 activities, and customary sources of capital and

21 funding. The Secretary, by rule, may require

22 such reports to be filed with the Commission no

23 more frequently than quarterly.

24 “(D) RECORDKEEPING BY HOLDING COM-

25 PANIES AND OTHER MATERIAL ASSOCIATED

1 PERSONS.—All persons subject to the reporting
2 requirements under subparagraph (C) of this
3 subsection shall keep and maintain such records
4 as are necessary to permit the Commission to
5 verify the information contained in reports filed
6 with the Commission pursuant to subparagraph
7 (C).

8 “(E) EXAMINATION OF HOLDING COMPA-
9 NIES AND OTHER MATERIAL ASSOCIATED PER-
10 SONS.—All records of persons subject to the re-
11 porting requirements contained in subpara-
12 graph (C) of this subsection are subject at any
13 time, or from time to time, to such reasonable
14 periodic, special, or other examinations by rep-
15 resentatives of the Commission as the Commis-
16 sion deems necessary or appropriate to verify
17 the information contained in reports filed with
18 the Commission pursuant to subparagraph (C).

19 “(F) USE OF ALTERNATIVE REPORTS BY
20 REGISTERED PERSONS AND THEIR HOLDING
21 COMPANIES AND OTHER MATERIAL ASSOCIATED
22 PERSONS.—(i) The Secretary, insofar as the
23 Secretary determines is consistent with the pur-
24 poses of this title, shall permit persons subject
25 to the reporting requirements of subparagraphs

1 (A) and (C) of this paragraph, to use reports
 2 otherwise created and maintained to meet the
 3 reporting requirements of those subparagraphs.

4 “(ii) The appropriate regulatory agency,
 5 insofar as such agency determines is consistent
 6 with the purposes of this title, shall permit per-
 7 sons, subject to the reporting requirements of
 8 subparagraph (B) of this paragraph, to use re-
 9 ports otherwise created and maintained to meet
 10 the reporting requirement of that subpara-
 11 graph.”; and

12 (4) in subparagraphs (G) and (I) (as redesign-
 13 nated by paragraph (2)), by striking “subparagraph
 14 (A)” each place it appears and inserting “subpara-
 15 graphs (A) and (C)”.

16 **SEC. 206. RISK ASSESSMENT FOR BROKERS AND DEALERS.**

17 Section 17(h) of the Securities Exchange Act of 1934
 18 (15 U.S.C. 78q(h)) is amended—

19 (1) in paragraph (1)—

20 (A) by striking “Such records shall de-
 21 scribe, in the aggregate,” in the second sen-
 22 tence and inserting “Such records may be re-
 23 quired to describe”;

24 (B) by striking “summary” in the third
 25 sentence;

1 (2) by redesignating paragraphs (3) through
2 (5) as paragraphs (7) through (9), respectively;

3 (3) by inserting after paragraph (2) the fol-
4 lowing new paragraphs:

5 “(3) REPORTING BY HOLDING COMPANIES AND
6 OTHER MATERIAL ASSOCIATED PERSONS.—Every
7 person, other than a natural person, who is associ-
8 ated with (A) a registered broker or dealer, or (B)
9 a registered municipal securities dealer for which the
10 Commission is the appropriate regulatory agency,
11 and whose business activities are reasonably likely to
12 have a material impact on the financial or oper-
13 ational condition of such registered person, including
14 its net capital, its liquidity, or its ability to conduct
15 or finance its operations, shall make such reports
16 concerning the associated person’s policies, proce-
17 dures, or systems for monitoring and controlling the
18 financial and operation risks to the registered person
19 and its associated persons as the Commission, by
20 rule, prescribes. Such reports may be required to de-
21 scribe, without limitation, each of the associated per-
22 son’s financial and securities activities, and cus-
23 tomary sources of capital and funding. The Commis-
24 sion, by rule, may require such reports to be filed

1 with the Commission no more frequently than quar-
2 terly.

3 “(4) RECORDKEEPING BY HOLDING COMPANIES
4 AND OTHER MATERIAL ASSOCIATED PERSONS.—All
5 persons subject to the reporting requirements under
6 paragraph (3) of this subsection shall keep and
7 maintain such records as are necessary to permit the
8 Commission to verify the information contained in
9 reports filed with the Commission pursuant to para-
10 graph (3).

11 “(5) EXAMINATION OF HOLDING COMPANIES
12 AND OTHER MATERIAL ASSOCIATED PERSONS.—All
13 records of persons subject to the reporting require-
14 ments contained in paragraph (3) of this subsection
15 are subject at any time, or from time to time, to
16 such reasonable periodic, special, or other examina-
17 tions by representatives of the Commission as the
18 Commission deems necessary or appropriate to
19 verify the information contained in reports filed with
20 the Commission pursuant to paragraph (3).

21 “(6) USE OF ALTERNATIVE REPORTS BY REG-
22 ISTERED PERSONS AND THEIR HOLDING COMPANIES
23 AND OTHER MATERIAL ASSOCIATED PERSONS.—The
24 Commission, insofar as it determines is consistent
25 with the purposes of this title, shall permit persons

1 subject to the reporting requirements of paragraphs
 2 (1), (2), and (3) of this subsection, to use reports
 3 otherwise created and maintained to meet the re-
 4 porting requirements of those paragraphs.”; and
 5 (4) in paragraphs (7) and (9) (as redesignated
 6 by paragraph (2)), by striking “paragraph (1)” each
 7 place it appears and inserting “paragraphs (1) and
 8 (3)”.

9 **SEC. 207. LARGE TRADER REPORTING: RULEMAKING DEAD-**
 10 **LINE.**

11 Within one year after the date of enactment of this
 12 Act, the Securities and Exchange Commission shall take
 13 all actions necessary to establish regulations pursuant to
 14 section 13(h) of the Securities Exchange Act of 1934 (15
 15 U.S.C. 78m(h)).

16 **SEC. 208. RULES, REGULATIONS, AND ORDERS; ANNUAL RE-**
 17 **PORTS.**

18 (a) RULES, REGULATIONS, AND ORDERS.—Section
 19 23(a)(1) of the Securities Exchange Act of 1934 (15
 20 U.S.C. 78w(a)(1)) is amended by inserting “derivatives,”
 21 after “and may for such purposes classify persons, securi-
 22 ties,”.

23 (b) REPORTS.—Section 8(a) of the Market Reform
 24 Act of 1990 is amended by striking “May 31, 1991, and

1 annually thereafter until May 31, 1995,” and inserting
 2 “May 31, 2000, and annually thereafter”.

3 **SEC. 209. CONFORMING AMENDMENTS.**

4 Section 3(a)(48) of the Securities Exchange Act of
 5 1934 (15 U.S.C. 78c(a)(48)) is amended to read as fol-
 6 lows:

7 “(48) The term ‘registered broker or dealer’
 8 means a broker or dealer registered or required to
 9 register pursuant to section 15 or 15B of this title,
 10 except that—

11 “(A) in paragraph (3)(A) of this sub-
 12 section and in section 6, the term means such
 13 a broker or dealer or a government securities
 14 broker or government securities dealer reg-
 15 istered or required to register pursuant to sec-
 16 tion 15C(a)(1)(A) of this title; and

17 “(B) in paragraph (3)(B) of this sub-
 18 section and in section 15A, the term means
 19 such a broker or dealer, a government securities
 20 broker or government securities dealer reg-
 21 istered or required to register pursuant to sec-
 22 tion 15C(a)(1)(A) of this title, or a derivatives
 23 dealer registered or required to register pursu-
 24 ant to section 15D(a)(1)(A) of this title.”.

TITLE III—HEDGE FUND REPORTING

SEC. 301. PUBLIC REPORTING BY UNREGISTERED HEDGE FUNDS.

Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following new subsection:

“(k) REPORTS OF UNREGISTERED HEDGE FUNDS.—

“(1) FILING OF REPORTS.—No later than 15 days after the end of each calendar or fiscal quarter, every unregistered hedge fund shall submit to the Commission a report prepared in accordance with United States generally accepted accounting principles that includes the following information for each pooled investment vehicle that is part of the unregistered hedge fund:

“(A) A statement of financial condition as of the end of the quarter.

“(B) A statement of income (loss) for the quarter ended.

“(C) A statement of cash flows.

“(D) A statement of changes in equity.

“(E) A description of the models and methodologies that the pooled investment vehi-

1 cle uses to calculate, assess, and evaluate mar-
2 ket risk.

3 “(F) Such other information and within
4 such time period as the Commission, in con-
5 sultation with the Secretary of the Treasury,
6 the Chairman of the Federal Reserve Board,
7 the Commodity Futures Trading Commission,
8 and other appropriate regulatory agencies, may
9 require by rule or regulation, as may be nec-
10 essary or appropriate in the public interest or
11 for the protection of investors, including infor-
12 mation about sudden changes in net asset value
13 of a pooled investment vehicle within the quar-
14 ter, the leverage ratio of the pooled investment
15 vehicle, and the total notional amount of the
16 pooled investment vehicle’s exchange-traded and
17 over-the-counter derivatives positions.

18 “(2) RULEMAKING.—The Commission shall
19 have the authority to promulgate rules and regula-
20 tions, as may be necessary or appropriate in the
21 public interest or for the protection of investors, that
22 prescribe the form of the reports required by para-
23 graph (1) and define the terms used in this sub-
24 section.

1 “(3) AVAILABILITY OF REPORTS.—Upon receipt
2 of reports under paragraph (1), the Commission
3 shall—

4 “(A) immediately transmit complete copies
5 of the reports to the Secretary of the Treasury,
6 the Chairman of the Federal Reserve Board,
7 the Commodity Futures Trading Commission,
8 and other appropriate regulatory agencies; and

9 “(B) subject to paragraph (4), make the
10 reports widely available to the public.

11 “(4) CONFIDENTIALITY OF PROPRIETARY IN-
12 FORMATION.—Proprietary information contained in
13 reports shall be treated as follows:

14 “(A) If, in preparing a complete and accu-
15 rate report under paragraph (1), an unregis-
16 tered hedge fund includes in the report propri-
17 etary information concerning investment strate-
18 gies or positions, such proprietary information
19 may, consistent with the regulations prescribed
20 by the Commission, be segregated in a con-
21 fidential section of the report that shall not be
22 available to the public under paragraph (3)(B).

23 “(B) Nothing in this subsection shall au-
24 thorize the Commission to withhold information
25 from Congress, or prevent the Commission from

1 complying with a request for information from
 2 any other Federal department or agency re-
 3 questing the information for purposes within
 4 the scope of its jurisdiction, or complying with
 5 an order of a court of the United States in an
 6 action brought by the United States or the
 7 Board.

8 “(5) DEFINITIONS.—For purposes of this sub-
 9 section:

10 “(A) UNREGISTERED HEDGE FUND.—The
 11 term ‘unregistered hedge fund’—

12 “(i) means any pooled investment ve-
 13 hicle, or group or family of pooled invest-
 14 ment vehicles, that—

15 “(I) has total assets under man-
 16 agement of \$1,000,000,000 or more;
 17 and

18 “(II) is excepted from the defini-
 19 tion of investment company by section
 20 3(c)(1) or 3(c)(7), or is a foreign com-
 21 pany that would be required to obtain
 22 an order of the Securities and Ex-
 23 change Commission under section
 24 7(d) if it made a public offering of its
 25 securities by use of the mails and

1 means or instrumentalities of inter-
2 state commerce; but

3 “(ii) does not include a commodity
4 pool operator or futures commission mer-
5 chant (as such terms are defined under
6 section 1a of the Commodity Exchange Act
7 (7 U.S.C. 1a)).

8 “(B) APPROPRIATE REGULATORY AGEN-
9 CIES.—The term ‘appropriate regulatory agen-
10 cies’ means each of the agencies that is an ap-
11 propriate regulatory agency under section
12 3(a)(34) of the Securities Exchange Act of
13 1934.”.

○