

□ 1800

COMMODITY FUTURES MODERNIZATION ACT OF 2000

Mr. COMBEST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4541) to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for future and over-the-counter derivatives, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4541

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents of 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.

Sec. 106. Transactions in exempt commodities.

Sec. 107. Swap transactions.

Sec. 108. Application of commodity futures laws.

Sec. 109. Protection of the public interest.

Sec. 110. Prohibited transactions.

Sec. 111. Designation of boards of trade as contract markets.

Sec. 112. Derivatives transaction execution facilities.

Sec. 113. Derivatives clearing.

Sec. 114. Common provisions applicable to registered entities.

Sec. 115. Exempt boards of trade.

Sec. 116. Suspension or revocation of designation as contract market.

Sec. 117. Authorization of appropriations.

Sec. 118. Preemption.

Sec. 119. Predispute resolution agreements for institutional customers.

Sec. 120. Consideration of costs and benefits and antitrust laws.

Sec. 121. Contract enforcement between eligible counterparties.

Sec. 122. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.

Sec. 123. Rule of construction.

Sec. 124. Technical and conforming amendments.

Sec. 125. Privacy.

Sec. 126. Report to Congress.

Sec. 127. International activities of the Commodity Futures Trading Commission.

Sec. 128. Rules of construction.

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. 221. Jurisdiction of Securities and Exchange Commission; other provisions.

Sec. 222. Application of the Commodity Exchange Act to national securities exchanges and national securities associations that trade security futures.

Sec. 223. Notification of investigations and enforcement actions.

SEC. 2. PURPOSES.

The purposes of this Act are—

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

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

(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;

(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;

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

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

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

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

TITLE I—COMMODITY FUTURES MODERNIZATION

SEC. 101. DEFINITIONS.

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

(1) by redesignating paragraphs (1) through (7), (8) through (12), (13), (14), (15), and (16) as paragraphs (2) through (8), (16) through (20), (22), (23), (24), and (28), respectively;

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

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

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

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

“(C) does not—

“(i) set rules governing the conduct of subscribers other than the conduct of such sub-

scribers’ trading on the alternative trading system; or

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

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

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

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

(4) by inserting after paragraph (8) the following:

“(9) DERIVATIVES CLEARING ORGANIZATION.—

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

“(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

“(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

“(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

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

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

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

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

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

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

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

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

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

“(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;

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

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

“(B) an eligible contract participant, other than a natural person or an instrumentality,

department, or agency of a State or local governmental entity, that—

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

“(ii) either—

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

“(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 C.F.R. 4.7(a));

“(bb) accredited investors, as defined in Regulation D of Securities and Exchange Commission under the Securities Act of 1933 (17 C.F.R. 230.501(a)), with total assets of \$2,000,000; or

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

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

“(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, \$100,000,000 in total assets; or

“(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

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

“(A) acting for its own account—

“(i) a financial institution;

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

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

“(iv) a commodity pool that—

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

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

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

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

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

“(III) that—

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

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

“(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign

person performing a similar role or function subject as such to foreign regulation—

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

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

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

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

“(cc) a financial institution; or

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

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

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

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

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

“(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

“(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

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

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

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

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

“(I) \$10,000,000; or

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

likely to be owned or incurred, by the individual;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(H) a trust company; or

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

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

“(21) HYBRID INSTRUMENT.—

“(A) IN GENERAL.—The term ‘hybrid instrument’ means a deposit instrument offered by a financial institution, or a security, having 1 or more payments indexed to the value, level, or rate of 1 or more commodities.

“(B) DEPOSIT INSTRUMENT DEFINED.—The term ‘deposit instrument’ means an instrument representing an interest described in paragraph (1), (2), (3), (4), or (5) of section 3(l) of the Federal Deposit Insurance Act, other than in subparagraph (A), (B), or (C) at the end of such paragraph (5).”;

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

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

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

“(B) having trading privileges on the contract market or derivatives transaction execution facility.

“(25) NARROW-BASED SECURITY INDEX.—

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

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

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

“(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index’s weighting; or

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

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

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

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

“(III) each component security is—

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

“(bb) 1 of 750 securities with the largest market capitalization; and

“(cc) 1 of 675 securities with the largest dollar value of average daily trading volume;

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

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

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

“(iv) it is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

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

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

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

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

“(vi) it is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

“(C) Within 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

“(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

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

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

“(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

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

“(27) ORGANIZED EXCHANGE.—The term ‘organized exchange’ means a trading facility that—

“(A) permits trading—

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

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

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

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

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

(7) by adding at the end the following:

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

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

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

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

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

“(30) SECURITY.—The term ‘security’ means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or

section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

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

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

“(33) TRADING FACILITY.—

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

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

“(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

“(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms ‘government securities dealer’, ‘government securities broker’, and ‘government securities’ are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

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

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

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

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

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

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B)) governs

or applies to an agreement, contract, or transaction in—

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

“(2) COMMISSION JURISDICTION.—

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

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

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

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

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

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

“(I) a financial institution;

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

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

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

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

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

“(C) Notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, contracts, or transactions described in subparagraph (B) shall be subject to sections 4b, 4c, 6c, 6d, and 8(a) if they are entered into by a futures commission merchant or an affiliate of a futures commission merchant that is not also an entity described in subparagraph (B)(ii) of this paragraph.”

SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE TRANSACTIONS.

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

“(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

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

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

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

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

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

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

“(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.”

SEC. 104. EXCLUDED ELECTRONIC TRADING FACILITIES.

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

“(e) EXCLUDED ELECTRONIC TRADING FACILITIES.—

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

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

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

SEC. 105. HYBRID INSTRUMENTS.

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

“(f) EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.—

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

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

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

“(B) the purchaser or holder of the hybrid instrument is not required to make any pay-

ment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

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

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

“(3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.”

SEC. 106. TRANSACTIONS IN EXEMPT COMMODITIES.

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

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

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

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

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

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

“(A) sections 5b and 12(e)(2)(B);

“(B) sections 4b, 4c, 6(c), 6(d), 6c, 6d, and 8a, and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions, to the extent the agreement, contract, or transaction is not between eligible commercial entities (unless 1 of the entities is an instrumentality, department, or agency of a State or local governmental entity) and would otherwise be subject to such sections and regulations; and

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

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

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

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

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

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

“(B) sections 4b and 4c and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions to the extent the agreement, contract, or transaction would otherwise be subject to such sections and regulations;

“(C) sections 6(c) and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and to the extent the agreement,

contract, or transaction would otherwise be subject to such sections; and

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

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

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

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

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

“(iii) certifications that—

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

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

“(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and

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

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

“(II) provide such reports to the Commission regarding transactions executed on the facility in reliance on the exemption set forth in paragraph (3) as the Commission may from time to time request to enable the Commission to satisfy its obligations under this Act; and

“(ii) maintain for 5 years, and make available for inspection by the Commission upon request, records of all activities related to its business as an electronic trading facility exempt under paragraph (3), including—

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

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

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

“(I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4);

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

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

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

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

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

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

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

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

SEC. 107. SWAP TRANSACTIONS.

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

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

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

“(2) each of the material economic terms of the agreement, contract, or transaction is individually negotiated by the parties.”

SEC. 108. APPLICATION OF COMMODITY FUTURES LAWS.

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

“(i) APPLICATION OF COMMODITY FUTURES LAWS.—

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

“(A) any agreement, contract, or transaction that is excluded or exempted under

subsection (c), (d), (e), (f), (g), or (h) of section 2 or section 4(c); or

“(B) any agreement, contract, or transaction, not otherwise subject to this Act, that is not so excluded or exempted, is or would otherwise be subject to this Act.

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

SEC. 109. PROTECTION OF THE PUBLIC INTEREST.

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

“SEC. 3. FINDINGS AND PURPOSE.

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

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

SEC. 110. PROHIBITED TRANSACTIONS.

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

“SEC. 4c. PROHIBITED TRANSACTIONS.

“(a) IN GENERAL.—

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

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

“(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

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

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

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

“(ii) is a fictitious sale; or

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

SEC. 111. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

The Commodity Exchange Act is amended—

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

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

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

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

“(b) CRITERIA FOR DESIGNATION.—

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

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

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

“(A) transfer trades or office trades;

“(B) an exchange of—

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

“(ii) futures for cash commodities; or

“(iii) futures for swaps; or

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

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

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

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

“(5) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization.

“(6) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

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

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

“(c) EXISTING CONTRACT MARKETS.—A board of trade that is designated as a contract market on the date of the enactment of

the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

“(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

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

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

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

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

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

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

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

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

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

“(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public information concerning—

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

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

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

“(9) EXECUTION OF TRANSACTIONS.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

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

“(11) FINANCIAL INTEGRITY OF CONTRACTS.—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

“(12) PROTECTION OF MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules to protect market partici-

pants from abusive practices committed by any party acting as an agent for the participants.

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

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

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

“(16) COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

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

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

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

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

“(e) CURRENT AGRICULTURAL COMMODITIES.—

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

“(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options thereon to be conducted on a derivatives transaction execution facility.”.

SEC. 112. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5 (as amended by section 111(2)) the following:

“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

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

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

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

“(b) REQUIREMENTS FOR TRADING.—

“(1) IN GENERAL.—A registered derivatives transaction execution facility under subsection (a) may trade any contract for sale of a commodity for future delivery (or option

on such a contract) on or through the facility only by satisfying the requirements of this section.

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

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

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

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

“(D)(i) the contract is a security futures product, and (ii) the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934 or an alternative trading system;

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

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

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

“(A) be an eligible contract participant; or

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

“(i) is registered with the Commission;

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

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

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

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

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

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

“(c) CRITERIA FOR REGISTRATION.—

“(1) IN GENERAL.—To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in subsection (b) and this subsection.

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

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

“(B) use technological means to—

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

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

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

“(A) transfer trades or office trades;

“(B) an exchange of—

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

“(ii) futures for cash commodities;

“(iii) futures for swaps; or

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

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

“(d) CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.—

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

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

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

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

“(A) contract terms and conditions;

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

“(C) financial integrity protections; and

“(D) other information relevant to participation in trading on the facility.

“(5) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for contracts traded on the facility if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

“(6) FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with

any of the persons described in this paragraph.

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

“(8) RECORDKEEPING.—The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.

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

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

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

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

“(1) IN GENERAL.—With respect to transactions other than transactions in security futures products, a registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

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

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

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

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

“(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

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

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

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

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

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

SEC. 113. DERIVATIVES CLEARING.

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

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

“CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING”;

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

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

“CHAPTER 2—MULTILATERAL CLEARING ORGANIZATIONS

“SEC. 408. DEFINITIONS.

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

“(1) MULTILATERAL CLEARING ORGANIZATION.—The term ‘multilateral clearing organization’ means a system utilized by more than 2 participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.

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

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

“(B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on 1 or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value;

“(C) any agreement, contract, or transaction described in subsection (c), (d), (f), or (h) of section 2 of the Commodity Exchange Act or exempted under section 2(g) or 4(c) of such Act; and

“(D) any option to enter into any, or any combination of, agreements, contracts or transactions referred to in this subparagraph.

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

“SEC. 409. MULTILATERAL CLEARING ORGANIZATIONS.

“(a) IN GENERAL.—Except with respect to clearing organizations described in subsection (b), no person may operate a multilateral clearing organization for over-the-counter derivative instruments, or otherwise engage in activities that constitute such a multilateral clearing organization unless the person is a national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, or an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act.

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

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

“(2) is registered as a derivatives clearing organization under the Commodity Exchange Act; or

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

(b) ENFORCEMENT POWERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Section 9 of the Federal Reserve Act (12 U.S.C. 221) is amended by adding at the end the following new paragraph:

“(24) ENFORCEMENT AUTHORITY.—Section 3(u), subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a State member bank which is not an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in the same manner and to the same extent as such provisions apply to State member insured banks, and any reference in such sections to an insured depository institution shall be deemed to include a reference to any such noninsured State member bank.”.

(c) RESOLUTION OF CLEARING BANKS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

“SEC. 9B. RESOLUTION OF CLEARING BANKS.

“(a) CONSERVATORSHIP OR RECEIVERSHIP.—

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

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

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

has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.

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

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

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

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

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

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

“(22) the term ‘financial institution’—

“(A) means a Federal reserve bank or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, a bank or a corporation organized under section 25A of the Federal Reserve Act and, when any such bank or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, the customer; and

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

(4) DEFINITION OF UNINSURED STATE MEMBER BANK.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (54) the following new paragraph—

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

(5) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

“(e) SCOPE OF APPLICATION.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which

operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991."

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

"SUBCHAPTER V—CLEARING BANK LIQUIDATION

"§ 781. Definitions

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

"(1) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

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

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

"§ 782. Selection of trustee

"(a) IN GENERAL.—

"(1) APPOINTMENT.—Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.

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

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

"§ 783. Additional powers of trustee

"(a) DISTRIBUTION OF PROPERTY NOT OF THE ESTATE.—The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

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

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

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

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

"(4) transfer assets or liabilities to a depository institution;

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

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

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

"(c) CERTAIN TRANSFERS INCLUDED.—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

"§ 784. Right to be heard

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

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

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

"(2) 'clearing organization' means a derivatives clearing organization registered under the Act;"

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

"(7) 'contract market' means a registered entity;"

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

"(8) 'contract of sale', 'commodity', 'derivatives clearing organization', 'future delivery', 'board of trade', 'registered entity', and 'futures commission merchant' have the meanings assigned to those terms in the Act;"

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

"SUBCHAPTER V—CLEARING BANK LIQUIDATION

"Sec.

"781. Definitions.

"782. Selection of trustee.

"783. Additional powers of trustee.

"784. Right to be heard."

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

"(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

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

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

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

(g) DERIVATIVES CLEARING ORGANIZATIONS.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5a (as added by section 112) the following new section:

"SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

"(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9) with respect to a

contract of sale of a commodity for future delivery, or option on such a contract or on a commodity, in each case unless the contract or option—

"(1) is excluded from this Act by subsection (a)(1)(C)(i), (c), (d), (f), or (h) of section 2, or exempted under section 2(g) or 4(c); or

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

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

"(c) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

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

"(2) CORE PRINCIPLES.—

"(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

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

"(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—The applicant shall establish—

"(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

"(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

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

"(E) SETTLEMENT PROCEDURES.—The applicant shall have the ability to—

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

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

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

"(F) TREATMENT OF FUNDS.—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

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

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

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

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

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

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

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

“(J) REPORTING.—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

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

“(L) PUBLIC INFORMATION.—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

“(M) INFORMATION SHARING.—The applicant shall—

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

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

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

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

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

“(3) ORDERS CONCERNING COMPETITION.—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this Act.

“(d) EXISTING DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section.

“(e) APPOINTMENT OF TRUSTEE.—

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

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

“(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

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

“(f) LINKING OF REGULATED CLEARING FACILITIES.—

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

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

SEC. 114. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

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

“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

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

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

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

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

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

“(2) RESPONSIBILITY.—A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

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

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

“(2) PRIOR APPROVAL.—

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

“(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section,

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

“(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

“(3) APPROVAL.—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.

“(d) VIOLATION OF CORE PRINCIPLES.—

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

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

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

“(2) FAILURE TO MAKE CHANGES.—If, not later than 30 days after receiving a notification under paragraph (1), a registered entity fails to make changes that, in the opinion of the Commission, are necessary to comply with the core principles, the Commission may take further action in accordance with this Act.

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

SEC. 115. EXEMPT BOARDS OF TRADE.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5c (as added by section 114) the following:

“SEC. 5d. EXEMPT BOARDS OF TRADE.

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

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

“(1) for which the underlying commodity has—

“(A) a nearly inexhaustible deliverable supply;

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

“(C) no cash market;

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

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

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

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

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

“(f) **SUBSIDIARIES.**—A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.

“(g) An exempt board of trade that meets the requirements of subsection (b) shall not represent to any person that the board of trade is registered with, or designated, recognized, licensed, or approved by the Commission.”.

SEC. 116. SUSPENSION OR REVOCATION OF DESIGNATION AS CONTRACT MARKET.

Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) (as redesignated by section 111(l)) is amended to read as follows:

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

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

SEC. 117. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 118. PREEMPTION.

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

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

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

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

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

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

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

“(iii) that is not subject to regulation by the Commission under section 4c or 19; or

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

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

“(A) an electronic trading facility under section 2(e);

“(B) an agreement, contract, or transaction that is excluded or exempt under section 2(c), 2(d), 2(f), 2(g), or 2(h) or is covered by the terms of an exemption granted by the Commission under section 4(c) (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act).”.

SEC. 119. PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.

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

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

SEC. 120. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

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

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

“(a) **COSTS AND BENEFITS.**—

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

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

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

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

“(C) considerations of price discovery;

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

“(E) other public interest considerations.

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

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

“(B) An emergency action.

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

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

SEC. 121. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.

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

“(4) **CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**—No agreement, con-

tract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction, under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.”.

SEC. 122. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

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

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

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

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

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

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

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

“(b) **REPORT.**—Within 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.”.

SEC. 123. RULE OF CONSTRUCTION.

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

SEC. 124. TECHNICAL AND CONFORMING AMENDMENTS.

(a) **COMMODITY EXCHANGE ACT.**—

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

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

(B) in paragraph (24)—
(i) in the paragraph heading, by striking “CONTRACT MARKET” and inserting “REGISTERED ENTITY”;

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

(iii) by adding at the end the following:

“A participant in an alternative trading system that is designated as a contract market pursuant to section 5f is deemed a member of

the contract market for purposes of transactions in security futures products through the contract market.”.

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

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

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

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

“(1) JURISDICTION OF COMMISSION.—

“(A) IN GENERAL.—The”; and

(B) in subsection (a)(1)—

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

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

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

(IV) by striking clause (ii); and

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

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

(ii) in subparagraph (B)—

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

(II) in clause (v)—

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

(bb) by inserting “or subparagraph (D)” after “subparagraph”; and

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

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

(D) in subsection (a)(8)(B)(ii)—

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

(ii) in the second sentence, by striking “designate a board of trade as a contract market” and inserting “designate or register a board of trade as a contract market or derivatives transaction execution facility”; and

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

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

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

(A) in subsection (a)—

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

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

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

(B) in subsection (c)—

(i) in paragraph (1)—

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

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

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

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

(A) in subsection (a)—

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

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

(B) in subsection (b)—

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

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

(C) in subsection (e)—

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

(ii) by striking “licensed or designated” each place it appears and inserting “licensed, designated, or registered”; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) in subsection (a)—

(i) in the first sentence—

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

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

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

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

(iii) in the third sentence—

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

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

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

(B) in subsection (b)—

(i) in the first sentence—

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

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

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

(ii) in the second sentence—

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

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

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

(C) in subsection (c)—

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

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

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

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

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

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

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

(B) in subsection (b), by striking “designated as a contract market” and inserting

"designated or registered as a contract market or a derivatives transaction execution facility".

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

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

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

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

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

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

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

(A) in the first sentence—

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

(ii) by inserting "or registered" after "designated";

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

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

(B) in the second sentence—

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

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

(C) in the last sentence—

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

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

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

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

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

(B) in paragraph (2)(F), by striking "trading privileges" and inserting "privileges".

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

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

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

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

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

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

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

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

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking "contract market, clearing organization of a contract market, licensed

board of trade," and inserting "registered entity"; and

(II) in subparagraph (C)(i), by striking "contract market" and inserting "registered entity";

(ii) in paragraph (2), by striking "sections 5a(11)," and inserting "sections 5(d)(13), 5b(b)(1)(E)," and

(iii) in paragraph (3), by striking "contract market" and inserting "registered entity"; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) by striking "contract market or clearing organization of a contract market" and inserting "registered entity";

(II) by striking "section 5a(8) and section 5a(9) of this Act" and inserting "sections 5 through 5c";

(III) by striking "contract market, clearing organization of a contract market, or licensed board of trade" and inserting "registered entity"; and

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

(ii) in paragraph (3)—

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

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

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

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

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

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

(c) TAX TREATMENT OF SECURITIES FUTURES CONTRACTS.—

(1) IN GENERAL.—Subpart IV of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to special rules for determining gains and losses) is amended by inserting after section 1234A the following new section:

"SEC. 1234B. GAINS OR LOSSES FROM SECURITIES FUTURES CONTRACTS.

"(a) TREATMENT OF GAIN OR LOSS.—

"(1) IN GENERAL.—Gain or loss attributable to the sale or exchange of a securities futures contract shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

"(2) NONAPPLICATION OF SUBSECTION.—This subsection shall not apply to—

"(A) a contract which constitutes property described in paragraph (1) or (7) of section 1221(a), and

"(B) any income derived in connection with a contract which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset.

"(b) SHORT-TERM GAINS AND LOSSES.—Except as provided in the regulations under section 1092(b) or this section, if gain or loss on the sale or exchange of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss shall be treated as short-term capital gain or loss.

"(c) SECURITIES FUTURES CONTRACT.—For purposes of this section, the term 'securities futures contract' means any security future (as defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this section).

"(d) CONTRACTS NOT TREATED AS COMMODITY FUTURES CONTRACTS.—For purposes of this title, a securities futures contract shall not be treated as a commodity futures contract.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to provide for the proper treatment of securities futures contracts under this title."

(2) TERMINATIONS, ETC.—Section 1234A of such Code is amended—

(A) by inserting "(other than a securities futures contract, as defined in section 1234B)" after "right or obligation" in paragraph (1),

(B) by striking "or" at the end of paragraph (1),

(C) by adding "or" at the end of paragraph (2), and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) a securities futures contract (as so defined) which is a capital asset in the hands of the taxpayer,".

(3) NONRECOGNITION UNDER SECTION 1032.—The second sentence of section 1032(a) of such Code is amended by inserting ", or with respect to a securities futures contract (as defined in section 1234B)," after "an option".

(4) TREATMENT UNDER WASH SALES RULES.—Section 1091 of such Code is amended by adding at the end the following new subsection:

"(f) CASH SETTLEMENT.—This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in) cash or property other than such stock or securities."

(5) TREATMENT UNDER STRADDLE RULES.—Clause (i) of section 1092(d)(3)(B) of such Code is amended by striking "or" at the end of subclause (I), by redesignating subclause (II) as subclause (III), and by inserting after subclause (I) the following new subclause:

"(II) a securities futures contract (as defined in section 1234B) with respect to such stock or substantially identical stock or securities, or"

(6) TREATMENT UNDER SHORT SALES RULES.—Paragraph (2) of section 1233(e) of such Code is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting "; and", and by adding at the end the following:

"(D) a securities futures contract (as defined in section 1234B) to acquire substantially identical property shall be treated as substantially identical property."

(7) TREATMENT UNDER SECTION 1256.—

(A)(i) Subsection (b) of section 1256 of such Code is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting "; and", and by adding at the end the following:

"(5) any dealer securities futures contract. The term 'section 1256 contract' shall not include any securities futures contract or option to enter into such a contract unless such contract or option is a dealer securities futures contract."

(ii) Subsection (g) of section 1256 of such Code is amended by adding at the end the following new paragraph:

"(9) DEALER SECURITIES FUTURES CONTRACT.—

"(A) IN GENERAL.—The term 'dealer securities futures contract' means, with respect to any dealer, any securities futures contract,

and any option to enter into such a contract, which—

“(i) is entered into by such dealer (or, in the case of an option, is purchased or granted by such dealer) in the normal course of his activity of dealing in such contracts or options, as the case may be, and

“(ii) is traded on a qualified board or exchange.

“(B) DEALER.—For purposes of subparagraph (A), a person shall be treated as a dealer in securities futures contracts or options on such contracts if the Secretary determines that such person performs, with respect to such contracts or options, as the case may be, functions similar to the persons described in paragraph (8)(A). Such determination shall be made to the extent appropriate to carry out the purposes of this section.

“(C) SECURITIES FUTURES CONTRACT.—The term ‘securities futures contract’ has the meaning given to such term by section 1234B.”

(B) Paragraph (4) of section 1256(f) of such Code is amended—

(i) by inserting “, or dealer securities futures contracts,” after “dealer equity options” in the text, and

(ii) by inserting “AND DEALER SECURITIES FUTURES CONTRACTS” after “DEALER EQUITY OPTIONS” in the heading.

(C) Paragraph (6) of section 1256(g) of such Code is amended to read as follows:

“(6) EQUITY OPTION.—The term ‘equity option’ means any option—

“(A) to buy or sell stock, or

“(B) the value of which is determined directly or indirectly by reference to any stock or any narrow-based security index (as defined in section 3(a)(55) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this paragraph).

The term ‘equity option’ includes such an option with respect to a group of stocks only if such group meets the requirements for a narrow-based security index (as so defined).”

(D) The Secretary of the Treasury or his delegate shall make the determinations under section 1256(g)(9)(B) of the Internal Revenue Code of 1986, as added by this Act, not later than July 1, 2001.

(8) CONFORMING AMENDMENTS.—

(A) Section 1223 of such Code is amended by redesignating paragraph (16) as paragraph (17) and by inserting after paragraph (15) the following new paragraph:

“(16) If the security to which a securities futures contract (as defined in section 1234B) relates (other than a contract to which section 1256 applies) is acquired in satisfaction of such contract, in determining the period for which the taxpayer has held such security, there shall be included the period for which the taxpayer held such contract if such contract was a capital asset in the hands of the taxpayer.”

(B) The table of sections for subpart IV of subchapter P of chapter 1 of such Code is amended by inserting after the item relating to section 1234A the following new item:

“Sec. 1234B. Securities futures contracts.”

(9) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(d) DESIGNATION OF CONTRACT MARKETS.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) DESIGNATION OF CONTRACT MARKETS.—Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 shall apply

for purposes of this title except to the extent provided in regulations prescribed by the Secretary.”

SEC. 125. PRIVACY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5f (as added by section 222) the following:

“SEC. 5g. PRIVACY.

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

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

SEC. 126. REPORT TO CONGRESS.

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

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

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

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

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

(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

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

SEC. 127. INTERNATIONAL ACTIVITIES OF THE COMMODITY FUTURES TRADING COMMISSION.

(a) FINDINGS.—The Congress finds that—

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

(2) developments in data processing and communications technologies enable users of risk management services to analyze and compare those services on a worldwide basis;

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

(4) regulatory impediments to the operation of global business interests can com-

promise the competitiveness of United States businesses;

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

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

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

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

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

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

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

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

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

SEC. 128. RULES OF CONSTRUCTION.

(a) FINANCIAL INSTITUTION ACTIVITIES.—No provision of this Act, or any amendment made by this Act to any other provision of law, shall be construed as authorizing, supporting the authorization for, or implying any prior authorization for, any financial institution (as defined in section 1a(15) of the Commodity Exchange Act), or any subsidiary of such financial institution, to engage in any activity or transaction or to hold any security or other asset.

(b) DEPOSITORY INSTITUTIONS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

“(v) RULES OF CONSTRUCTION.—

“(1) IN GENERAL.—No depository institution may take delivery of an equity security under a security futures product (as defined in section 3(a)(56) of the Securities Exchange Act of 1934).

“(2) ADDITIONAL RULE.—Paragraph (1) shall not be construed as creating any inference that a depository institution may take delivery of, or make any investment in, an equity security under any other circumstance.”

TITLE II—COORDINATED REGULATION OF SECURITY FUTURES PRODUCTS

Subtitle A—Securities Law Amendments

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

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

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

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

“(11) The term ‘equity security’ means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a

security; or any such warrant or right; or any put, call, straddle, option, or privilege on any such security; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.”;

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

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

(5) by adding at the end the following:

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

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

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

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

“(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index’s weighting; or

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

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

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

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

“(III) each component security is—

“(aa) registered pursuant to section 12 of this title;

“(bb) 1 of 750 securities with the largest market capitalization; and

“(cc) 1 of 675 securities with the largest dollar value of average daily trading volume;

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

“(iii)(I) it traded on a designated contract market or registered derivatives transaction

execution facility for at least 30 days as a contract of sale for future delivery that was not a narrow-based security index; and

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

“(iv) it is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

“(v) no more than 18 months have passed since enactment of the Commodity Futures Modernization Act of 2000 and it is (I) traded on or subject to the rules of a foreign board of trade; (II) the offer and sale in the United States of a contract of sale for future delivery on such index was authorized prior to the effective date of the Commodity Futures Modernization Act of 2000; and (III) the conditions of such authorization continue to be met; or

“(vi) it is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

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

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

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

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

“(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

“(56) The term ‘security futures product’ means a security future or any put, call, straddle, option, or privilege on any security future.

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

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

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

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

(a) **EXPEDITED REGISTRATION AND EXEMPTION.**—Section 6 of the Securities Exchange

Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(g) **NOTICE REGISTRATION OF SECURITY FUTURES PRODUCT EXCHANGES.**—

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

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

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

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

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

“(i) security futures products; or

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

“(2) **REGISTRATION BY NOTICE FILING.**—

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

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

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

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

“(4) **EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.**—

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

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

“(ii) Section 8.

“(iii) Section 11.

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

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

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

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

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

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

“(5) TRADING IN SECURITY FUTURES PRODUCTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

“(i) 1 year after the date of enactment of the Commodity Futures Modernization Act of 2000; or

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

“(B) PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

“(i) the transaction is entered into—

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

“(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(12)) at the time at which the persons enter into the agreement, contract, or transaction; and

“(ii) the transaction is entered into on or after the later of—

“(I) 8 months after the date of enactment of the Commodity Futures Modernization Act of 2000; or

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

(b) COMMISSION REVIEW OF PROPOSED RULE CHANGES.—

(1) EXPEDITED REVIEW.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

“(7) SECURITY FUTURES PRODUCT RULE CHANGES.—

“(A) FILING REQUIRED.—A self-regulatory organization that is an exchange registered with the Commission pursuant to section 6(g) of this title or that is a national securities association registered pursuant to section 15A(k) of this title shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a ‘proposed rule change’) that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security fu-

tures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such self-regulatory organization's obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, promptly publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit data, views, and arguments concerning such proposed rule change.

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

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

“(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

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

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

“(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved. Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for

hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

“(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.”.

(2) DECIMAL PRICING PROVISIONS.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (7), as added by paragraph (1), the following:

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

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

“(9) CONSULTATION WITH CFTC.—

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

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

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

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

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

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

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

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

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

SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES TRADING SECURITY FUTURES PRODUCTS.

(a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

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

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

“(A) NOTICE REGISTRATION.—

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

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

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

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

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

“(i) Section 8.

“(ii) Section 11.

“(iii) Subsections (c)(3) and (c)(5) of this section.

“(iv) Section 15B.

“(v) Section 15C.

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

(2) CONFORMING AMENDMENT.—Section 28(e) of the Securities Exchange Act of 1934 (15

U.S.C. 78bb(e)) is amended by adding at the end the following:

“(4) The provisions of this subsection shall not apply with regard to securities that are security futures products.”

(b) FLOOR BROKERS AND FLOOR TRADERS.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by inserting after paragraph (11), as added by subsection (a), the following:

“(12) EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.—

“(A) REGISTRATION EXEMPTION.—A natural person shall be exempt from the registration requirements of this section if such person—

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

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

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

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

“(i) Section 8.

“(ii) Section 11.

“(iii) Subsections (c)(3), (c)(5), and (e) of this section.

“(iv) Section 15B.

“(v) Section 15C.

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

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

“(k) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—

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

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

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

“(B) have rules that—

“(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to subsection (a) that are applicable to security futures products; and

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

“(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 19(g)(2)) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to

security futures products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

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

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

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

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

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

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

“(A) Section 8.

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

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

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

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

(1) Section 16(14) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ll(14)) is amended by inserting “or any security future as that term is defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934,” after “certificate of deposit for a security.”

(2) Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A)) is amended—

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

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

(C) by adding at the end the following:

“(iii) persons who are registered as a broker or dealer pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934.”

SEC. 204. SPECIAL PROVISIONS FOR INTER-AGENCY COOPERATION.

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

(1) by striking “(b) All” and inserting the following:

“(b) RECORDS SUBJECT TO EXAMINATION.—

“(1) PROCEDURES FOR COOPERATION WITH OTHER AGENCIES.—All”;

(2) by striking “prior to conducting any such examination of a registered clearing”

and inserting the following: "prior to conducting any such examination of a—

"(A) registered clearing";

(3) by redesignating the last sentence as paragraph (4)(C);

(4) by striking the period at the end of the first sentence and inserting the following: "; or

"(B) broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) gives notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.";

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

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

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

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

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

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

"(4) RULES OF CONSTRUCTION.—

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

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

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

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

(a) ADDITION OF SECURITY FUTURES PRODUCTS TO OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

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

(A) in paragraph (1)—

(i) by inserting "(A)" after "acquires"; and

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

(B) in paragraph (2)—

(i) by inserting "(A)" after "interest in any"; and

(ii) by striking "; or" and inserting "; or (B) such security futures product; or"; and

(C) in paragraph (3)—

(i) by inserting "(A)" after "interest in any"; and

(ii) by inserting "; or (B) such security futures product" after "privilege".

(2) MANIPULATION IN OPTIONS AND OTHER DERIVATIVE PRODUCTS.—Section 9(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(g)) is amended—

(A) by inserting "(1)" after "(g)";

(B) by inserting "other than a security futures product" after "future delivery"; and

(C) by adding at the end following:

"(2) Notwithstanding the Commodity Exchange Act, the Commission shall have the authority to regulate the trading of any security futures product to the extent provided in the securities laws."

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

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

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

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

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

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

"(h) TRADING IN SECURITY FUTURES PRODUCTS.—

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

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

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

"(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each

component security of a narrow-based security index, be registered pursuant to section 12 of this title;

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

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

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

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

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

"(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

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

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

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

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

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

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

"(A) AUTHORITY TO MODIFY.—The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order,

may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

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

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

“(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

“(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

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

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

“(7) DEFERRAL OF LINKED AND COORDINATED CLEARING.—

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

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

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

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

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

“(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single eq-

uity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 15A(a), and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

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

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

(1) in subsection (a), by inserting “or a security futures product” after “exempted security”;

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

(3) by redesignating paragraph (2) of subsection (c) as paragraph (3) of such subsection; and

(4) by inserting after paragraph (1) of such subsection the following:

“(2) MARGIN REGULATIONS.—

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

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

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

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

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

“(i) to preserve the financial integrity of markets trading security futures products;

“(ii) to prevent systemic risk;

“(iii) to require that—

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

“(II) initial and maintenance margin levels for a security future product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of this title, other than an option on a security future; except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate; and

“(iv) to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures products, are and remain consistent with the requirements established by the Board, pursuant to subparagraphs (A) and (B) of paragraph (1).”

(c) INCORPORATION OF SECURITY FUTURES PRODUCTS INTO THE NATIONAL MARKET SYSTEM.—Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1) is amended by adding at the end the following:

“(e) NATIONAL MARKETS SYSTEM FOR SECURITY FUTURES PRODUCTS.—

“(1) CONSULTATION AND COOPERATION REQUIRED.—With respect to security futures products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

“(2) APPLICATION OF RULES BY ORDER OF CFTC.—No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security futures products on an exchange that is registered under section 6(g) unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.”

(d) INCORPORATION OF SECURITY FUTURES PRODUCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT.—Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(b)) is amended by adding at the end the following:

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

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

(e) MARKET EMERGENCY POWERS AND CIRCUIT BREAKERS.—Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)) is amended—

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

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

(f) TRANSACTION FEES.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended

(1) in subsection (a), by inserting “and assessments” after “fees”;

(2) in subsections (b), (c), and (d)(1), by striking “and other evidences of indebtedness” and inserting “other evidences of indebtedness, and security futures products”;

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

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

(5) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

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

“(e) ASSESSMENTS ON SECURITY FUTURES TRANSACTIONS.—Each national securities exchange and national securities association shall pay to the Commission an assessment equal to \$0.02 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to \$0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.”.

(g) EXEMPTION FROM SHORT SALE PROVISIONS.—Section 10(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(a)) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by adding at the end the following:

“(2) Paragraph (1) of this subsection shall not apply to security futures products.”.

(h) RULEMAKING AUTHORITY TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) is amended—

(1) by inserting “(A)” after “(3)”;

(2) by adding at the end the following:

“(B) Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (1) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of (i) the provisions of section 8, section 15(c)(3), and section 17 of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products and (ii) similar provisions of the Commodity

Exchange Act and rules and regulations thereunder involving security futures products.”.

(i) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after subsection (h), as added by subsection (a), the following:

“(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (1) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(c)(3)(B) involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.”.

(j) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by inserting after subsection (k), as added by section 203, the following:

“(l) Consistent with this title, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (1) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

“(1) rules of such national securities association of the type specified in section 15(c)(3)(B) involving security futures products; and

“(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered pursuant to section 6(g) involving security futures products.”.

(k) OBLIGATION TO PUT IN PLACE PROCEDURES AND ADOPT RULES.—

(1) NATIONAL SECURITIES ASSOCIATIONS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by inserting after subsection (l), as added by subsection (j) of this section, the following new subsection:

“(m) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities association registered pursuant to subsection (a) shall, not later than 8 months after the date of enactment of the Commodity Futures Modernization Act of 2000, implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title.”.

(2) NATIONAL SECURITIES EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by inserting after subsection (i), as added by subsection (i) of this section, the following new subsection:

“(j) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in section 6(h)(5)(A) of this title and adopt the

rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.”.

(l) OBLIGATION TO ADDRESS SECURITY FUTURES PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding after subsection (i), as added by subsection (i), the following—

“(j)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the protection of investors and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

“(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.”.

SEC. 207. CLEARANCE AND SETTLEMENT.

Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(b)) is amended—

(1) in paragraph (3)(A), by inserting “and derivative agreements, contracts, and transactions” after “prompt and accurate clearance and settlement of securities transactions”;

(2) in paragraph (3)(F), by inserting “and, to the extent applicable, derivative agreements, contracts, and transactions” after “designed to promote the prompt and accurate clearance and settlement of securities transactions”;

(3) by inserting after paragraph (7), as added by section 206(d), the following:

“(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”.

SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND DISCLOSURE ISSUES UNDER THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) TREATMENT OF SECURITY FUTURES PRODUCTS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

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

(B) in paragraph (3), by adding at the end the following: “Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.”;

(C) by adding at the end the following:

“(16) The terms ‘security future’, ‘narrow-based security index’, and ‘security futures product’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(2) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following:

“(14) Any security futures product that is—
“(A) cleared by a clearing agency registered under section 17A of the Securities

Exchange Act of 1934 or exempt from registration under subsection (b)(7) of such section 17A; and

“(B) traded on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.”.

(3) CONFORMING AMENDMENT.—Section 12(a)(2) of the Securities Act of 1933 (15 U.S.C. 771(a)(2)) is amended by striking “paragraph (2)” and inserting “paragraphs (2) and (14)”.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) EXEMPTION FROM REGISTRATION.—Section 12(a) of the Securities Exchange Act of 1934 (15 U.S.C. 781(a)) is amended by adding at the end the following: “The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.”.

(2) EXEMPTIONS FROM REPORTING REQUIREMENT.—Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 781(g)(5)) is amended by adding at the end the following: “For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product.”.

(3) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following:

“(f) TREATMENT OF TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—The provisions of this section shall apply to ownership of and transactions in security futures products as if they were ownership of and transactions in the underlying equity security. The Commission may adopt such rules and regulations as it deems necessary or appropriate in the public interest to carry out the purposes of this section.”.

SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.

(a) DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.—

(1) Section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(36)) is amended by inserting “security future,” after “treasury stock.”.

(2) Section 202(a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amended by inserting “security future,” after “treasury stock.”.

(3) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end the following:

“(52) The terms ‘security future’ and ‘narrow-based security index’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(4) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:

“(27) The terms ‘security future’ and ‘narrow-based security index’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(b) OTHER PROVISION.—Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(1) by striking “or” at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting “; or”; and

(3) by adding at the end the following:

“(6) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to—

“(A) an investment company registered under title I of this Act; or

“(B) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election.”.

SEC. 210. PREEMPTION OF STATE LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended—

(1) in the last sentence—

(A) by inserting “subject to this title” after “privilege, or other security”; and

(B) by striking “any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 19(b) of this Act” and inserting “any such security”; and

(2) by adding at the end the following new sentence: “No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.”.

Subtitle B—Amendments to the Commodity Exchange Act

SEC. 221. JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION; OTHER PROVISIONS.

(a) JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION.—

(1) Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2a) (as redesignated by section 124(a)(2)(C)) is amended—

(A) in clause (ii)—

(i) by inserting “or register a derivatives transaction execution facility that trades or executes,” after “contract market in.”;

(ii) by inserting after “contracts for future delivery” the following: “, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery.”;

(iii) by striking “making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets” and inserting “or the derivatives transaction execution facility, and the applicable contract, meet”; and

(iv) by striking subclass (III) of clause (ii) and inserting the following:

“(III) Such group or index of securities shall not constitute a narrow-based security index.”;

(B) by striking clause (iii);

(C) by striking clause (iv) and inserting the following:

“(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 and section 1a(32) of this Act subject to all rules and regulations applicable to security futures products under this Act and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934.”; and

(D) by redesignating clause (v) as clause (iv).

(2) Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, 4) is amended by adding at the end the following:

“(D)(i) Notwithstanding any other provision of this Act, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange

Act of 1934, section 2(a)(16) of the Securities Act of 1933, section 2(a)(52) of the Investment Company Act of 1940, and section 202(a)(27) of the Investment Advisers Act of 1940, options on security futures, and persons effecting transactions in security futures and options thereon, and this Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guaranty’) and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a(32) of this Act: *Provided, however*, That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

“(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934.

“(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product.

“(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

“(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

“(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

“(VI) The security futures product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of

1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

“(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

“(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has in place such procedures.

“(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.

“(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.

“(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

“(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

“(I) the transaction is conducted on or subject to the rules of a board of trade that—

“(aa) has been designated by the Commission as a contract market in such security futures product; or

“(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

“(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

“(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

“(iii) (I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

“(II) After 3 years after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934.

“(iv) (I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

“(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to the Commission in connection with the examination.

“(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section

15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

“(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f, shall be limited to records with respect to accounts, agreements, and transactions involving security futures products.

“(v) (I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

“(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

“(vi) (I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

“(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

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

“(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and any national securities associations registered pursuant to section 15A(a) of such Act; or

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

“(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).”.

(b) MARGIN ON SECURITY FUTURES.—Section 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C. 2a(vi)) (as redesignated by section 124) is amended—

(1) by redesignating subclause (V) as subclause (VI); and

(2) by striking “(vi)(I)” and all that follows through subclause (IV) and inserting the following:

“(v) (I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option

thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

“(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

“(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

“(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.

“(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.”

(c) DUAL TRADING.—Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is amended to read as follows:

“SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY FUTURES PRODUCTS ON DESIGNATED CONTRACT MARKETS AND REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.

“(a) The Commission shall issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility. The regulations issued by the Commission under this section—

“(1) shall provide that the prohibition of dual trading thereunder shall take effect upon issuance of the regulations; and

“(2) shall provide exceptions, as the Commission determines appropriate, to ensure fairness and orderly trading in security futures product markets, including—

“(A) exceptions for spread transactions and the correction of trading errors;

“(B) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this section; and

“(C) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest consistent with the purposes of this section.

“(b) As used in this section, the term ‘dual trading’ means the execution of customer or-

ders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for—

“(1) the account of such floor broker;

“(2) an account for which such floor broker has trading discretion; or

“(3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association.

“(c) As used in this section, the term ‘broker association’ shall include two or more contract market members or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker, who—

“(1) engage in floor brokerage activity on behalf of the same employer,

“(2) have an employer and employee relationship which relates to floor brokerage activity,

“(3) share profits and losses associated with their brokerage or trading activity, or

“(4) regularly share a deck of orders.”

(d) EXEMPTION FROM REGISTRATION FOR INVESTMENT ADVISERS.—Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended by adding at the end the following:

“(3) Subsection (1) of this section shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a(6), and that does not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.”

(e) EXEMPTION FROM INVESTIGATIONS OF MARKETS IN UNDERLYING SECURITIES.—Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by adding at the end the following:

“(e) This section shall not apply to investigations involving any security underlying a security futures product.”

(f) RULEMAKING AUTHORITY TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) by inserting “(a)” before the first undesignated paragraph;

(2) by inserting “(b)” before the second undesignated paragraph; and

(3) by adding at the end the following:

“(c) Consistent with this Act, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act (except paragraph (11) thereof), involving the application of—

“(1) section 8, section 15(c)(3), and section 17 of the Securities Exchange Act of 1934 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 3(a)(40) of the Securities Exchange Act of 1934), involving security futures products; and

“(2) similar provisions of this Act and the rules and regulations thereunder involving security futures products.”

(g) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section

17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by adding at the end the following:

“(r) Consistent with this Act, each futures association registered under this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities and Exchange Act of 1934 (except paragraph (11) thereof), with respect to the application of—

“(1) rules of such futures association of the type specified in section 4d(3) of this Act involving security futures products; and

“(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities and Exchange Act of 1934 involving security futures products.”

(h) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 5c of the Commodity Exchange Act (as added by section 114) is amended by adding at the end the following new subsection:

“(f) Consistent with this Act, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof) with respect to the application of—

“(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 4d(3) of this Act involving security futures products; and

“(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and national securities exchanges registered pursuant to section 6(g) of such Act involving security futures products.”

(i) OBLIGATION TO ADDRESS SECURITY FUTURES PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended by adding at the end the following:

“(E)(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the protection of investors and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

“(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.”

(j) SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended by adding at the end the following:

“(F)(i) Nothing in this Act is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

“(ii) Nothing in this Act is intended to prohibit any person located in the United States from purchasing or carrying securities futures products traded on or subject to the

rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market.”.

SEC. 222. APPLICATION OF THE COMMODITY EXCHANGE ACT TO NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS THAT TRADE SECURITY FUTURES.

(a) NOTICE DESIGNATION OF NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS.—The Commodity Exchange Act is amended by inserting after section 5e (7 U.S.C. 7b), as redesignated by section 111(l), the following:

“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.

“(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934, or is an alternative trading system shall be a designated contract market in security futures products if—

“(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures products;

“(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

“(3) the registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission. Such designation shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

“(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to section 5f shall be exempt from the following provisions of this Act and the rules thereunder:

“(A) Subsections (c), (e), and (g) of section 4c.

“(B) Section 4j.

“(C) Section 5.

“(D) Section 5c.

“(E) Section 6a.

“(F) Section 8(d).

“(G) Section 9(f).

“(H) Section 16.

“(2) An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 17 and shall be exempt from any provision of this Act that would require such alternative trading system to—

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

“(B) discipline subscribers other than by exclusion from trading.

“(3) To the extent that an alternative trading system is exempt from any provision of this Act pursuant to paragraph (2) of this subsection, the futures association registered under section 17 of which the alternative trading system is a member shall set rules governing the conduct of subscribers to the alternative trading system and discipline the subscribers.

“(4)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this Act or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

“(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

“(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.”.

(b) NOTICE REGISTRATION OF CERTAIN SECURITIES BROKER-DEALERS; EXEMPTION FROM REGISTRATION FOR CERTAIN SECURITIES BROKER-DEALERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

“(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

“(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

“(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

“(D) the broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

The registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

“(3) A floor broker or floor trader shall be exempt from the registration requirements of section 4e and paragraph (1) of this subsection if—

“(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

“(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products; and

“(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.”.

(c) EXEMPTION FOR SECURITIES BROKER-DEALERS FROM CERTAIN PROVISIONS OF THE COMMODITY EXCHANGE ACT.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended by inserting after paragraph (3), as added by subsection (b), the following:

“(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this Act and the rules thereunder:

“(i) Subsections (b), (d), (e), and (g) of section 4c.

“(ii) Sections 4d, 4e, and 4h.

“(iii) Subsections (b) and (c) of this section.

“(iv) Section 4j.

“(v) Section 4k(1).

“(vi) Section 4p.

“(vii) Section 6d.

“(viii) Subsections (d) and (g) of section 8.

“(ix) Section 16.

“(B)(i) Except as provided in clause (ii) of this subparagraph, but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2), or any broker or dealer exempt from registration pursuant to paragraph (3), from any provision of this Act or of any rule or regulation thereunder, to the extent the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

“(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

“(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 17.

“(ii) No futures association registered under section 17 shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).”.

(d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SECURITIES BROKER-DEALERS.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k), is amended by inserting after paragraph (4), as added by subsection (c), the following:

“(5) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this Act and the rules thereunder:

“(A) Subsections (b), (d), (e), and (g) of section 4c.

“(B) Sections 4d, 4e, and 4h.

“(C) Subsections (b) and (c) of section 4f.

“(D) Section 4j.

“(E) Paragraph (1) of this section.

“(F) Section 4p.

“(G) Section 6d.

“(H) Subsections (d) and (g) of section 8.

“(I) Section 16.”.

SEC. 223. NOTIFICATION OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

(a) Section 8(a) of the Commodity Exchange Act (7 U.S.C. 12(a)) is amended by adding at the end the following:

"(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f."

(b) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at the end the following:

"(g) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f."

(c) Section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by adding at the end the following:

"(h) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f."

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to the rule, the gentleman from Texas (Mr. COMBEST) and the gentleman from Texas (Mr. STENHOLM) each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. COMBEST).

Mr. COMBEST. Mr. Speaker, I ask unanimous consent that the gentleman from Iowa (Mr. LEACH) from the Committee on Banking and Financial Services have control of 5 minutes of my time and that he be permitted to yield blocks of time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. COMBEST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House considers a bill that addresses another of the contentious areas where capital and investment needs of American business intersect with the needs of managing economic risk in a global market.

Although the issues in this bill do not have the long history associated with Glass-Steagall reforms, the process that we hope to be culminating this afternoon actually began in 1989. Then it took the Congress 3 years to broker a solution on how to deal with over-the-counter financial instruments that had many of the economic characteris-

tics of agricultural futures. While the Futures Trading Practices Act of 1992 proved temporary, we hope that today's legislation will be more lasting.

Let me emphasize at the outset of this bill it aligns itself closely with the recommendations of the President's Working Group on Financial Services. The Department of the Treasury, the Federal Reserve, the Securities and Exchange Commission and the Commodity Futures Trading Commission compromise the President's Working Group.

The PWG urged the Congress to steer clear of allowing over-the-counter financial instruments to be offered to unsuspecting individuals who could lose their life's savings by picking an unsuitable investment. These are the so-called "retail customers," and in all instances this bill has followed the PWG's advice.

Indeed, the three committees of jurisdiction here in the House have taken a cautious approach, while making the three remain reforms the centerpiece of this legislation.

First, we provide legal certainty to the vast multi-trillion dollar derivative markets, but we make certain that only highly sophisticated, deep-pocketed companies and individuals may participate in these markets.

Second, we provide the U.S. derivatives industry the ability to trade single stock futures, but only under the watchful eyes of Federal securities and futures regulators.

Third, we allow U.S. futures exchanges to set their own course in operating their derivatives markets under CFTC oversight, but without the burdens of a regulatory regime designed for the mid-20th century.

These accomplishments were realized even though three committees shared legislative jurisdiction over these matters. The Committee on Agriculture, whose jurisdiction grew from the 150-year-old agricultural futures markets, understands the urgency of giving legal certainty to a \$90 trillion swaps market. The Committee on Commerce, with jurisdiction over the securities laws, knows that if U.S. financial firms are to compete in global markets, single stock futures must be allowed to trade here in this country. And the Committee on Banking and Financial Services accepts the nexus between traditional banking activities and the tools of risk management that are not of their making.

In conclusion, Mr. Speaker, I urge my colleagues to adopt this sound legislation. It rounds out many of the historic financial reforms passed by the 106th Congress. To fail to pass this legislation this year will put our financial services industry at a severe competitive disadvantage in the world market. That is why it is so important that the House get this bill to the other body now, where it may be considered and sent on to the President.

Finally, Mr. Speaker, I would simply say in recognition, the gentleman from

Illinois (Mr. EWING), the chairman of the subcommittee with this jurisdiction, has not spent simply days, weeks or months on this bill, he has spent years on drafting this. We all regretably know that the gentleman from Illinois (Mr. EWING) is finalizing his congressional career at the end of this term. This, I think, could be his legacy. There have been countless hours that he has put in on this work. I commend the gentleman very much for what it is that he has done.

I also want to thank the staff on all of the committees for the countless numbers of hours that they have put in over the past several weeks to try to get us to this point today.

Mr. Speaker, I ask unanimous consent that the gentleman from Illinois (Mr. EWING) control the balance of the time that is allotted to the Committee on Agriculture.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4541. It is an important piece of legislation and has a number of components that will improve the business environment for the derivatives portion of our Nation's financial services industry. While I support the bill, I do have some reservations.

Mr. Speaker, in its early stages, this bill was built from agreements developed between regulators and the President's Working Group on Financial Markets; between the over-the-counter derivatives industry and our futures exchanges; between the Securities and Exchange Commission and the Commodity Futures Trading Commission; and between the three committees of jurisdiction.

Mr. Speaker, for a time, the bill's development was the focus of a bipartisan group of members from the three committees that conducted the committee markups; but in a bizarre twist, the leadership intervened and decided to substitute partisan negotiations in place of the bipartisan discussions that were already under way and that were yielding productive results.

Mr. Speaker, the leadership's partisan diversion in this matter was clearly unnecessary. In my view, it slowed the process of developing a consensus bill, and consequently it nearly cost us our opportunity to move this legislation forward. The process has also had the effect of detracting from confidence in the final product.

Nevertheless, Mr. Speaker, the bill tackles and accomplishes the three main tasks that the Committee on Agriculture set for itself at the beginning of this process: modernizing our Commodity Exchange Act regulatory system, providing legal certainty for our over-the-counter derivatives market, and repealing the outdated prohibition on the trading of single stock futures in the United States.

Mr. Speaker, I want to compliment the CFTC for their help. The commission deserves special credit for the design of the new futures market regulatory scheme.

The bill reforms futures trading regulation by freeing the CFTC from the task of prescribing the rules and procedures that exchanges must follow. With the bill's enactment, the CFTC's primary role will be to examine and enforce trading entities' compliance with core principles of self-regulatory responsibility. Exchanges will be able to design their businesses the best they can, by adopting practices that are in compliance with these principles.

The enforcement provisions of H.R. 4541, as reported by the Committee on Agriculture, caused the CFTC to be concerned that it would lack sufficient authority to bring enforcement action against a registered entity that fails to abide by core principles. I am pleased to say that since that time, the bill's provisions have been modified to meet the concerns of the CFTC. At the same time, provisions have been added to clarify that registered entities will have some flexibility in meeting core principles.

Mr. Speaker, the bill before the House repeals the outdated ban on single stock futures. We have never had a better opportunity to eliminate this barrier to progress. With all the things we do trade in this country today, not just corn, cotton, wheat, soybeans, interest rates, currencies, sugar, crude oil and milk futures, but futures on heating degree days, on catastrophic insurance and Iowa crop yields and many other commodities, the ban is particularly absurd.

Our Nation is the capital of financial innovation; but we ban futures trading on two things, just two things: onions and single stock futures. The agreements in this bill that will allow trading in single stock futures are an important development, and I am grateful for the work of the SEC and the CFTC in developing their agreement.

Mr. Speaker, sections 102 through 106 of the bill provide the legal certainty for over-the-counter derivatives recommended by the President's Working Group and sought by the over-the-counter industry. Section 107 is intended to further bolster that certainty with regard to swap transactions. The application of section 107 is limited to bilateral, individually negotiated transactions, not entered into on a transaction facility.

Mr. Speaker, as the Treasury Department said for the Committee on Agriculture's record earlier this year, "The changes resulting from technology, globalization and financial innovation have made it increasingly important that our regulatory and legal framework keeps pace with rapid progress in the marketplace."

Mr. Speaker, the place of our financial industry in worldwide competition depends on us. We should move this bill forward.

I would, however, be much more comfortable if we had been given the opportunity to analyze the bill and expose it to greater public scrutiny. Our work product would benefit, since the issues involved are complicated and very technical in nature. However, I have decided after listening to the regulators and the industry representatives involved that expediency is more important than a careful analytical process. I can easily understand how another decision could be reached on this legislation.

Mr. Speaker, despite my reservations, I do want to especially commend the leaders of the House committees who worked on this bill, and particularly recognize the gentleman from Texas (Chairman COMBEST) for his leadership. Special recognition must be reserved for our subcommittee chairman, the gentleman from Illinois (Mr. EWING). His leadership over a number of years has been key to laying the groundwork for and designing the architecture of the delicate agreements that hold H.R. 4541 together. He is a true consensus builder, and the bill before us is a tribute to his service.

Mr. Speaker, I urge my colleagues to pass this bill, and at this time I ask the gentleman from Illinois (Chairman EWING) if he will join me in a colloquy.

Mr. Speaker, the bill before us seeks to modernize regulation of futures markets by replacing rigid governmentally imposed restrictions with flexible, but comprehensive, core principles that registered entities must comply with in the conduct of administering trading.

Does the chairman of the subcommittee agree that the bill is meant to provide this flexibility while also maintaining the ability of the CFTC to compel compliance with their provisions?

Mr. EWING. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Illinois.

Mr. EWING. Mr. Speaker, as included in the bill before us, the core principles will be, by their nature, flexible standards. Accordingly, a regulated entity would have reasonable discretion in making determinations as to how it will meet these requirements. Regulated entities will be able to exercise reasonable discretion in interpreting the language of a core principle to the extent such language includes discretionary language. However, the commission retains its clear authority to issue interpretations by rule, regulation, or order.

Mr. STENHOLM. Mr. Speaker, reclaiming my time, I thank the chairman for his answer, and for his work on the bill. I again encourage the support of this legislation.

Mr. Speaker, I include for the RECORD the statement of administration policy in support of the legislation before us.

STATEMENT OF ADMINISTRATION POLICY

H.R. 4541—Commodity Futures Modernization Act of 2000

(Rep Ewing (R) Illinois and 3 cosponsors)

The Administration strongly supports the version of H.R. 4541, the Commodity Futures Modernization Act of 2000, that the Administration understands will be considered on the House floor. This legislation would reauthorize the Commodity Futures Trading Commission (CFTC) and modernize the Nation's legal and regulatory framework regarding over-the-counter (OTC) derivatives transactions and markets. In so doing, H.R. 4541 also would implement many of the unanimous recommendations regarding the treatment of OTC derivatives made by the President's Working Group on Financial Markets, which includes the Secretary of the Treasury and the Chairmen of the Federal Reserve Board of Governors, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

It is important that this legislation be enacted this year because of the meaningful steps it would take in helping to: promote innovation; enhance the transparency and efficiency of derivative markets; maintain the competitiveness of U.S. businesses and markets; and, potentially, reduce systemic risk. H.R. 4541 would accomplish these goals while assuring adequate customer protection for small investors and protecting the integrity of the underlying securities and futures markets. A failure to modernize the Nation's framework for OTC derivatives during this legislative session would deprive American markets and businesses of these important benefits that could result in the movement of these markets to overseas locations with more updated regulatory regimes. The Administration looks forward to working with members of Congress to improve certain aspects of the bill as it continues through the legislative process.

Mr. Speaker, I reserve the balance of my time.

Mr. EWING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I truly appreciate all of the hard work from majority and minority members and staff of my committee, the Committee on Banking and Financial Services and the Committee on Commerce. I also must say that the Treasury Department, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Federal Reserve have cooperated greatly in working through this process.

Mr. Speaker, the President's Working Group report on OTC derivatives was requested by the House and Senate Committee on Agriculture chairmen in September of 1998 and presented to the committee in November of 1999. This report laid the groundwork for many of the legal certainty provisions and other provisions included in H.R. 4541.

The President's Working Group report pointed out two issues apart from the legal certainty that also deserve congressional close attention. Regulatory relief for the domestic futures exchanges was of great importance to ensure the U.S. futures exchanges can compete globally.

□ 1815

Chairman Greenspan said it most clearly in past testimony, "Already the

largest futures exchange in the world is no longer in America's heartland; instead, it is now in the heart of Europe. To be sure, no U.S. exchange has yet to lose a major contract to a foreign competitor. But it would be a serious mistake for us to wait for such unmistakable evidence of a loss of international competitiveness before acting."

While the President's working group report did not give details on regulatory relief for futures exchanges, it did conclude that the Commodities Future Trading Commission should provide appropriate regulatory relief for the exchange-traded financial futures.

The CFTC took the initiative to develop a far-reaching staff proposal to provide regulatory relief for domestic futures exchanges. I am extremely impressed with the CFTC's commitment to work with the industry and with others and the President's working group members in creating its proposal. I particularly pay tribute to the chairman, Mr. Rainer, for his work.

H.R. 4541 incorporates much of the framework put forward by the CFTC.

The final aspect of the CEA modernization that I would like to address is the Shad/Johnson Accord. The President's working group members believed that the current prohibition on single stock futures could be repealed if issues about integrity of the underlying securities market and regulatory arbitrage are resolved.

The gentleman from Texas (Chairman COMBEST); the gentleman from Texas (Mr. STENHOLM), the ranking member; the gentleman from Virginia (Chairman BLILEY); and I all sent a letter to Chairman Levitt of the SEC and Chairman Rainer of the CFTC asking them to create and present a plan regarding the Shad/Johnson.

The agencies agreed that they would share jurisdiction on regulating these products; that dual trading would be banned; that margins would be set equivalent to the levels on option markets; and that the SEC would enforce the insider trading laws on these products.

The CFTC and the SEC's language is the basis for the current reform of the Shad/Johnson; however, a tax provision was added to ensure parity between the single stock futures and options trading and a section 31 fee currently assessed on securities will also be assessed on single stock futures.

Banking modernization was enacted last year. It is time for the financial industry to move onto CEA modernization.

I made it clear that I was interested in a comprehensive bill, and I believe this bill displays a substantial cooperative effort among the House Committee on Agriculture, the Committee on Banking and Financial Services, the Committee on Commerce to substantially address the most important reforms for the U.S. financial industry. For the first time, members of the President's working group, many of the futures exchanges and many over-the-

counter parties have agreed on a majority of the bill.

America's financial industry is involved in a global battle. If the U.S. futures exchange, the OTC industry are to compete with new electronic exchanges and other foreign competition, such as the EUREX, we need to send a clear message that the United States will have a fair and competitive regulatory system.

Finally, I would like to thank the gentleman from Texas (Chairman ARCHER) and the joint tax staff for all of their hard work in crafting the legislative language to address the tax treatment for security future products.

Mr. Speaker, I submit the following explanation from the gentleman from Texas (Mr. ARCHER) that describes the tax language that is contained in this bill for the RECORD:

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
October 19, 2000.

Hon. LARRY COMBEST,
Chairman, Committee on Agriculture, Washington, DC.

DEAR LARRY: I understand that H.R. 4541, the "Commodities Futures Modernization Act of 2000," is scheduled for consideration by the House today. One of the issues raised by the bill has been the tax treatment of transactions involving security futures contracts. Time constraints have prevented the Committee on Ways and Means from formally considering this legislation. Nonetheless, I have been asked to provide you with statutory language that addresses the tax treatment of security futures contracts, and I understand that the language I provided has been included in the bill.

To provide assistance in interpreting the statutory language, I am attaching a technical explanation prepared by the staff of the Joint Committee on Taxation. I would appreciate your introducing this letter and explanation into the record during consideration of H.R. 4541. Thank you very much for your assistance in this regard.

With Best Personal Regards,
Sincerely,

BIL ARCHER,
Chairman.

TECHNICAL EXPLANATION OF THE TAX PROVISIONS OF H.R. 4541, THE "COMMODITY FUTURES MODERNIZATION ACT OF 2000"

PREPARED BY THE STAFF OF THE JOINT COMMITTEE ON TAXATION

I. INTRODUCTION

This document¹ prepared by the staff of the Joint Committee on Taxation provides a technical explanation of the tax provisions of H.R. 4541, the "Commodity Futures Modernization Act of 2000." The bill is scheduled for consideration by the House of Representatives on October 19, 2000. The non-tax portions of the bill provides for exchange trading a "securities futures contract", which will be a contract for future delivery of a single security or a narrow-based security index. The bill provides for the tax treatment of these instruments in a manner generally consistent with the present-law treat-

ment of transactions in stock and stock options.

II. EXPLANATION OF THE TAX PROVISIONS OF THE BILL

TAX TREATMENT OF SECURITIES FUTURES CONTRACTS (SEC. 124(C) AND (D) OF H.R. 4541 AND SECS. 1234B AND 1256 OF THE CODE)

Present Law

In general

Generally, gain or loss from the sale of property, including stock, is recognized at the time of sale or other disposition of the property, unless there is a specific statutory provision for nonrecognition (sec. 1001).

Gains and losses from the sale or exchange of capital assets are subject to special rules. In the case of individuals, net capital gain is generally subject to a maximum tax rate of 20 percent (sec. 1(h)). Net capital gain is the excess of net long-term capital gains over net short-term capital losses. Also, capital losses are allowed only to the extent of capital gains plus, in the case of individuals, \$3,000 (sec. 1211). Capital losses of individuals may be carried forward indefinitely and capital losses of corporations may be carried back three years and forward five years (sec. 1212).

Generally, in order for gains or losses on a sale or exchange of a capital asset to be long-term capital gains or losses, the asset must be held for more than one year (sec. 1222).² A capital asset generally includes all property held by the taxpayer except certain enumerated types of property such as inventory (sec. 1221).

Section 1256 contracts

Special rules apply to "section 1256 contracts," which include regulated futures contracts, certain foreign currency contracts, nonequity options, and dealer equity options. Each section 1256 contract is treated as if it were sold (and repurchased) for its fair market value on the last business day of the year (i.e., "marked to market"). Any gain or loss with respect to a section 1256 contract which is subject to the mark-to-market rule is treated as if 40 percent of capital gain or loss. This results in a maximum rate of 27.84 percent on such gain for taxpayers other than corporations. The mark-to-market rule (and the special 60/40 capital treatment) is inapplicable to hedging transactions.

A "regulated futures contract" is a contract (1) which is traded on or subject to the rules of a national securities exchange registered with the Securities Exchange Commission, a domestic board of trade designated a contract market by the Commodities Futures Trading Commission, or similar exchange, board of trade, or market, and (2) with respect to which the amount required to be deposited and which may be withdrawn depends on a system of marking to market.

A "dealer equity option" means, with respect to an options dealer, an equity option purchased in the normal course of the activity of dealing in options and listed on the qualified board or exchange on which the options dealer is registered. An equity option is an option to buy or sell stock or an option the value of which is determined by reference to any stock, group or stocks, or stock index, other than an option on certain broad-based groups of stock or stock index.³

²The holding period for futures transactions in a commodity is 6 months. The 6-month holding period does not apply to futures which are subject to the mark-to-market rules of section 1256, discussed below.

³Rev. Rul. 94-63, 1994-2 C.B. 188, provides that the determination made by the Securities and Exchange Commission will determine whether or not an option is "broad based".

¹This document may be cited as follows: Joint Committee on Taxation, "Technical Explanation of the Tax Provisions of H.R. 4541, the 'Commodity Futures Modernization Act of 2000'" (JCY-108-00), October 19, 2000.

An options dealer is any person who is registered with an appropriate national securities exchange as a market maker or specialist in listed options, or who the Secretary of the Treasury determines performs functions similar to market makers and specialists.⁴

Mark to market accounting for dealers in securities

Under present law, a dealer in securities must compute its income from dealing in securities pursuant to the mark-to-market method of accounting (sec. 475). Gains and losses are treated as ordinary income and loss. Traders in securities, and dealers and traders in commodities may elect to use this method of accounting, including the ordinary income treatment. Section 1256 contracts are not treated as securities for purposes of section 475.⁵

Short sales

In case of a "short sale" (i.e., where the taxpayer sells borrowed property and later closes the sale by repaying the lender with substantially identical property), any gain or loss on the closing transaction is considered gain or loss from the sale or exchange of a capital asset if the property used to close the short sale is a capital asset in the hands of the taxpayer, but the gain is ordinarily treated as short-term gain (sec. 1233(a)).

The Internal Revenue Code (the "Code") also contains several rules intended to prevent the transformation of short-term capital gain into the long-term capital gain or long-term capital loss into short-term capital loss by simultaneously holding property and selling short substantially identical property (sec. 1233(b) and (d)). Under these rules, if a taxpayer holds property for less than the long-term holding period and sells short substantially identical property, any gain or loss upon the closing of the short sale is considered short-term capital gain, and the holding period of the substantially identical property is generally considered to begin on the date of the closing of the short-term sale. Also, if a taxpayer has held property for more than the long-term holding period and sells short substantially identical property, any loss on the closing of the short sale is considered a long-term capital loss.

For purposes of these short sale rules, property includes stock, securities, and commodity futures, but commodity futures are not considered substantially identical if they call for delivery in different months.

For purposes of the short-sale rules relating to short-term gains, the acquisition of an option to sell at a fixed price is treated as a short sale, and the exercise or failure to exercise the option is considered a closing of the short sale.⁶

The Code also treats a taxpayer as recognizing gain where the taxpayer holds appreciated property and enters into a short sale of the same or substantially identical property, or enters into a contract to sell the same or substantially identical property (sec. 1259).

Wash sales

The wash-sale rule (sec. 1091) disallows certain losses from the disposition of stock or

securities if substantially identical stock or securities (or an option or contract to acquire such property) are acquired by the taxpayer during the period beginning 30 days before the date of sale and ending 30 days after such date of sale. Commodity futures are not treated as stock or securities for purposes of this rule. The basis of the substantially identical stock or securities is adjusted to include the disallowed loss.

Similar rules apply to disallow any loss realized on the closing of a short sale of stock or securities where substantially identical stock or securities are sold (or a short sale, option or contract to sell is entered into) during the applicable period before and after the closing of the short sale.

Straddle rules

If a taxpayer realizes a loss with respect to a position in a straddle, the taxpayer may recognize that loss for the taxable year only to the extent that the loss exceeds the unrecognized gain (if any) with respect to offsetting positions in the straddle (sec. 1092). Disallowed losses are carried forward to the succeeding taxable year and are subject to the same limitation in that taxable year.

A "straddle" generally refers to offsetting positions with respect to actively traded personal property. Positions are offsetting if there is a substantial diminution of risk of loss from holding one position by reason of holding one or more other positions in personal property. A "position" in personal property is an interest (including a futures or forward contract or option) in personal property.

The straddle rules provide that the Secretary of the Treasury may issue regulations applying the short sale holding period rules to positions in a straddle.⁷ To the extent these rules apply to a position, the rules in section 1233(b) and (d) do not apply.

The straddle rules generally do not apply to positions in stock. However the straddle rules apply if one of the positions is stock and at least one of the offsetting positions is either (1) an option with respect to stock or (2) a position with respect to substantially similar or related property (other than stock) as defined in Treasury regulations. Under property Treasury regulations, a position with respect to substantially similar or related property does not include stock or a short sale of stock, but includes any other position with respect to substantially similar or related property.⁸

If a straddle consists of both positions that are section 1256 contracts and positions that are not such contracts, the taxpayer may designate the positions as a mixed straddle. Positions in a mixed straddle are not subject to the mark-to-market rule of section 1256, but instead are subject to rules written under regulations to prevent the deferral of tax or the conversion of short-term capital gain to long-term capital gain or long-term capital loss into short-term capital loss.

Transactions by a corporation in its own stock

A corporation does not recognize gain or loss on the receipt of money or other property in exchange for its own stock. Likewise, a corporation does not recognize gain or loss when it redeems its stock with cash, for less or more than it received when the stock was issued. In addition, a corporation does not recognize gain or loss on any lapse or acquisition of an option to buy or sell its stock (sec. 1032).

Explanation of the Tax Provisions of the Bill

In general

Except in the case of dealer securities futures contracts described below, securities futures contracts are not treated as section 1256 contracts. Thus, holders of these contracts are not subject to the mark-to-market rules of section 1256 and are not eligible for 60-percent long-term capital gain treatment under section 1256. Instead, gain or loss on these contracts will be recognized under the general rules relating to the disposition of property.⁹

A securities futures contract is defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as added by the bill. In general, that definition provides that a securities futures contract means a contract of sale for future delivery of a single security or a narrow-based security index. A securities future contract will not be treated as a commodities futures contract for purposes of the Code.

Treatment of gains and losses

The bill provides that any gain or loss from the sale or exchange of a securities futures contract (other than a dealer securities futures contract) will be considered as gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has (or would have) in the hands of the taxpayer. Thus, if the underlying security would be a capital asset in the taxpayer's hands, then gain or loss from the sale or exchange of the securities futures contract would be capital gain or loss. The bill also provides that the termination of a securities futures which is a capital asset will be treated as a sale or exchange of the contract.

Capital gain treatment will not apply to contracts which themselves are not capital assets because of the exceptions of the definition of a capital asset relating to inventory (sec. 1221(a)(1)) or hedging (sec. 1221(a)(7)), or to any income derived in connection with a contract which would otherwise be treated as ordinary income.

Except as otherwise provided in regulations under section 1092(b) (which treats certain losses from a straddle as long-term capital losses) and section 1234B, as added by the bill, any capital gain or loss from the sale or exchange of a securities futures contract to sell property (i.e., the short side of a securities futures contract) will be short-term capital gain or loss. In other words, a securities futures contract to sell property is treated as equivalent to a short sale of the underlying property.

Wash sale rules

The bill clarifies that, under the wash sale rules, a contract or option to acquire or sell stock or securities shall include options and contracts that are (or may be) settled in cash or property other than the stock or securities to which the contract relates. Thus, for example, the acquisition, within the period set forth in section 1091, of a securities futures contract to acquire stock of a corporation could cause the taxpayer's loss on the sale of stock in that corporation to be disallowed, notwithstanding that the contract may be settled in cash.

Short sale rules

In applying the short sale rules, a securities futures contract to acquire property will be treated in manner similar to the property itself. Thus, for example, the holding of a securities futures contract to acquire property

⁴A special rule provides that any gain or loss with respect to dealer equity options which are allocable to limited partners or limited entrepreneurs are treated as short-term capital gain or loss and do not qualify for the 60 percent long-term, 40 percent short-term capital gain or loss treatment of section 1256(a)(3).

⁵As discussed above, dealers in equity options are subject to mark-to-market accounting and the special capital gain rules of section 1256.

⁶An exception applies to an option to sell acquired on the same day as the property identified as intended to be used (and is so used) in exercising the option is acquired (sec. 1233(c)).

⁷Reg. sec. 1.1092(b)-2T.

⁸Prop. Reg. sec. 1.1092(d)-2(c).

⁹Any securities futures contract which is not a section 1256 contract will be treated as a "security" for purposes of section 475. Thus, for example, traders in securities future contracts which are not section 1256 contracts could elect to have section 475 apply.

and the short sale of property which is substantially identical to the property under the contract will result in the application of the rules of section 1233(b).¹⁰ In addition, as stated above, a securities futures contract to sell is treated in a manner similar to a short sale of the property.

Straddle rules

Stock which is part of a straddle at least one of the offsetting positions of which is a securities futures contract with respect to the stock or substantially identical stock will be subject to the straddle rules of section 1092. Treasury regulations under section 1092 applying the principles of the section 1233(b) and (d) short sale rules to positions in a straddle will also apply.

For example, assume a taxpayer holds a long-term position in actively traded stock (which is a capital asset in the taxpayer's hands) and enters into a securities futures contract to sell substantially identical stock (at a time when the position in the stock has not appreciated in value so that the constructive sale rules of section 1259 do not apply). The taxpayer has a straddle. Treasury regulations prescribed under section 1092(b) applying the principles of section 1233(d) will apply, so that any loss on closing the securities futures contract will be a long-term capital loss.

Section 1032

A corporation will not recognize gain or loss on transactions in securities futures contracts with respect to its own stock.

Holding period

If property is delivered in a satisfaction of a securities futures contract to acquire property (other than a contract to which section 1256 applies), the holding period for the property will include the period the taxpayer held the contract, provided that the contract was a capital asset in the hands of the taxpayer.

Regulations

The Secretary of the Treasury or his delegate has the authority to prescribe regulations to provide for the proper treatment of securities futures contracts under provisions of the Internal Revenue Code.

Dealers in securities futures contracts

In general, the bill provides that securities futures contracts and options on such contracts are not section 1256 contracts. The bill provides, however, that "dealer securities futures contracts" will be treated as section 1256 contracts.

The term "dealer securities futures contract" means a securities futures contract which is entered into by a dealer in the normal course of his or her trade or business activity of dealing in such contracts, and is traded on a qualified board of trade or exchange. The term also includes any option to enter into securities futures contracts purchased or granted by a dealer in the normal course of his or her trade or business activity of dealing in such options. The determination of who is to be treated as a dealer in securities futures contracts is to be made by the Secretary of the Treasury or his delegate not later than July 1, 2001. Accordingly, the bill authorizes the Secretary to treat a person as a dealer in securities futures contracts or options on such contracts if the Secretary determines that the person performs, with respect to such contracts or options, functions similar to an equity options dealer, as defined under present law.

The determination of who is a dealer in securities futures contracts is to be made in a manner that is appropriate to carry out the purpose of the provision, which generally is to provide comparable tax treatment between dealers in securities futures contracts, on the one hand, and dealers in equity options, on the other. Although traders in securities futures contracts (and options on such contracts) may not have the same market-making obligations as market makers or specialists in equity options, many traders are expected to perform analogous functions to such market makers or specialists by providing market liquidity for securities futures contracts (and options) even in the absence of a legal obligation to do so. Accordingly, the absence of market-making obligations is not inconsistent with a determination that a class of traders are dealers in securities futures contracts (and options), if the relevant factors, including providing market liquidity for such contracts (and options), indicate that the market functions of the traders is comparable to that of equity options dealers.

As in the case of dealer equity options, gains and losses allocated to any limited partner or limited entrepreneur with respect to a dealer securities futures contract will be treated as short-term capital gain or loss.

Treatment of options under section 1256

The bill modifies the definition of "equity option" for purposes of section 1256 to take into account changes made by the non-tax provisions of the bill. Only options dealers are eligible for section 1256 with respect to equity options. The term "equity option" is modified to include an option to buy or sell stock, or an option the value of which is determined, directly or indirectly, by reference to any stock, or any "narrow-based security index," as defined in section 3(a)(55) of the Securities Exchange Act of 1934 (as modified by the bill). An equity option includes an option with respect to a group of stocks only if the group meets the requirements for a narrow-based security index.

As under present law, listed options that are not "equity options" are considered "nonequity options" to which section 1256 applies for all taxpayers. For example, options relating to broad-based groups of stocks and broad based stock indexes will continue to be treated as nonequity options under section 1256.

Definition of contract markets

The non-tax provisions of the bill designate certain new contract markets. The new contract markets will be contract markets for purposes of the Code, except to the extent provided in Treasury regulations.

Effective date

These provisions will take effect on the date of enactment of the bill.

Mr. EWING. Mr. Speaker, I reserve the balance of my time.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LEACH asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. LEACH. Last year, after nearly 2 decades of work, the United States Congress passed the Financial Modernization Act to bring our Nation's banking and securities laws in line with the realities of the marketplace. In the few days left for legislation in this Congress, an analogous opportunity presents itself to modernize the Commodity Exchange Act that governs the trading of futures and options.

At issue is the question of whether an appropriate regulatory framework can

be established to deal not only with certain problems that confront today's risk management markets, but new dilemmas that appear on the horizon.

Legislation of this nature involves different committees with different concerns and sometimes competitive jurisdictional interests. From the perspective of the Committee on Banking and Financial Services, I would like to express my respect for the initial Committee on Agriculture product. That Committee's product, led by the gentleman from Texas (Chairman COMBEST) and the gentleman from Texas (Mr. EWING), reflected a credible way of dealing with a number of concerns that have developed during much of the last of the decade as derivatives-related products have grown. Nonetheless, the Committee on Banking and Financial Services believes that some modifications to H.R. 4541 were in order; and in July, a number of clarifying approaches were adopted on a bipartisan manner.

The fact is that the CEA, or Commodity Exchange Act, is an awkward legislative vehicle designed in an era in which financial products have of a nature now in place were neither in existence nor much contemplated. Indeed, the Commodities Future Trading Commission was fundamentally designed to supervise agriculture and commodities markets, not financial institutions.

Because of anachronistic constraints established under the Commodity Exchange Act, legal uncertainty exists for trillions of dollars of existing contractual obligations. This bill resolves this uncertainty for the benefit of customers of many of these products, but it does not fully resolve the certain issue for some kinds of future activities.

While I would have wished that more could have been achieved, it should be clear that no additional legal uncertainty is created under the bill and progressive strides have been made on the fundamental aspects of the legal certainty issue.

Mr. Speaker, at this point let me just conclude by thanking the staff of the committees of jurisdiction, the staffs frankly of the professional parts of the United States Government, the Treasury, the Fed, the SEC, that have put forth a great deal of effort and input into this legislative vehicle. Most of all, I think it has to be stressed that one Member of this body has contributed significantly to the embellishment of this institution, this legislative vehicle and I personally want to thank the gentleman from Texas (Mr. EWING) for everything he has done to bring this forth in such a responsible, decent and credible way.

Mr. Speaker, I reserve the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Texas for yielding me the time, and I thank him for the

¹⁰Because securities futures contracts are not treated as futures contracts with respect to commodities, the rule providing that commodity futures are not substantially identical if they call for delivery in different months does not apply.

excellent work that he has contributed to this product, along with the gentleman from Iowa (Mr. LEACH), the gentleman from Virginia (Mr. BLILEY) and all across the spectrum of the House and the Senate.

Mr. Speaker, I rise in reluctant support for this bill today, because of the fact that I still have some very serious concerns about both the process that has brought this bill to the floor and some of its provisions.

Mr. Speaker, to the extent to which the bill has been made minimally acceptable to those of us on the Committee on Commerce who work for it, the gentleman from Michigan (Mr. DINGELL) and I, the gentleman from New York (Mr. TOWNS) who has spent a lot of time on this bill, I want to thank especially Consuela Washington for her excellent work and Jeff Duncan, from my staff, and the staff of the gentleman from New York (Mr. TOWNS) for their excellent work in trying to improve this piece of legislation, as best as it could have been improved and still pass the House floor.

What we are doing in this bill is saying, okay, we are going to take OTC swaps between eligible contract participants out of the CEA. They are excluded from the act. Now, I do not have any problem with that. If the swap dealers feel more comfortable with a statutory exclusion for sophisticated counterparties instead of the CFTC exemptive authority and the Committee on Agriculture is willing to agree to an exclusion that makes sense, that is fine with me. However, I am not willing to allow legal certainty to become a guise for sweeping exemptions from the antifraud or market manipulation provisions of the securities laws. I do not think that is wise.

Mr. Speaker, while some earlier drafts of this bill would have done precisely that, the bill we are considering today does not, and that is a good thing. That is why I am willing to support the legal certainty language today. However, I do have some concern about how we have defined eligible contract participants, that is, the sophisticated institutions that will be allowed to play in the swaps market with little or no regulation, I might add.

The bill before us today lowers the threshold for who will be an eligible contract participant far below what the Committee on Commerce had allowed. By the way, we agreed upon that, Democrat and Republican, from the gentleman from Virginia (Mr. BLILEY) to the gentleman from Michigan (Mr. DINGELL), that was our standard. I feel that this will now create a regulatory gap for retail swap participants that ultimately must be addressed.

For example, under one part of this definition, an individual with total assets in excess of only \$5 million who uses a swap to manage certain risks is an eligible contract participant for that swap. I think that threshold is simply too low.

I believe that the original Committee on Commerce investor protection provisions should have been fully restored. Moreover, the bill should clarify explicitly that counterparties who may enter into transactions with retail-eligible contract participants are subject for such transactions to the antifraud authority of their primary regulators.

Mr. Speaker, let me turn to the provisions of this bill that would allow the trading of stock futures. These new products that would trade on exchanges and compete directly with stocks and stock options.

Now, I have serious reservations about the impact of single stock futures on our securities markets, and in all likelihood these products are going to be used principally by day traders and other speculators. There is nothing inherently wrong with speculation. It can be an important source of liquidity in the financial markets, but one of the purposes of the Federal securities laws has traditionally been to control excessive speculation and excessive and artificial volatility in the markets and to limit the potential for markets to be manipulated or used to carry out insider trading or other fraudulent schemes.

Mr. Speaker, I support this bill. I hope it receives its support of the full House. It is much better than it had been, but there could have been greater consumer protections built in.

Mr. EWING. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. BLILEY), the distinguished chairman of the Committee on Commerce.

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, as we considered H.R. 4541 in the Committee on Commerce, I had two priorities. First, that security-future products be traded in decimals with no government-mandated minimal increments. We have recently witnessed the beginning of decimal trading in the securities markets. When securities are priced in free market increments, spreads narrow and investors win. These efficiencies should accrue to the security futures market as well.

Second, electronic communications networks, ECNs, should have the ability to trade security future products. ECNs have provided increased competition and liquidity in the securities marketplace. Competition brings investors enhanced services and cheaper transactions. These benefits should certainly be extended to the market for security future products.

I am pleased these two provisions are in the bill we are considering today.

I thank my colleagues, the gentleman from Texas (Chairman COMBEST) and the gentleman from Texas (Mr. EWING), the chairman of the Subcommittee on Risk Management, Research and Specialty Crops; the gentleman from Iowa (Chairman LEACH); and the gentleman from Louisiana (Mr. BAKER), chairman of the Subcommittee

on Capital Markets, Securities and Government Sponsored Enterprises; as well as the gentleman from Ohio (Mr. OXLEY), my good friend, chairman of the Subcommittee on Finance and Hazardous Materials, for their fine work and constructive participation in this developing this legislation.

I support this bill, and I urge my colleagues to do the same.

Mr. STENHOLM. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. DINGELL).

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I thank my good friend for yielding me the time.

Mr. Speaker, I rise to hold my nose at and to support this legislation. It just barely meets the standards in which legislation may be considered acceptable.

□ 1830

It does so only because the matter is going to go to the Senate, where I hope that the very visible and very obvious remaining defects are corrected.

There are a number of problems.

First of all, the bill almost died because of flawed procedure. Subject to action by the committees after just one bipartisan meeting, which from all counts was constructive, Democratic staff were booted out of the negotiations on this bill, at the direction of the Republican leadership.

This is not a surprise to me because it has happened on many other occasions. However, 2 weeks ago, the Committee on Agriculture majority staff started circulating drafts of legislation for Democratic review and comment. I salute them and thank them for that.

The development of these events and the willingness of the Committee on Agriculture to make significant changes in the bill in response to our comments have made it possible for me to support the bill at this point in the process. I want to commend and thank both the majority and the minority on the Committee on Agriculture for the remarkable consideration and courtesy which was shown.

This has gone from being an extraordinarily bad piece of legislation to being a bill which is worth moving to the next stage. It does not provide necessary investor protections, and it does not assure in the fullest that we will not have excessive speculation which will put the markets at risk in this country.

For reasons not adequately explained, greedy brokers and banks are arguably relieved of selected statutory and regulatory restraints on their behavior. These must be addressed before the bill becomes law. But I support passage of this bill at this time as a step forward, and as part of moving the process forward, as it should be.

But I want to make it very clear, I am still holding my nose. It will not be possible to support this bill if it is not

significantly improved at the next stage of the process.

Mr. Speaker, I would like to address my principal concerns with this bill.

First, I support legal certainty under the Commodity Exchange Act (CEA) for swaps entered into between professional traders and similar sophisticated parties who have the means to protect themselves. However, the Republican negotiations have produced a bill that also excludes retail swaps from the CEA. Brokers can sell swaps to retail investors (in this market that means investors with \$5 million in assets) without the antimanipulation and antifraud protections that otherwise would apply under that Act. The bill does not provide any substitute protections. This needs more work. I would like to clarify for the record that it is the intent of Congress in passing this legislation that counterparties who may enter into transactions with retail "eligible contract participants" are subject for such transactions to the antifraud authority of their primary regulator. This bill should not be interpreted as declaring open season on investors.

Second, Section 107 provides a redundant exclusion for a broad range of swap transactions. I would have preferred that this section be deleted and that we defer instead to the bill's carefully crafted exclusions for specific groups of products. However, as amended by the agreement we reached last night, I will support its inclusion. I want it clearly understood that the limitations on this exclusion are strict. To qualify for the Section 107 exclusion, each of the material economic terms of the swap must be individually negotiated, not passively accepted, by the parties. In contrast to the products for which the Section 107 exclusion is designed, exchange-traded products may have some terms that are standardized and some that can be negotiated on behalf of the purchaser or seller by an agent. Section 107 clarifies that exchange-traded products, such as security futures products, do not fall within the exclusion. Moreover, the Section 107 exclusion would not apply to an electronic system where a user passively could accept contract terms as opposed to actively negotiating every material economic term. Section 107 should not be construed to affect the applicability of other exclusions in the bill, such as the one found in Section 103 conditionally excluding certain transactions on electronic trading facilities from the CEA. Finally, Section 107 should not be construed to narrow or broaden the conditions that apply to such exclusions.

Third, H.R. 4541 establishes a comprehensive regulatory system for the regulation of security futures products. It rests on a system of joint regulation by the CFTC and SEC, both of whom are assigned specific tasks designed to maintain fair and orderly markets for single stock futures and futures or groups or indexes of securities. Under this system, it is clear that intermediaries that trade securities futures products must register with the SEC as broker-dealers, although it allows futures market intermediaries that are regulated by the CFTC to register with the SEC on a streamlined basis as notice registrants.

In the middle of the night, language was stripped from the bill with the result that banks would now be exempted from the rules that apply to everyone else. As a result a bank selling securities futures could register with the CFTC as a futures commission merchant but,

unlike other entities, not have to notice register with the SEC. Effectively, half of the regulatory framework that we have negotiated over many months would disappear. There is no public interest to be served in eliminating SEC oversight over issues such as insider trading frauds, market manipulation, and customer sales practice rules just because a bank traded the security.

I want to make the following observations about this seeming travesty:

1. There are not many bank FCM's left.
2. I do not believe any responsible financial services lawyer will recommend that the bank FCM not file a broker-dealer notice registration with the SEC.
3. Given the clear findings of the Congress, which has expressly concluded that a security future is a security, the SEC would be on solid legal standing should it proceed by rule to require bank FCM's to register as broker-dealers through the streamlined notice process.
4. Similarly, the CFTC would be on solid legal standing should it bar bank FCM's from selling security futures unless they have notice registered with the SEC.

Fourth, also last night, language was added on page 227 of the bill that has the effect of creating a major competitive advantage for foreign futures exchanges trading single stock futures based on U.S. securities. That provision, a new Section 2(a)(1)(F)(ii) of the Commodity Exchange Act, permits any retail customer in the U.S. to purchase single stock futures on U.S. stocks sold by a foreign board of trade without regard to any of the regulatory constraints imposed on U.S. exchanges. Because of this change, U.S. exchanges will not face direct electronic competition on U.S. trading terminals from foreign exchanges that can cut margins, fees, and regulatory costs. This provision, for which no one will now claim responsibility, undoes much of the good work in this legislation to ensure fair competition and consistent market integrity and investor protections. This provision should be deleted from the bill.

With these serious reservations, I support passage of this legislation.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New Jersey (Mrs. ROUKEMA), the subcommittee chairman.

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to associate myself with the remarks of the chairman of the Committee on Banking and Financial Services, with which I agree.

I do want to make a couple of statements here. What we are doing here today is very essential in terms of improving and clarifying the legal uncertainty under the Commodity Exchange Act. That has been pointed out.

We are also talking about a modernized economy, not only here in the United States but in the global economy. As has been mentioned, the derivatives and the swap agreements are growing throughout, and we need this clarification of legal certainty.

But as a member of the Committee on Banking and Financial Services, I

also want to say that this legislation would ensure that derivatives engaged in by financial institutions would continue to be regulated by the appropriate bank regulatory agencies. I must stress that this law would in no way reduce the appropriate oversight of these products.

Mr. Speaker, I will work in the next Congress to revisit these issues as the market continues to grow, but this is an essential first step.

Mr. Speaker. I rise as a Member of the Banking Committee in support of H.R. 4541, the Commodity Futures Modernization Act of 2000. This is an important piece of legislation that addresses a host of issues relating to products and transactions that form a critical part of our nation's economy. Today I want to focus on the regulatory treatment of one type of product: over-the-counter derivatives contracts that are currently traded among large financial institutions throughout the world. These derivatives, which include swap agreements, various options, and hybrid instruments, are used by large financial institutions to manage and control various risks—particularly interest rate risk. These instruments help maintain a safe and sound banking system.

However, there have been questions about the legal certainty of these derivatives because their status under the commodity Exchange Act is unclear. This uncertainty is a result of the law not keeping up with the marketplace. This bill would go a long way to address the question of legal certainty of these instruments traded among large institutions in the wholesale market by exempting these products from the Commodity Exchange Act. This legislation would ensure that these derivatives engaged in by financial institutions would continue to be regulated by the appropriate bank regulatory agencies. I must stress that this law would in no way reduce appropriate oversight of these products, but would ensure that our financial institutions would not be subject to a burdensome additional layer of regulation solely as a result of participating in this derivatives activity.

I want to note that I support the additional provisions that were passed out of the Banking Committee earlier this year that would have provided clarification for a broader market of products identified as "banking products." I will work in the next Congress to revisit these issues as the market continues to grow. This is an essential first step. But I want to thank the chairmen of the Agriculture Committee, the Commerce Committee, and the Banking Committee for working together to bring this bill to the floor and addressing the most critical component of the "legal certainty" issue. This bill would ensure the continued ability of large financial institutions to manage risks with derivatives, and I support its passage.

Mr. EWING. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. Mr. Speaker, I want to thank the gentleman from Illinois for yielding time to me.

Mr. Speaker, I rise today in support of H.R. 4541, the Commodity Futures Modernization Act, which provides for the deregulation and modernization of the U.S. futures industry.

It also reforms the antiquated Shad-Johnson accord to allow U.S. futures

exchanges to trade single stock futures.

Finally, the bill provides legal certainty for the \$90 trillion financial derivatives industry that really has become critical to the operation of American finance and industry.

This important legislation was negotiated between the Committee on Agriculture, the Committee on Banking and Financial Services, and the Committee on Commerce to provide real reform. It places our financial industry on solid ground for the highly competitive future. Without it, many of these important financial products will move overseas, threatening the growth of the American economy.

I especially want to compliment my good friend, the gentleman from Illinois (Mr. EWING), who worked tirelessly on this bill. The gentleman from Illinois is retiring this year, and his leadership on this issue will be sorely missed. I think this landmark legislation is a compliment to his years of service as a legislator.

I also want to congratulate all of the chairmen of the relevant committees, the three committees and subcommittees, and their ranking members for their efforts in bringing this bill together so it can be on the floor today.

The Commodity Futures Modernization Act is right for our economy and it is right for our financial industry. I am proud to lend my support to this important bill.

Mr. STENHOLM. Mr. Speaker, I yield 1 minute to the gentleman from Maine (Mr. BALDACCI).

Mr. BALDACCI. Mr. Speaker, I thank the gentleman for yielding time to me, and also for his leadership on the Committee on Agriculture, and for working to fashion the bipartisan measure that is before us today.

Also, I commend the gentleman from Illinois (Chairman EWING) for his leadership and support on the committee. Having been a member of the committee, to end up working on a bill like this, I am very proud of the part that I have played in that effort.

Mr. Speaker, I rise in support of the Commodity Futures Modernization Act. The legislation has been a product of a lot of hard work over several years, and the reforms are a long time in coming. But between now and when the committee dealt with it, it has been undergoing some changes, which is not really surprising. However, some of what I supported has been taken out. I hope we can continue working on this when we revisit one of those issues.

With respect to the definition of eligible contract participants, the CFTC has the broad authority to determine that other persons are eligible beyond those specifically listed. It is my understanding that the commodity trading advisors, with over \$25 million in client assets under management, are among those other persons which the CFTC should determine to meet the requirements.

Mr. LEACH. Mr. Speaker, I yield 1 minute to my distinguished colleague,

the gentleman from Pennsylvania (Mr. TOOMEY).

Mr. TOOMEY. Mr. Speaker, I thank the chairman for yielding time to me.

Mr. Speaker, over the last 20 years, American and international financial markets have changed dramatically. Opportunities for investors have expanded tremendously. New access to capital has empowered entrepreneurs. The ability to hedge financial and commodity price risk has stabilized earnings and encouraged investment.

This democratization of the capital markets has been driven largely by the development and application of derivative transactions, especially over-the-counter derivatives.

I worked in the derivative sector of the financial services industry for 7 years in the 1980s and 1990s. I marvel now at how widespread, sophisticated, and indispensable these products have become since then.

Today we are going to pass a Commodity Exchange Act that will eliminate most of the cloud of legal and regulatory uncertainty that has shadowed these products since their invention. For that reason, I urge my colleagues to vote yes on this bill.

It is not, however, a perfect bill. I hope the other body will eliminate the remaining legal uncertainty that will still shadow the use of these transactions by retail customers. I hope that they will allow greater flexibility in the electronic trading of the over-the-counter derivatives.

Today we do have a good bill. It will strengthen the ability of American financial institutions to compete in a vital sector of finance. I urge its passage.

Mr. STENHOLM. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I would just close by encouraging all of my colleagues to support this bill, and again commend the gentleman from Illinois (Mr. EWING) for his tireless work in putting together a package that has brought three different committees together under a most strange situation, but one in which we do have the opportunity to pass legislation of some extreme importance.

Mr. EWING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, let me say that this has been a great experience. I have had wonderful cooperation from both sides of the aisle, from chairmen and subcommittee chairmen and ranking members on those committees.

I think it is important today to recognize that we are here at a time and a place when this legislation, so badly needed by our financial industry, can pass through this House and be considered in the other body.

When we realize how long it takes us sometimes to move complicated pieces of legislation, such as the Banking Reform Act of last year, we should recognize that now is the time to move this legislation before we have a new administration, before we have new

chairmen, before we have whoever may be in control of this Congress after the next election.

We have come together. We have grappled with the issues. We have reached a good conclusion and devised a good bill for our financial industry. I thank everyone again, and I ask for a positive vote on this bill.

Mr. OXLEY. Mr. Speaker, during this Congress, we have made historic progress in enacting legislation to modernize and improve our financial markets. We enacted Gramm-Leach-Bliley, and finally repealed the outdated restrictions against affiliations among banks, securities firms, and insurance firms, paving the way for new efficiencies and innovations in our marketplace.

We enacted E-SIGN, facilitating the growth of electronic commerce in not only the financial marketplace, but indeed the entire U.S. marketplace.

And today we are taking a step toward further improving the competitiveness of U.S. markets in the financial arena. H.R. 4541 serves three important functions. It promotes regulatory efficiency, enhances legal certainty in the derivatives market, and stimulates competition.

This bill enhances regulatory efficiency in the futures market by streamlining the regulations of the CFTC. I support this prudent approach to deregulation.

It enhances legal certainty in the derivatives market by explicitly carving out derivatives transactions from CFTC regulation. I welcome the resulting legal certainty, which is vital to the continued growth of an industry that is so fundamentally important to the financial health of U.S. companies, and, indeed, the global financial marketplace.

The legislation also promotes competition both domestically and internationally by lifting a ban on a type of financial product that could serve important functions in our markets and abroad. While current law bans the trading of futures on individual securities and on narrow-based indices in the U.S. overseas markets for these security futures products are rapidly developing. It is important for our markets to be able to compete for this business, because I strongly believe that in a fair competitive environment, our markets will always win.

This legislation authorizes the trading of securities futures products on futures exchanges, options exchanges, equity exchanges and, importantly, Alternative Trading Systems. The broad spectrum of competition that this legislation will foster will serve the market well.

I would like to thank my colleagues for their good work on this legislation. In particular I thank Chairman BLILEY, CHAIRMAN COMBEST, Chairman LEACH, Chairman EWING and Chairman BAKER for the leadership they have displayed in moving this bill forward. The bill certainly reflects the hard work these gentlemen have put into it. This is good policy and I urge each of you to support it.

Mr. BAKER. Mr. Speaker, Commodity Exchange Act reform is long overdue.

The CEA has become an obstacle to the competitiveness of the US futures industry. It prohibits US futures exchanges from offering single stock futures while the same products are being created in London for international investors. It burdens futures exchanges with regulation that amounts to micromanagement, and that increases the cost of managing risk

for American companies and financial institutions.

Even worse, some at the CFTC have tried to apply CFTC regulations—which don't even work well for the futures business—to banking activities, including bank deposits and swaps. Banks don't need a second regulator, not for their deposits and not for their swap business. CFTC regulation for swaps is so inappropriate that, if swaps were ever found to be futures contracts regulated by the CFTC, many of them would be illegal and unenforceable under CFTC rules. Swaps aren't futures and swaps aren't securities, and we must make that clear in federal law.

The House Banking Committee, under the able leadership of Chairman LEACH at our July 27 mark-up of this bill, added provisions to the House Agriculture Committee version that dealt with many of these problems. Our approach wasn't the most clear and straightforward, and I'll be the first to admit it. I would have preferred—and I still prefer—to simply add a definition of futures contracts to the Commodity Exchange Act so the questions of legal certainty for swaps would be completely resolved. But the Banking Committee approach was still effective, and it was included in the compromise version of this bill that was agreed to by Committee Chairmen from the House and Senate last week.

In the bill going to the floor today, those protections for swaps are gone. This bill does not create legal certainty for all swap participants. It does not protect banks from duplicate regulation by the CFTC and SEC. It is not good enough to become law.

Furthermore, the CFTC, an agency in search of a mission, will become an unwanted and unneeded regulator of e-commerce, particularly in the realm of financial services. The Bill contains a definition of electronic trading facility, and while it rules out CFTC regulation of some electronic trading, it opens the door to CFTC regulation of other electronic facilities. I wonder whether the e-commerce community is even aware of how this legislation might constrain the growth of electronic finance. We should not build a regulatory structure before it even exists, especially whether other countries are promoting unrestricted growth of such financial e-commerce platforms. We should not build a regulatory structure for e-commerce before we even know what it looks like.

It is evident that these problems will not be solved on the House side. They must be tackled by the House working together with the Senate, and in particular with Senate Banking Committee Chairman PHIL GRAMM. I look forward to productive discussions with the Senator that will enable the Congress to adopt responsible guidelines for financial products.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today in strong support of H.R. 4541, the Commodity Futures Modernization Act of 2000. I represent the 7th Congressional District of Illinois, which is home to the Chicago Mercantile Exchange and the Chicago Board of Trade—two of this country's premier derivatives exchanges. While I have the honor of representing them in Congress, they and the rest of the U.S. markets represent us all over the world. I believe that it is in this nation's best economic interests for U.S. financial markets to grow and prosper and once again lead the world.

This legislation helps us to do that. This much-needed legislation would provide regu-

latory reform to U.S. futures exchanges, provide legal certainty to the U.S. derivatives market, and finally lift the 19-year ban on single stock futures, allowing U.S. investors access to these products and expanding our markets.

The threat to U.S. markets has increased in just the last month. The London International Financial Futures Exchange announced that it would begin trading single stock futures on U.S. based company stocks in January 2001. In just three months, futures on the stock of AT&T, Citigroup, Cisco, Systems, Exxon Mobil, and Merck will be traded in London. If H.R. 4541 does not pass, U.S. markets will continue to be prohibited from offering these products—handcuffed from competing with foreign exchanges for a U.S. market that should be traded here at home.

Let me be clear, this is not just an Illinois issue. Futures exchanges are a huge part of what makes the entire U.S. economy robust and vibrant. If we fail to lift the ban on single stock futures, if we fail to provide regulatory reform, and if we fail to provide legal certainty to U.S. derivatives markets, then the consequences could be devastating. For example, U.S. exchanges will be rendered completely unable to compete. Without this legislation, single stock futures, which are based on assets developed and produced in the United States, may never be traded in this country.

We all need to ensure that the U.S. financial services industry remain competitive in the global marketplace. Therefore, I urge you to join with me in passing this important legislation.

Mr. BARRETT of Nebraska. Mr. Speaker, I rise today in support of H.R. 4541, the Commodity Futures Modernization Act of 2000. I commend Chairman EWING and his staff for their hard work and leadership as we debate this legislation.

The House Agriculture Committee has worked together with the Banking and Financial Services and Commerce Committees to draft a bill that will discourage fraud and manipulation, but encourage technology, competition and a sound business environment. Our farmers and ranchers are now more dependent on a sound futures market than ever before. I am pleased that this legislation will allow our agriculture producers access to a risk management tool as we move into the 21st century.

Mr. Speaker, this legislation will provide our financial institutions with the tools needed to conduct trading practices in a friendly manner. This bill also brings our U.S. exchanges onto a level playing field with foreign exchanges. American agriculture producers are becoming more involved in futures markets. It is important that we establish regulations that are fair and will allow our farmers to use the futures market as intended.

In my home state of Nebraska, I try to encourage the use of the futures market to provide procedures with yet another valuable risk tool. When Congress approves this legislation, the Commodity Exchange Act reauthorization will be complete. I then fully expect the Commodity Futures Trading Commission (CFTC) to regulate the U.S. futures and related markets and protect the interests of those who use the markets.

The Commodity Futures Modernization Act of 2000 accomplishes three main goals. First, this bill establishes legal certainty for over-the-

counter derivatives. Second, this legislation provides regulatory relief to futures exchanges and their customers. This relief will transform the CFTC from a frontline regulatory role to more of an oversight role. Third, this act will reform the Shad-Johnson Jurisdictional Accord to make clear rules of regulation between agencies.

Mr. Speaker, I urge my colleagues to support the Commodity Futures Modernization Act and allow our American farmers and ranchers to make use of the commodity futures market.

The SPEAKER pro tempore (Mr. LAHOOD). The question is on the motion offered by the gentleman from Illinois (Mr. EWING) that the House suspend the rules and pass the bill, H.R. 4541, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. EWING. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 377, nays 4, not voting 51, as follows:

[Roll No. 540]

YEAS—377

Abercrombie	Carson	Fossella
Aderholt	Castle	Fowler
Allen	Chabot	Frank (MA)
Andrews	Chambliss	Frelinghuysen
Archer	Clayton	Frost
Armey	Clement	Gallegly
Baca	Clyburn	Ganske
Bachus	Coble	Gejdenson
Baird	Coburn	Gekas
Baldacci	Collins	Gibbons
Baldwin	Combest	Gilchrest
Ballenger	Condit	Gillmor
Barcia	Cook	Gilman
Barr	Costello	Gonzalez
Barrett (NE)	Cox	Goode
Barrett (WI)	Coyne	Goodlatte
Bartlett	Cramer	Goodling
Barton	Crane	Gordon
Bass	Crowley	Goss
Becerra	Cubin	Graham
Bentsen	Cummings	Granger
Bereuter	Cunningham	Green (WI)
Berkley	Danner	Greenwood
Berman	Davis (FL)	Gutierrez
Berry	Deal	Gutknecht
Biggert	DeGette	Hall (OH)
Bilbray	Delahunt	Hall (TX)
Bishop	DeLauro	Hastings (FL)
Blagojevich	Deutsch	Hastings (WA)
Bliley	Dickey	Hayes
Blumenauer	Dicks	Hayworth
Blunt	Dingell	Hefley
Boehlert	Dixon	Herger
Boehner	Doggett	Hill (IN)
Bonilla	Dooley	Hill (MT)
Bonior	Doolittle	Hilleary
Bono	Doyle	Hilliard
Borski	Dreier	Hinchey
Boswell	Duncan	Hinojosa
Boyd	Dunn	Hobson
Brady (TX)	Edwards	Hoefel
Brown (FL)	Ehlers	Hoekstra
Brown (OH)	Ehrlich	Holden
Bryant	Emerson	Holt
Burr	Engel	Hooley
Burton	English	Horn
Buyer	Eshoo	Hostettler
Callahan	Etheridge	Houghton
Calvert	Evans	Hoyer
Camp	Ewing	Hulshof
Canady	Farr	Hunter
Cannon	Fattah	Hutchinson
Capps	Fletcher	Hyde
Capuano	Foley	Inslee
Cardin	Ford	Isakson

Istook	Mink	Sensenbrenner
Jackson (IL)	Moakley	Serrano
Jefferson	Mollohan	Sessions
Jenkins	Moore	Shadegg
John	Moran (KS)	Sherman
Johnson (CT)	Moran (VA)	Sherwood
Johnson, E. B.	Morella	Shimkus
Johnson, Sam	Murtha	Shows
Jones (NC)	Myrick	Simpson
Kanjorski	Nadler	Skeen
Kaptur	Napolitano	Skelton
Kasich	Neal	Slaughter
Kelly	Nethercutt	Smith (NJ)
Kennedy	Ney	Smith (TX)
Kildee	Northup	Smith (WA)
Kilpatrick	Norwood	Snyder
Kind (WI)	Nussle	Souder
King (NY)	Obey	Spence
Kingston	Olver	Stabenow
Klecza	Ortiz	Stark
Knollenberg	Ose	Stearns
Kolbe	Packard	Stenholm
Kucinich	Pallone	Strickland
Kuykendall	Pastor	Stump
LaFalce	Payne	Stupak
LaHood	Pease	Sununu
Lampson	Pelosi	Sweeney
Lantos	Peterson (MN)	Tancredo
Largent	Peterson (PA)	Tanner
Larson	Petri	Tauscher
Latham	Phelps	Tauzin
LaTourette	Pickering	Taylor (NC)
Leach	Pickett	Terry
Lee	Pitts	Thomas
Levin	Pombo	Thompson (CA)
Lewis (GA)	Pomeroy	Thornberry
Lewis (KY)	Porter	Thune
Linder	Portman	Thurman
LoBiondo	Price (NC)	Tiahrt
Lofgren	Pryce (OH)	Tierney
Lowey	Quinn	Toomey
Lucas (KY)	Radanovich	Towns
Lucas (OK)	Rahall	Traficant
Luther	Ramstad	Udall (CO)
Maloney (CT)	Rangel	Udall (NM)
Maloney (NY)	Regula	Upton
Manzullo	Reyes	Velazquez
Markey	Reynolds	Visclosky
Martinez	Riley	Vitter
Mascara	Rivers	Walden
Matsui	Roemer	Walsh
McCarthy (MO)	Rogers	Wamp
McCarthy (NY)	Rohrabacher	Waters
McCrery	Ros-Lehtinen	Watkins
McDermott	Rothman	Watt (NC)
McGovern	Roukema	Watts (OK)
McHugh	Roybal-Allard	Waxman
McIntyre	Royce	Weiner
McKeon	Ryan (WI)	Weldon (FL)
McKinney	Ryun (KS)	Weldon (PA)
McNulty	Sabo	Weller
Meehan	Salmon	Wexler
Meek (FL)	Sanders	Whitfield
Meeks (NY)	Sandlin	Wicker
Menendez	Sanford	Wilson
Mica	Sawyer	Wolf
Millender-	Saxton	Woolsey
McDonald	Scarborough	Wu
Miller, Gary	Schaffer	Wynn
Miller, George	Schakowsky	Young (AK)
Minge	Scott	Young (FL)

NAYS—4

DeFazio	Smith (MI)
Paul	Taylor (MS)

NOT VOTING—51

Ackerman	Franks (NJ)	Oxley
Baker	Gephardt	Pascrell
Bilirakis	Green (TX)	Rodriguez
Boucher	Hansen	Rogan
Brady (PA)	Jackson-Lee	Rush
Campbell	(TX)	Sanchez
Chenoweth-Hage	Jones (OH)	Shaw
Clay	Klink	Shays
Conyers	Lazio	Shuster
Cooksey	Lewis (CA)	Sisisky
Davis (IL)	Lipinski	Spratt
Davis (VA)	McCollum	Talent
DeLay	McInnis	Thompson (MS)
DeMint	McIntosh	Turner
Diaz-Balart	Metcalf	Weygand
Everett	Miller (FL)	Wise
Filner	Oberstar	
Forbes	Owens	

□ 1902

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. DIAZ-BALART. Mr. Speaker, on rollcall vote 540, H.R. 4541, the Commodity Futures Modernization Act of 2000, I was in my district on official business. Had I been present, I would have voted "yea."

Mr. FILNER. Mr. Speaker, on rollcall No. 540, I had to return to my Congressional District on official business and missed this vote. Had I been present, I would have voted "yea."

Ms. SANCHEZ. Mr. Speaker, during rollcall vote No. 540 on H.R. 4541 I was unavoidably detained. Had I been present, I would have voted "yea."

GENERAL LEAVE

Mr. EWING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 4541, the bill just considered.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Illinois?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 4811, FOREIGN OPERATIONS, EXPORT FINANCING AND RELATED PROGRAMS APPROPRIATIONS ACT, 2001

Mr. CALLAHAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4811), making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MS. PELOSI

Ms. PELOSI. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Ms. PELOSI moves that the managers on the part of the House at the Conference on the disagreeing votes of the two Houses on the bill H.R. 4811, making appropriations for Foreign Operations, Export Financing, and related programs for the year ending September 30, 2001 be instructed to insist on the highest possible funding level for Debt Restructuring, and on provisions authorizing a United States contribution to the Highly Indebted Poor Countries Trust Fund without unnecessary legislative restrictions.

The SPEAKER pro tempore. The gentlewoman from California (Ms. PELOSI) will be recognized for 30 minutes and the gentleman from Alabama (Mr. CALLAHAN) will be recognized for 30 minutes.

The Chair recognizes the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I yield myself such time as I may consume.

I offer this motion to emphasize that it is imperative that the conference agreement on the fiscal year 2001 Foreign Operations bill provide both the highest possible funding level for debt restructuring, and for the authorization for a United States contribution to the Highly Indebted Poor Countries Trust Fund, HIPC, without unnecessary legislative restrictions.

Just a few weeks ago, Mr. Speaker, this House had a passionate debate about debt relief and a historic vote in favor of funding this much-needed relief. As a result, the House bill now contains full funding for the amount requested in fiscal year 2001 for a U.S. contribution to the HIPC Trust Fund. However, the bill is still short of the full pending request for debt restructuring by some \$238 million. The Senate bill contains even less than the House bill.

In addition, both the House and Senate appropriations bills contain unnecessary legislative restrictions on U.S. participation in the HIPC Trust Fund, such as a moratorium on new lending and other eligibility restrictions. Just yesterday, the chairman of the Senate Committee on Foreign Relations, Senator HELMS, and the chairman of the Senate Committee on Banking, Senator GRAMM, sent a letter to Secretary Summers outlining 17 specific conditions for debt relief that must be met prior to U.S. participation in the Trust Fund. The conditions outlined in their letter would require the IMF to completely revamp their lending procedures, and would also eliminate 36 of the 41 of the countries currently eligible for debt relief.

The House sent a strong signal of support for debt relief earlier this year. If we are serious about providing real debt relief, it is essential that the conference agreement on the bill fully fund debt relief and authorize a U.S. contribution to the HIPC Trust Fund without unnecessary restrictions. My motion instructs conferees to insist on these items.

Mr. Speaker, I reserve the balance of my time.

Mr. CALLAHAN. Mr. Speaker, I yield myself such time as I may consume.

I think, Mr. Speaker, that the authorizing committee, the Committee on Banking and Financial Services, has some minor objections to a provision contained therein, but I do not have, and I think that we can certainly work with that committee to work out the differences and, therefore, I will accept the motion.

Mr. Speaker, I yield back the balance of my time.

Ms. PELOSI. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. WATERS), a leader on this issue from the authorizing committee.

Ms. WATERS. Mr. Speaker, I thank the gentlewoman for yielding me this